

*This is a redacted version of the original decision. Select details 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

DECISION

Child's Name: PC

Date of Birth: XX-XX-XXXX

Date of Hearing: 8/5/09

CLOSED HEARING

ODR No. 00004-0910LS

Parties to the Hearing:

Representative:

Parents

Parent Attorney:

Mr. & Mrs.

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School District

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Date Record Closed:

August 10, 2009

Date of Decision:

August 24, 2009

Hearing Officer:

Anne L. Carroll, Esq.

### **INTRODUCTION AND PROCEDURAL HISTORY**

“Student” is transitioning from 3—5 year early intervention services to kindergarten in North Penn School District in the 2009/2010 school year. “Student” has been identified as IDEA eligible due to an autism spectrum disorder and speech/language impairment. [Redacted.]

The dispute in this case centers on the amount of time “student” should receive special education services, the location of those services and where “student” should participate in a regular kindergarten class. Parents contend that the District’s proposal to place “student” in a morning autistic support class daily, followed by a regular afternoon kindergarten class in a building other than “student’s” neighborhood school, violates the IDEA requirement that “student” be educated in the least restrictive environment.

The hearing was conducted in one session on August 5, 2009. Because “student” needs the special education services the District proposes and because the District convincingly justified its decision to provide those services at the intensity level and location it has chosen, the District will be permitted to implement its proposed autistic support program and to place “student” in a regular kindergarten class in the same building. The District will, however, be required to reassess location of the regular kindergarten class mid-way through the school year

## **ISSUES**

1. Is the North Penn School District's proposal to provide "student" with both autistic support services and a regular education kindergarten class appropriate for "student"?
2. Does the North Penn School District's proposal for providing "student" with 15 hours/week of autistic support services in a special education class and 15 hours/week in a regular kindergarten class in a District elementary school other than the school "student" would attend if not disabled violate the requirement that educational services for IDEA-eligible students be provided in the least restrictive environment?

## **FINDINGS OF FACT**

1. "Student" is a 6 year old child, born "XX-XX-XXXX". "Student" is a resident of the North Penn School District and will be eligible for special education services from the District when the 2009/2010 school year begins. (Stipulation, N.T. p. 18).
2. "Student" has a current diagnosis of autism and speech/language impairment in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(1), (11); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. pp. 17, 18; S-13).
3. "Student" is transitioning to the District for kindergarten from 3—5 year old early intervention services, which "student" received in a regular pre-school setting for part of the day, with speech/language, OT, behavior support services and social skills training provided outside of school hours for the most part. (N.T. pp. 18 (Stipulation), 197; S-10)
4. "Student" was first diagnosed with Pervasive Developmental Disorder, Not Otherwise Specified (PDD-NOS) by a private neuro-developmental pediatrician in January 2006, when "student" was nearly three years old. (N.T. p. 153; P-2, P-3, S-10)
5. "Student" was also evaluated by Montgomery County Intermediate Unit (MCIU) in 2006 and found to be eligible for early intervention services, with deficits and needs in the areas of speech/language, particularly expressive language and pragmatics, fine motor skills, social skills and behavior. (N.T. p. 153; P-2, P-3, S-10)
6. For the 2008/2009 school year, "student" attended a private pre-kindergarten program 5 days/week for 2½ hours/day in which "student" was fully included with 5 and 6 year old typical peers. (N.T. pp. 156, 199, 206; P-2, P-3, P-5, P-8, S-10)

