

*This is a redacted version of the original hearing officer decision. Select details may have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.*

PENNSYLVANIA

# Special Education Hearing Officer

=====

Child's Name: D. B.

Date of Birth: xx/xx/xx

File Number: 6192/05-06 LS

Dates of Hearing: February 15, 2006, March 2, 2006,  
March 9, 2006, and March 28, 2006

OPEN HEARING

Parties to the Hearing:

Parent(s)

Representative:

(parent *pro se*)

Date Transcript Received:

April 5, 2006

Date of Decision:<sup>1</sup>

April 12, 2006

Annville-Cleona School District  
520 South White Oak Street  
Annville, PA 17003-2200

Mark Fitzgerald, Esq.  
Sweet, Stevens, Tucker, Katz  
P.O. Box 5069  
New Britain, PA 18901

Hearing Officer Name:

Gregory J. Smith

---

<sup>1</sup> The record was kept open until receipt of the transcript. This decision was rendered within 15 days of the closing of the record.

## **Background**

STUDENT is a xx-year-old child with a disability who resides with his parents in the area served by the Annville-Cleona School District (District). STUDENT is a student with a specific learning disability in basic reading and written expression. During September and October 2005 several incidents of mistreatment of STUDENT by other students and bullying of STUDENT by other students were reported to the District. On November 3, 2005 a program about bullying was presented to middle school students. Part of that program included a video on bullying which contained the depiction of a physically aggressive bullying situation. STUDENT experienced a great deal of anxiety as the result of watching the video on bullying and his own experiences with bullying. STUDENT stopped attending school on November 4, 2005, the day after the program and video on bullying.

Student's parents requested the present hearing seeking a placement for STUDENT outside of the District. They also requested that a planned psychiatric evaluation be completed by a psychiatrist familiar with STUDENT, one-to-one instruction to address STUDENT's dyslexia, and compensatory education.

## **Findings of Fact**

1. STUDENT is a xx-year-old (d.o.b. XX/XX/XX) child with a disability who resides with his parents in the area served by the District. (N.T. at 197-198; S-1)
2. STUDENT is a student with a specific learning disability in basic reading and written expression. (N.T. at 198-199; S-3, S-5)
3. STUDENT first enrolled in the District as a fourth grade student near the start of the 2002-2003 school year. At the time of his enrollment, Student's mother indicated that STUDENT had not received special education previously. (N.T. at 198, 394; S-1)
4. In January 2003 STUDENT's mother requested a multidisciplinary evaluation (MDE) to determine whether or not learning support was needed. (S-2, S-3)
5. A MDE was completed and on March 12, 2003 an evaluation report (ER) was produced. It was determined that STUDENT had a specific learning disability in the areas of basic reading and written expression. Learning support services in the areas of encoding and decoding words and written expression were recommended. In addition, a program to address STUDENT's calculation fluency in mathematics was also recommended. (N.T. at 140, 198-199, 394; S-3)
6. Near the end of the 2003-2004 school year STUDENT began to receive learning support to address his reading and written expression disabilities through a "pull-out" program and instruction in language arts in a learning support resource room. (N.T. at 321-322, 394; S-5)

