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**PENNSYLVANIA**  
**SPECIAL EDUCATION HEARING OFFICER**

DECISION

DUE PROCESS HEARING

Name of Child: N.S.  
ODR # 6204/05-06 LS

Date of Birth: xx/xx/xx

Dates of Hearing: March 28, 2006

CLOSED HEARING

Parties to the Hearing:

Parent

Mrs. Sandy Homel  
Director of Secondary Special Education  
Centennial School District  
433 Centennial Road  
Warmister, PA 18974

Representative:

Charles Weiner, Esquire  
179 North Broad Street  
Doylestown, PA 18901

Andria Saia, Esquire  
1800 Byberry Road  
1301 Mason's Mill Business Park  
Huntington Valley, PA 19006

Date Transcript Received:

April 1, 2005

Date of Decision:

April 10, 2006

Hearing Officer:

Marcie Romberger, Esquire

## BACKGROUND

Student is currently in tenth grade in the Centennial School District. Student and the District entered into a settlement agreement in November, 2005. Prior to settlement negotiations, the District issued a Permission to Evaluate, and the Student consented to a re-valuation by the District. The settlement does not address any timelines in which the Evaluation Report and IEP should be completed.

## FINDINGS OF FACT

1. Student is currently in 10<sup>th</sup> grade at Centennial School District (hereinafter "District"). NT 37.
2. In February, 2005, Student was having difficulties with his academics. NT 37-38.
3. On February 10, 2005, Student's Mother asked the District via email to re-evaluate Student to determine if he was a student in need of special education services. P-1; NT 40.
4. In March, 2005, Student's Mother received an email from the District asking her to forward her request for a re-evaluation via a letter as a request via email was not sufficient. P-3. Student's Mother complied. P-4.
5. Via email, Student's Mother learned on April 22, 2005 that the District denied her request for a re-evaluation of Student since Student had been previously evaluated in March, 2004. P-5.
6. Student's Mother sought an independent educational evaluation. NT 46-47.
7. After the independent evaluation was completed, Student requested a due process hearing. NT 46-47.
8. In response to Student's request for a due process hearing, the District requested permission to re-evaluate Student. NT 47. Student gave consent for the District to conduct its re-evaluation on October 18, 2005. P-8. The District received this consent on October 20, 2005. S-1.
9. The Due Process Hearing was scheduled for November 11, 2005. NT 50. On that day, the District provided Student with a draft of the Evaluation Report. NT 50; P-10. Missing from the Evaluation Report was an occupational therapy evaluation which was to be performed that day. NT 51.

10. The results of the occupational therapy evaluation were to be incorporated into the Evaluation Report. NT 51. Although Student assumed he would receive a copy of the final Evaluation Report within a few days, no date was discussed. NT 52.
11. Also on November 11, 2005, the parties reached a settlement with respect to the issues involved in the Due Process hearing. NT 50. The settlement agreement discusses agreed upon financial terms. P-17, S-8. It does not specify dates when the Evaluation Report or the IEP would be completed. P-17, S-8; NT 89. Dates as to when the Evaluation Report and the IEP would be completed were not discussed at the meeting, nor were there any discussion that federal timelines would not apply. NT 72-73, 88.
12. A letter from Student's attorney to District's counsel stated that it was his understanding that one of the terms of the settlement was that the Evaluation Report was to be completed "as soon as practical." P-11.
13. By January 9, 2006, Student had not received from the District a District signed settlement, Evaluation Report, or IEP. P-20.
14. Student filed for a new due process hearing on January 9, 2006. P-20.
15. On January 10, 2006, Student received a call from the District stating that the Evaluation Report had been sent on January 9, 2006. NT 64. Student received the Report, dated November 16, 2005, on January 10, 2006. P-22, P-23; NT 65.
16. On January 12, 2006, Student received a call from the District attempting to schedule an IEP meeting. NT 65. A meeting was scheduled for January 18, 2006, but because of a power outage, a meeting could not be held. NT 65. An IEP meeting was held on January 25, 2006. NT 65. S-4.
17. On January 19, 2006, Student received a letter from the District stating that the Evaluation Report was incorrectly dated November 16, 2005. P-24. The District suggested that the Report should be dated January 19, 2006. P-24, P-25. However, there is also an evaluation dated January 25, 2006 which is the same as the November 16, 2005 and January 19, 2006 evaluation. S-2.
18. The IEP from the January 25, 2006 meeting was approved by Student on February 27, 2006. S-5.
19. In February, 2006, Student received a copy of the settlement agreement signed by the District's superintendent. NT 69-70; P-17.
20. Sixty days from October 20, 2006, the date the Permission to Evaluate was returned to the District, is February 2, 2006. S-1, S-7.

## ISSUE

Did the District conduct the evaluation and issue an IEP in a timely fashion?

If not, is compensatory education warranted from November 16, 2005 until January 25, 2006?

## DISCUSSION AND CONCLUSION OF LAW

Each public agency shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services to determine if the child is a “child with a disability” and to determine the educational needs of the child. 34 C.F.R. § 300.320. In Pennsylvania, the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60 school days after the agency receives written parental consent. 22 Pa. Code §14.123. A reevaluation is conducted if conditions warrant a reevaluation, or if the child’s parent or teacher requests a reevaluation, but at least once every three years. 34 C.F.R. §300.536(b). A reevaluation report shall be provided to the parents within 60 school days from the date that the request for reevaluation was received from the parent or teacher, or from the date that a determination is made by the agency that conditions warrant a reevaluation. 22 Pa.Code §14.124. A meeting to develop an IEP for the child must be conducted within 30-days of a determination that the child needs special education and related services. 34 C.F.R. §300.343 (b)(2)

Student contends that the District is in violation of the above regulation by not completing the Evaluation Report within 60 days of February 10, 2005, the date in which Student first requested an evaluation. P-1. This claim cannot be addressed, however. Student gave up his right to argue this claim and to seek a remedy because of the settlement agreement entered into by both parties.

The settlement is clear. Student released all “claims, demands, damages, actions, causes of actions, suits at law or in equity,” “from the beginning of time through the date of execution of this agreement.” P-17. It is unclear when the District Superintendent signed the settlement, but Student’s Mother signed the agreement on December 2, 2005, almost ten months after the date in which she initially requested a re-evaluation. Therefore, Student does not have a right of action for any event occurring before December 2, 2005. Because Student’s original request for a re-evaluation was so far removed from the settlement, I cannot address the substance of this claim.

Student’s other claim is that the District did not abide by the settlement by not completing an Evaluation Report “as soon as practical” after November 11, 2005, the date the parties entered into a settlement. P-11. The settlement itself does not contain

any provisions with respect to when the evaluation was going to be completed or when an IEP would be offered. Nor were there discussions between the parties regarding when the Evaluation Report was going to be completed, let alone an agreement that the Evaluation Report would be completed earlier than is required by law. Putting aside the District's argument that anything outside the settlement is parol evidence and should not be considered, the reality is there is no outside evidence to consider.

Student did consent to a re-evaluation on October 18, 2005 and the consent was received by the District on October 20, 2005. The Evaluation Report was completed and forwarded to Student within 60 school days from the date of Student's consent and receipt by the District. P-22, P-23, S-1; NT 65. An IEP meeting was held within 30 days from the day the Evaluation Report was issued. Therefore, the District did follow the mandated timelines. No compensatory education is warranted.

## ORDER

The District did not violate the settlement agreement. The District did complete the Evaluation Report and IEP in a timely fashion. No compensatory education is warranted. No further action is required by the District in relation to the issues in this hearing.

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Marcie Romberger, Esquire  
Hearing Officer