7. By the end of the 2008/2009 school year, “student” was receiving 45 minutes of speech/language and occupational therapy weekly, itinerant teacher support 30 min/month, social skills group for 60 min/week and 6 hours of behavior support services and socialization training. Most of the behavior support “student” received was provided at home, but a personal care aide spent 150 minutes with “student” at pre-school each week, helping “student” to generalize the skills “student” was taught to the pre-school setting and providing behavior support. (N.T. pp. 197, 198, 202; P-6, S-10)
8. As the end of the 2008/2009 school year approached in April 2009, “student” had made significant progress in “student’s” typical pre-kindergarten class, particularly in playing with peers and initiating/sustaining communication with them. “Student” continued to need preferential seating near the teacher for “circle time,” when the entire class was engaged in group activities, reminders not to call out and reminders to attend and focus. “Student” continued to exhibit attention-seeking behaviors, difficulty sitting still, difficulty with transitions/changes in routine, manifested by acting-out behaviors, dislike of loud noises and dislike of unexpected touching. (P-8, p. 7)
9. “Student’s” Parents, pre-school teachers and other private professionals who have evaluated, observed or worked with “Student” agree that in order to continue progressing toward acquiring age-appropriate skills and to succeed in a full-inclusion kindergarten program, “student” needs:
  - a) Specific and explicit instruction in pragmatic language and social skills, including the opportunity to practice the skills “student” learns;
  - b) occupational therapy for sensory regulation, organization, motor planning, attention and responding to directions;
  - c) continuation of a 1:1 aide to facilitate generalization and use of skills in the regular education environment and to support appropriate behavior in that setting. (N.T. pp. 115, 207, 208; P-5, P-8, pp. 6, 7; P-14, S-3, S-12, S-13, S-14)
10. After consideration of evaluation reports, including one completed by the District in March 2009 which included a review of records, standardized testing and classroom observations, the District members of “student’s” IEP team recommended that “student” attend a kindergarten autistic support class during the morning of each school day in which “student” will receive:
  - a) Speech/language services directed toward explicit instruction in pragmatic language, social skills and appropriate classroom behavior, based upon “student’s” specific needs;
  - b) group OT services directed toward appropriate school-related skills such as taking turns, transitioning to different activities, controlling body movements, sitting appropriately, responding appropriately to directions/requests and dealing appropriately with frustrations such as losing at a game, having to wait and making mistakes.

- c) OT services directed toward improving “student’s” handwriting skills in terms of both copying and proper spacing of words, motor planning/use of classroom materials and developing the ability to restate the steps to completing an activity or project. (N.T. pp. 41,42, 50, 55, 56, 58, 61, 63, 64, 76, 77, 79, 91, 112—117, 214; P-13, S-3, S-10, S-22, S-12, S-13)
11. With the District’s placement proposal, “student” will first have the opportunity to learn the skills taught in the autism support class and practice those skills with peers in that setting. In the afternoons, “student” will attend a regular kindergarten class in the same District elementary school building, which is not “student’s” neighborhood school. In that classroom, “student” will have the opportunity to practice the skills taught in the autistic support class in a regular education class with systematic support from the regular classroom teacher and autistic support personnel. (N.T. pp. 50—53, 58, 63, 64, 77, 80, 81, 88, 96, 97, 106, 132, 133, 214; S-3, S-10)
12. A significant advantage of attending the autistic support and regular kindergarten classes in the same school building is the opportunity to fully participate in the District’s “tiered” approach to explicitly teaching skills then transferring and generalizing appropriate language, behaviors and social skills to the regular education setting. That approach is facilitated by the ready availability of teachers and related service providers from the autistic support class to continue working with students in the regular kindergarten classroom. (N.T. pp. 52, 53, 58, 76, 81, 86, 96, 127, 128)
13. The District operates several different levels of autistic support classes for kindergarten students, depending upon the severity of the disability and the type of needs exhibited by each eligible student. The class proposed for “student” is for high functioning students. (N.T. pp. 93, 94, 139, 140)
14. The District’s autistic support curriculum in the class proposed for “student” follows a unique program for high functioning children with an autism spectrum disorder based upon teaching them to see situations from another person’s perspective, a skill which needs to be explicitly taught to children on the autism spectrum. The instruction also teaches children to distinguish between expected and unexpected behaviors in particular environments. (N.T. pp. 44—47, 57, 79, 80)
15. The goal of the autistic support class that the District proposes for “student” is to place the students entirely in regular education classes in their neighborhood schools as soon as possible. Although the average length of time the students remain in autistic support classes is two to three years, students can and do transition entirely to regular education classes much sooner. If “student’s” progress in kindergarten continues as it did in pre-school, the District considers it possible for “student” to enroll in first grade in “student’s” neighborhood school

and receive support entirely in the regular education classroom. (N.T. pp. 119, 120, 134, 141, 142, 144)

### **DISCUSSION AND CONCLUSIONS OF LAW**

There is no dispute in this case that “student” needs the speech/language, occupational therapy services and social skills training proposed by the District for “student’s” kindergarten school year. The parties differ only with respect to where and how those services should be delivered. Parents contend that because “student” did well in a fully integrated pre-school setting, with behavior services delivered primarily at home outside of school hours, a similar program is an appropriate means of providing “student” with the same kinds of services, which “student” continues to need in kindergarten. Parents further contend that the District’s proposal to place “student” in a 3 hour daily autistic support class composed entirely of children with similar disabilities/needs violates the IDEA requirement that special education services be provided in the “least restrictive environment” (LRE), as does the District’s proposal to provide a fully integrated regular education kindergarten program during the other half of each school day at a location other than “student’s” neighborhood school.