7. At Student's parents' request, in sixth grade, the 2004-2005 school year, STUDENT was included in regular education for all of his classes. He received support for language arts in the regular education setting. (N.T. at 322-323; S-5)
8. On March 31, 2005 an individualized education program (IEP) team meeting was held. The IEP team decided that for the remainder of sixth grade STUDENT would continue to receive support for language arts in the regular education classroom. Then, in seventh grade when STUDENT would enter the middle school, STUDENT would go to the learning support resource room for English and reading. This plan was implemented to address STUDENT's continued difficulties in reading fluency and writing. (N.T. at 126, 200, 395-396; S-5)
9. The IEP produced on March 31, 2005 had several annual goals. One annual goal was self-monitoring, with three short-term objectives/benchmarks: independently completing an assignment book, asking for help when needed, and taking needed materials home. Three annual goals addressed the retelling of stories, reading fluency, and writing. Those annual goals were accompanied by six short-term objectives/benchmarks in the areas of editing writing assignments, reading fluency, decoding of word, encoding sounds, writing complete sentences, and responding to questions about literature. (S-5)
10. The March 31, 2005 IEP included the following program modifications and specially designed instruction: multi-modality teaching strategies; extended time on tests and/or assignments; graphic organizers, editing checklists, and paired reading; multi-phonemic language approach; writing assistance, such as structured writing organizers, small group writing instruction, and high frequency spelling words; rephrasing to check for understanding; and simplifying directions. (N.T. at 200-201, 203; S-5)
11. STUDENT's mother participated in the March 31, 2005 IEP team meeting and his parents agreed to the proposed IEP. (N.T. at 199, 395-396; S-5)
12. During the first marking period of the 2005-2006 school year STUDENT made progress on his IEP goals. He earned a grade of B in learning support English and a grade of A- in learning support reading. (N.T. at 220-221, 282-283, 286-292; P-24, S-8, S-34, S-35, S-37, S-38)
13. During September and October 2005 several incidents of mistreatment of STUDENT by other students and bullying of STUDENT by other students were reported to the District. (N.T. at 40, 65, 242-250, 325-326, 333, 378-379; P-1, P-20, S-6, S-7, S-32)
14. Each of the incidents of mistreatment and/or bullying of STUDENT was investigated by District staff. No reports were received from STUDENT or any other source that suggested that the bullying was the result of STUDENT being a child with a disability or related to the fact that he received special education services. (N.T. at 57, 65, 67, 95-96, 127, 187, 262-265; S-7, S-32)
15. On November 3, 2005 a program about bullying was presented to middle school students. Part of that program included a video on bullying which contained the depiction of a physically aggressive bullying situation. (N.T. at 191, 250-251, 266; P-1)

16. STUDENT experienced anxiety as the result of watching the video on bullying and his own experiences with bullying. (N.T. at 41-44, 48-49, 70, 246, 250-253; P-1, S-17)
17. STUDENT stopped attending school on November 4, 2005, the day after the program and video on bullying. (N. T. at 92-03, 164, 204, 396; P-1, S-20)
18. On November 10, 2005 Ms. R, a licensed clinical social worker, informed the District that she had been seeing STUDENT since October 19, 2005. She reported that she had diagnosed STUDENT as having anxiety and post traumatic stress disorder related to bullying. She also reported that STUDENT would soon be placed in a partial hospitalization program. (N.T. at 128-129, 331, 356; S-9)
19. On November 16, 2005 a meeting was held to discuss STUDENT's pending admission to a partial hospitalization program, his discharge from that program, and his return to the District. An action plan was developed for STUDENT's return to the District. The plan called for STUDENT's schedule to be modified to reduce contact with students who may have bullied him, the principal would be designated as STUDENT's contact if he felt bullied, STUDENT's locker would be moved, and a staff member would help STUDENT plan his schedule and class transitions to minimize stress. (N.T. at 105-106, 130-132, 191-192; S-11)
20. On November 17, 2005 the District was informed that STUDENT had been admitted to a partial hospitalization program and that he had been evaluated by Dr. S., a psychiatrist. (N.T. at 130, 206, 331, 359; P-10, P-11, S-10)
21. On November 23, 2005 STUDENT was discharged from the partial hospitalization. Dr. A., a child psychiatrist, noted that STUDENT should continue to receive homebound instruction "until an appropriate placement can be found." S-12 at 1 Subsequently, Dr. A. noted that STUDENT was "prepared to return to school." S-12 at 2 (N.T. at 130, 208; P-11, P-13, S-12, S-18)
22. On December 8, 2005 the District requested permission to evaluate STUDENT in order to determine his emotional and academic needs. (N.T. at 134-135, 419; S-14, S-22, S-25)
23. On December 15, 2005 Dr. A reported that the following academic needs had been identified: structure, firm limits, emotional support, consistency, and academic support. Dr. A. recommended that STUDENT would benefit from a small classroom with support staff, a teaching assistant, emotional support staff, and the services of a guidance counselor. She also recommended an MDE. (N.T. at 209-210; S-18)
24. STUDENT began to receive tutoring at home and then homebound instruction, provided by the District, in mid-December 2005. (N.T. at 172-173, 216-217; S-16, S-19, S-24, S-26, S-32)
25. On December 19, 2005 Dr. A. reported that STUDENT was "experiencing significant emotional distress secondary to stress related to peer interactions (bullying, etc.) that have occurred at school. [D. B.'s] stress is manifested in the form of anxiety and depression..." S-20 at 1 (S-20)

26. On December 19, 2005 an IEP team meeting was held. Both of STUDENT's parents participated in that meeting. The District offered to modify Student's IEP to include social/emotional goals. STUDENT's parents requested that no changes be made to STUDENT's IEP. (N.T. at 126, 136-137, 214, 216; S-21, S-24)
27. On January 4, 2006 Student's parents rejected the District's request for permission to evaluate. At that time Student's parents requested a due process hearing. (N.T. at 135, 209, 341-342, 415; S-22, S-25)
28. On January 12, 2006 the District requested a due process hearing to obtain permission to complete an evaluation. (S-39)
29. On January 13, 2006 the District renewed its request for permission to evaluate. In addition, it requested permission to complete a psychiatric evaluation and a review of records. In order to complete the review of records, the District requested that Student's parents provide permission to obtain records from non-District agencies, including the partial hospitalization program. (N.T. at 217-218; S-27, S-28, S-29)
30. On January 16, 2006 a resolution meeting was held. At that meeting Student's parents gave their permission to evaluate. Student's parents also indicated that they still wished to proceed with a due process hearing on the issues they had raised. Following the January 16, 2006 resolution meeting the District withdrew its request for a hearing. (N.T. at 149, 217; S-28, S-29, S-30, S-31)
31. In mid-January 2006 the District challenged the sufficiency of Student's parents' request for a hearing. On January 18, 2006 that sufficiency challenge was sustained. (S-42, S-43)
32. On January 27, 2006 Student's parents filed an amended complaint. The issues raised in the amended complaint were: placement outside of the District, a psychiatric evaluation completed by a psychiatrist familiar with STUDENT, one-to-one instruction, and compensatory education. On January 20, 2006 the amended complaint was found to be sufficient. (S-42, S-43)
33. On February 6, 2006 Dr. M., a psychiatrist, wrote a hand written letter stating that she had completed a psychiatric evaluation of STUDENT. Dr. M. stated that her diagnosis was major depressive disorder, adjustment disorder, learning disorder, and that she was considering post traumatic stress disorder. Dr. M. recommended that STUDENT remain on homebound instruction through approximately March 31. She also gave her "medical opinion" that STUDENT not return to his former placement in the District. (N.T. at 335-336, 408; P-8, S-46)
34. Dr. M. did not have any contact with school staff prior to making her recommendations. (N.T. at 417-418)
35. On February 8, 2006 Ms. R. recommended home-bound instruction until STUDENT "can be placed in a school other than [a District] Middle School." P-9 at 1 The District was not

provided with a copy of that recommendation until it was provided as part of the parents' exhibit book at the present hearing. (N.T. at 227; P-9)

36. On November 8, 2005 and January 30, 2006 STUDENT was seen by his family physician, Dr. T. Dr. T. has identified himself as Student's "advocate." On February 9, 2006 Dr. T. wrote a letter recommending attendance in a different school, homebound instruction, or cyber-schooling. The District was not provided with a copy of that recommendation until it was provided as part of the parents' exhibit book at the present hearing. (N.T. at 224-226, 331; P-5, P-6, P-7)