#### **LRE Legal Standards**

The IDEA statute and regulations provide that an eligible child is entitled to be educated in the least restrictive environment appropriate for the student, *i.e.*, one in which the student is, to the maximum extent appropriate, educated with children who are not disabled. 34 C.F.R. §300.114(a)(2)(i). In order for a proposed placement to meet LRE requirements, school districts must, at a minimum, assure that placement decisions are “made by a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options”

§300.116(a)(1); are “determined at least annually” §300. 116(b)(1); are “ based upon the child’s IEP” §300.116(b)(2). In addition, unless an eligible child “requires some other arrangement, the child [must be] educated in the school he or she would attend if not disabled.” §300.116(c).

The United States Court of Appeals for the Third Circuit provided additional guidance for applying LRE requirements in *Oberti v. Board of Education*, 995 F.2d 1204 (3<sup>rd</sup> Cir. 1993). In accordance with *Oberti*, the first step in evaluating a program and placement to determine whether it meets LRE criteria is an assessment of whether the student can be educated satisfactorily in the regular classroom with supplementary aids and services. *Greenwood v. Wissahickon School District*, 571 F.Supp.2d 654 (E.D. Pa. 2008). In making that determination, a school district is required to consider the full range of aids and services available, with the goal of placing the student with a disability in the regular classroom as much as possible. Consideration must also be given to the unique benefits that a student with a disability will derive from placement in a regular classroom, and those benefits must be compared to the benefits likely to be derived from a more segregated setting. Finally, the district must determine whether there are likely to be any negative effects upon the education of the other children from placement of a particular student with a disability in the regular classroom.

Second, if education outside of the regular classroom for all or part of the school day is found necessary, the proposed placement must be evaluated to determine whether it provides for contact with non-disabled peers to the greatest extent appropriate. In *Oberti*, the court noted that the continuum of placements mandated by the IDEA statute and regulations is designed to assure that a school district does not take an “all or

nothing” approach to the placement of a student with a disability, but considers using a range of placement options to assure that the unique needs of each child are met. A school district’s obligation to place an eligible student in the least restrictive environment does not diminish its responsibility to educate an eligible student appropriately. *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 390 (3<sup>rd</sup> Cir. 2006).

In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion. In *L.E. v. Ramsey Board of Education*, the Court of Appeals for the Third Circuit explicitly extended the *Schaffer* burden of proof analysis to a parental challenge to an IEP based upon an LRE violation. 435 F.3d at 392. It is, however, somewhat challenging to determine how allocating the burden of proof to parents with respect to an LRE violation works in practice, when both the IDEA regulations and controlling case law place an affirmative duty on districts to assure that an eligible child is not removed from the regular education environment unless, and only to the extent, necessary. In *Oberti*, the Third Circuit described the IDEA LRE requirements as a “presumption” in favor of educating an eligible child with non-disabled peers. 995 F.2d at 1214. Moreover, in *L.E. v. Ramsey Board of Education*, the administrative hearing and district court decisions were issued when school districts had the burden of proof, and those decisions were affirmed on that basis. In addition, the court analyzed and credited the evidence presented by the district with respect to the need for the student in that case to be educated outside of a regular classroom environment. It is likely, therefore, that the *L.E.* decision is not the last word on this issue.



In *Moore v. Kulicke & Soffa Industries, Inc.*, 318 F.3d 561 (3rd Cir. 2003), the court discussed the role of presumptions in a burden of proof analysis, concluding that when the party with the ultimate burden of proof successfully raises a presumption under the governing law, the burden of production shifts to the opposing party to come forward with some evidence to rebut the presumption. Failing that, the party with the burden of proof prevails on that issue. In the absence of specific guidance from the courts with respect to how the statutory/regulatory LRE standards as explained in *Oberti* should be analyzed and applied in light of *Schaffer* and *L.E. v. Ramsey Board of Education*, and noting that the Supreme Court specifically allocated only the burden of persuasion, which remains with parents, it makes sense to adopt and apply the *Moore* analysis with respect to the LRE issue in this case.