37. Dr. T. did not have any contact with school staff prior to making his recommendations. (N.T. at 226, 423)

38. On February 9, 2006 Dr. A. informed Student's parents that it was the opinion of the partial hospitalization treatment team that with continued psychiatric treatment STUDENT will be able to function "at home, school, and the community." P-13 at 1 The treatment team consisted of Dr. A., who is a psychiatrist, a case counselor, a nurse, an educational therapist, and a program director. (N.T. at 230-231; P-13)

39. STUDENT has not attended school since November 4, 2005. (P-3, P-21, S-13, S-18, S-24, S-26, S-36, S-46)

## **Issues**

Must the School District use a psychiatrist who has previously worked with STUDENT to complete the psychiatric evaluation component of a multidisciplinary evaluation?

Must the School District provide STUDENT with an educational placement outside of the District?

Must the School District provide one-to-one instruction to address Student's dyslexia?

Must the School District provide STUDENT with compensatory education?

## **Discussion**

The present hearing was initially requested by Student's parents. Although the District also requested a hearing, [Fact 28] the issues raised by the District were resolved at a resolution meeting and the District subsequently withdrew its request for a hearing. [Fact 30]

The District challenged the sufficiency of the parents' initial request for a hearing. [Fact 31] That challenge was sustained by this hearing officer. [Fact 31] The parents filed an amended complaint, raising the above issues, and that amended complaint was found to be sufficient. [Fact 32]

Throughout the hearing the District has requested dismissal of some or all of the issues on various grounds, including the hearing officer's lack of jurisdiction, lack of authority to order specific evaluators, and the parents' failure to meet a burden of production. Each motion to dismiss was denied by this hearing officer. The reasons the District's motions failed fell into three categories: First, parents have the right to a due process hearing in matters related to "identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child." 34 CFR §300.507(a)(1) Each of the issues raised by Student's parents, at least on their face, fit into one or more of the allowed categories for a hearing. Because Student's parents were proceeding *pro se* it was necessary to allow them to continue to develop the record the best that they could, rather than cut those efforts off. Second, most questions of jurisdiction and/or authority are fact specific. Without the establishment of a record a final determination cannot be made. And third, this hearing officer knows of no precedence, and the District offered none, for dismissing a special education due process hearing on the grounds of failure to meet a burden of production.

Simply put, this hearing officer believed and still believes that in this specific matter, and under the specific circumstances presented in this matter, that Student's parents have the right to a decision on the facts of the case and that the decision should not be preempted by motions made by the District. In deciding this case on the facts the hearing officer certainly must limit himself to areas in which he does, in fact, have jurisdiction. But, that does not equate to prematurely denying a decision to the parents. If, and only if, the facts compel the conclusion that the hearing officer lacks jurisdiction should he make the decision not to rule on a specific issue.

Turning next to the question of the burden of proof in the present matter, the Supreme Court, in its decision in *Schaffer v. Weast*, 126 S.Ct. 528 (2005) held that the "burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief." at 537 In so doing the Court found no reason to depart from "the ordinary default rule that plaintiffs bear the risk of failing to prove their claims." at 534

That decision effectively settled a split, present in the Circuit Courts, in assigning the burden of proof. As noted in *L.E. v. Ramsey Bd. of Educ*, \_\_\_ F.3d \_\_\_ (3d Cir. 2006) the Third Circuit Court had previously placed the burden of proof on the school district. However, in *L.E. v. Ramsey* the Third Circuit Court found *Schaffer* controlling and extended the reach of *Schaffer* writing "It would be unreasonable for us to limit that holding to a single aspect of an IEP, where the question framed by the Court, and the answer it provided, do not so constrict the reach of its decision." at 5

Because it is the parents who have challenged the use of an unfamiliar psychiatrist, Student's placement, and Student's program relative to his dyslexia, it is the parents that carry the burden of proof on each of those issues. The parents would also carry the burden of proof on the question of compensatory education because they are challenging the appropriateness of the homebound instruction, however, because as discussed below, this hearing officer has determined that he lacks jurisdiction over that issue, the burden of proof need not be considered.

Must the School District use a psychiatrist who has previously worked with STUDENT to complete the psychiatric evaluation component of a multidisciplinary evaluation?

The above issue was originally phrased “Must the district provide an educational evaluation completed by a psychiatrist who has previously worked with [Student]?” N.T. at 29 However, the dispute was not over whether or not a psychiatric evaluation should be completed. The District sought permission to complete a MDE, including a psychiatric evaluation. [Facts 22, 13] Following an initial rejection of that request [Fact 27] and the District’s filing for a due process hearing, [Fact 28] Student’s parents agreed to the MDE. [Fact 30] What they disagreed with was who should complete the psychiatric evaluation part of the MDE, requesting that the evaluator be a psychiatrist familiar with STUDENT [Fact 32]

Although the District argued that this issue was outside the jurisdiction of a hearing officer, the potentially fact specific nature of this claim required the denial of a motion made relative to that argument. If, in fact, evidence existed that suggested that STUDENT would be harmed if a psychiatrist that was unfamiliar with him completed the evaluation, this issue would certainly be within the jurisdiction of a hearing officer to rule on. That was precisely what Student’s parents were claiming.

However, turning to the evidence in the record, no evidence was presented that suggested that STUDENT would be harmed if a psychiatrist unfamiliar with STUDENT were to evaluate him. Other than his parents, not a single witness and no exhibits asserted that STUDENT would be harmed by contact with an unfamiliar psychiatrist. In short, Student’s parents failed to meet their burden to show that a psychiatrist familiar with STUDENT was required.

In fact, the evidence suggests the opposite. Since November STUDENT has been seen by Ms. R., a licensed clinical social worker, [Facts 18, 35] Dr. S, a psychiatrist, [Fact 20] Dr. A. a child psychiatrist, [Facts 21, 25, 38], Dr. M., a psychiatrist, [Fact 33] Dr. T, the family’s physician, [Fact 36] and a treatment team consisting of, in addition to Dr. A, a case counselor, a nurse, an educational therapist, and a program director. [Fact 38] Although the parents did not call any of those individuals to testify on their behalf, none of the reports produced by those individuals suggest that STUDENT had any difficulty meeting with them or would have any difficulty being evaluated by a novel individual in the future. The parents did not even testify that STUDENT had any difficulty with the large number of evaluators, most of whom appeared to be unfamiliar with Student.

Because there is no evidence to support the suggestion that STUDENT will be harmed if he is not evaluated with a psychiatrist who is familiar with him or that he must be evaluated by a psychiatrist familiar with him, and because the evidence in the record actually suggests that STUDENT has done well during multiple evaluations completed by at least three different psychiatrists during a four month period and multiple evaluations completed by other mental health and/or medical professionals during that same period, the District cannot and will not be required to use a psychiatrist familiar with STUDENT when it completes the psychiatric portion of the MDE.



Must the School District provide STUDENT with an educational placement outside of the District?

Student's parents have sought a placement outside of the District because they believe that continued placement within the District would be detrimental to their son. While it is impossible to know exactly what transpired during the first part of the current school year, the record suggests the following:

- a. During September and October 2005 several incidents of mistreatment of STUDENT by other students and bullying of STUDENT by other students were reported to the District. [Fact 13]
- b. Those incidents were not related to STUDENT being a child with a disability or related to the fact that he received special education services. [Fact 14]
- c. Following a program and video about bullying, which caused STUDENT anxiety, STUDENT stopped attending school. [Facts 15, 16, 17]
- d. STUDENT was admitted to a partial hospitalization program and then placed on homebound instruction, both events related to Student's response to his treatment from his peers. [Facts 18, 19, 20, 21, 24, 33, 35]
- e. STUDENT has not attended school since November 4, 2005. [Fact 39]

While the above is relatively clear from the record, what is not clear is whether or not STUDENT must be placed outside of the District. Up until his removal from the District STUDENT was making progress toward his IEP goals. [Fact 12] As discussed above, the District has sought an evaluation to determine whether or not Student's program needs to be changed. Once the MDE is completed, the IEP team might determine that Student's program can only be provided in a placement outside of the District. If that is the determination of the IEP team, then a placement outside of the District may be appropriate. But, at the present time, the evidence before this hearing officer does not compel that conclusion.

None of the evidence that was presented suggesting that an out-of-District placement is necessary was credible. Although several reports recommending an out-of-District placement were entered as parents' exhibits, [Facts 33, 35, 36] none of those reports carried probative weight with this hearing officer for the following reasons: First, none of the makers of those reports were called as witnesses. It is impossible to determine the basis of their conclusions because they did not testify in the present matter. Second, none of the makers appear to have had any contact with the District before reaching their conclusions about placement. [Facts 34, 37] Again, it is impossible to determine how they could have reached any conclusion about District programs and placement if they never had contact with anyone in the District. Third, the reports were objected to as hearsay evidence and as uncorroborated hearsay evidence they cannot form the basis of this hearing officer's decision. Fourth, at least one of the reports was produced by the family's physician who described himself as Student's "advocate." [Fact 36] That self-description, in itself, challenges the credibility of the report. Fifth, at least some of the reports

were not provided to the District prior to the start of the present hearing. [Facts 35, 36] And sixth, the reports were contradicted by another report provided by the parents, equally without supporting testimony by the maker and also objected to by the District. That report provided the opinion of the partial hospitalization treatment team, a team consisting of a psychiatrist, a case counselor, a nurse, an educational therapist, and a program director, that with continued psychiatric treatment STUDENT will be able to function “at home, school, and the community.” P-13 at 1 [Fact 38] That report, issued on February 9, 2006, specifically does not state that STUDENT requires a different school, but rather indicates he will be able to function in school.

The problem is that all of the reports, including the partial hospital team report, lack any credibility because no one who created any of the reports was called by Student’s parents as a witness. In fact, Student’s parents produced no witnesses who had evaluated STUDENT relative to his emotional state, who had worked with him at the partial hospitalization, or who had been part of his treatment since the partial hospitalization. Without that testimony and with the hearsay nature of the objected to reports that were admitted into the record, Student’s parents failed to meet their burden to prove that STUDENT requires a placement outside of the District. Based on the record before this hearing officer, the District cannot and will not be required to provide a placement outside of the District.

Must the School District provide one-to-one instruction to address Student’s dyslexia?

Although the District argued that this issue should be dismissed for the parents’ failure to meet a burden of production, as noted at the hearing and noted above, this hearing officer knows of no precedent in special education hearings, and the District offered none, for dismissing an issue for lack of production.

Turning to the merits of this issue, although the issue cannot be dismissed for lack of production, the parents certainly cannot prevail when nothing on the record suggests that one-to-one instruction is needed to address Student’s dyslexia. The parents did not call a single witness and there is not a single exhibit that suggests that STUDENT requires any one-to-one instruction. In short, Student’s parents failed to meet their burden of proof to show that STUDENT requires one-to-one instruction to address his dyslexia.

In March 2005 the District, with the participation of Student’s mother, prepared a comprehensive IEP to address his needs. [Facts 8, 9, 10, 11] The IEP team decided that in seventh grade, when STUDENT would enter the middle school, STUDENT would go to the learning support resource room for English and reading. This plan was implemented to address Student’s continued difficulties in reading fluency and writing. [Fact 8] The IEP included goals and short-term objectives/benchmarks [Fact 9] and program modifications and specially designed instructions. [Fact 10] The only evidence presented suggests that STUDENT made progress on his IEP goals. [Fact 11]

Nothing in the record suggests that STUDENT was not making adequate progress in the program he was provided under the March 2005 IEP. Nothing in the record suggests that STUDENT requires one-to-one instruction in any area and certainly not in the area of his dyslexia. Because

of these facts, the District cannot and will not be required to provide STUDENT with one-to-one instruction to address his dyslexia.

Must the School District provide STUDENT with compensatory education?

Following incidents of bullying and mistreatment by other students [Fact 13] and following a program and video on bullying [Fact 15] which caused STUDENT anxiety, [Fact 16] STUDENT stopped attending school on November 4, 2005. [Fact 17] Student's parents have sought compensatory education claiming at various points in this matter that the District failed to provide homebound instruction in a timely manner after STUDENT stopped attending school and/or that the homebound instruction did not include an appropriate amount of special education.

School districts are required to provide special education to all students who qualify for it. When they do not, they may be held liable for compensatory education.

The basic requirement for the provision of services has been summarized in *In Re Educational Assignment of N.B.*, Spec. Educ. Op. 1427 (2003):

The Individuals with Disabilities Education Act (IDEA) requires the states to provide a "free appropriate public education" to all students who qualify for special education services. In *Rowley*,<sup>22</sup> the U.S. Supreme Court held that this requirement is met by providing personalized instruction and support services to permit the child to benefit educationally from the instruction, providing the procedures set forth in the Act are followed.

<sup>22</sup> *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982).

A child is entitled to compensatory education if a school district knew or should have known that a child had an inappropriate IEP or was not receiving more than minimal educational benefit and did not correct the situation. With limited exceptions, the period for which compensatory education can be granted is limited to two years under the revised IDEA which went into effect July 1, 2005. An award for compensatory education should be equal to the period of deprivation minus the time reasonably required for the school district to rectify the problem. *M.C. v. Central Regional School District*, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996)

The key to all of the above is that the requirement that school districts provide a free appropriate public education is specifically referring to special education and related services. The homebound instruction that STUDENT has been on since November 4, 2005 is not a special education placement. It is a regular education placement obtained as the result of a recommendation of a medical professional. At times homebound instruction is confused with the special education placement of instruction in the home, but that does not appear to be the case here. What appears to be the case is that Student's parents have sought some relief because they believe that the homebound instruction was not started as soon as it should have been or it has not been adequate in its content. However, because homebound instruction is a regular

education placement and because a special education due process hearing officer does not have the authority to rule on matters outside of special education, the relief that Student's parents seek, specifically compensatory education, cannot be granted by this hearing office.

Student's parents do not appear to be making a claim that the District knew or should have known that Student's program and/or placement were no longer appropriate and failed to act appropriately. However, even if that were a claim to be asserted, the facts of the present matter do not support it. On November 16, 2005, less than two weeks after STUDENT stopped attending school, a meeting was held to discuss Student's pending admission to a partial hospitalization program, his discharge from that program, and his return to the District. [Fact 19] Once STUDENT was discharged from the partial hospitalization program and it became evident that he would not immediately return to school, [Fact 21] the District requested permission to evaluate STUDENT in order to determine his emotional and academic needs. [Fact 22] That request was repeated, with some modification, one month later. [Fact 29] In response, Student's parents refused to give their permission to evaluate [Fact 27] until after the District sought a due process hearing [Fact 28] and held a resolution meeting. [Fact 30] During that period the District also held an IEP team meeting to discuss possible modifications to Student's program, [Fact 26] but Student's parents requested that no changes be made to the IEP. [Fact 26] In short, the District tried to find out whether or not changes were needed in Student's IEP and tried to make some changes to his IEP. It was Student's parents who slowed the evaluation process. Because of that, even if this hearing officer had jurisdiction over the question of compensatory education, the District could not be held accountable for a failure to modify Student's program in a timely fashion.

For all of the above reasons, compensatory education cannot and will not be required in this matter.

Accordingly we make the following:

### **ORDER**

The School District is not required to use a psychiatrist who has previously worked with STUDENT to complete the psychiatric evaluation component of a multidisciplinary evaluation.

The School District is not required to provide STUDENT with an educational placement outside of the District.

The School District is not required to provide one-to-one instruction to address Student's dyslexia.

The School District is not required to provide STUDENT with compensatory education.

---

Signature of Hearing Officer