**Parents' Initial Burden to Raise the LRE Presumption**

Parents' claim in this case is based entirely on their contention that the District's proposed placement for "student" is inappropriate because it allegedly violates LRE standards. There is no doubt that the District has proposed a half day of autistic support services each day in a special class setting that provides for no interaction with typical peers, and that the proposed regular education setting for the remainder of each school day will not be at "student's" neighborhood school. In light of the Parents' claim and the undisputed evidence concerning the District's proposed placements for regular and special education services, the burden of production shifted to the District to explain why it is necessary to provide "student", first, with an entirely segregated autistic support class and second, why it is necessary to provide him with a regular kindergarten class at a school other than the school "student" would attend if not disabled.

### **North Penn School District's Burden of Production**

The District provided extensive evidence concerning its analysis of “student’s” needs for speech/language and OT services, social skills training and behavior goals and why it is essential for “student” to receive explicit instruction in those skill areas and the opportunity to generalize and apply the skills taught in the autistic support class to a regular education setting. *See, e.g.*, N.T. pp. 42, 44, 50—53, 55, 89; F.F. 10, 11. The District has also provided a reasonable and convincing rationale for keeping “student” in the same school building for the regular education class, where staff from the autistic support class familiar to “student” can explicitly and systematically support generalization of the skills in which “student” is specifically instructed in the morning to the regular education class “student” will attend in the afternoons. The District’s testimony concerning the advantages of the tiered approach for facilitating transfer of skills to the regular education environment was also reasonable and convincing. (F.F. 12) In short, the District provided good reasons for its program/placement proposal in terms of meeting “student’s” specific needs and established demonstrate that education outside of the regular education setting for part of the day is necessary for “student”. Moreover, despite mornings spent entirely in a special education class, “student” will fully participate in a regular kindergarten class. (F.F. 11)

The District’s testimony also established that it has sound reasons for “student” to remain in the same school building for the regular education portion of “student’s” school day. (F.F. 12) The extensive experience of the staff at that school in successfully integrating high functioning children with autistic spectrum disorders into regular kindergarten classes will provide “student” with opportunities to apply the skills

“student” acquires to the regular education setting in a program that has been successful. (F.F. 15) Moreover, the only restrictive aspect of the District’s proposal for “student’s” full integration into a regular kindergarten class, where “student” will receive the same regular education curriculum as non-disabled peers, is that the most appropriate setting for that kindergarten class is not at “student’s” home school. Based upon the specific facts of this case, that circumstance does not constitute an LRE violation because the District has provided sufficient evidence to support its position that “another arrangement” is presently necessary, and, therefore, appropriate to meet “student’s” identified needs.

Finally, the District provided credible testimony concerning its commitment to re-assigning “student” to “student’s” neighborhood school as soon as “student” a reasonable opportunity to make meaningful progress in regular education classes there. (F.F. 15)

**Parents’ Ultimate Burden of Persuasion**

Although Parents’ testimony concerning “student’s” success in a fully-integrated pre-school class and the documents provided in further support of their testimony provided credible evidence that participating in a regular education setting is appropriate for “student”, Parents did not overcome the District’s proof that “student” should also receive services in an autistic support class and participate in regular kindergarten in the same building, at least at the beginning of the 2009/2010 school year.

At the outset, it must be noted that in terms of the applicable legal standards, Parents’ contention that the District is violating LRE standards by proposing an entirely segregated autistic support class for part of each day is somewhat unusual under the factual circumstances of this case. Because the District provides only a half day

kindergarten program for non-disabled kindergarten students, “student’s” placement in the special education class will not affect at all the amount of time “student” is instructed in a regular class. “Student” will actually receive twice as many hours of instruction each week (30) as a typical child in kindergarten (15). Since “student” will receive as many hours of instruction in a regular kindergarten class as “student’s” non-disabled peers, Parents’ contention that the extra services constitute an LRE violation is unsupportable, except in the attenuated sense that “student” might otherwise have greater opportunities to engage in non-school related, unstructured activities with typical peers.<sup>1</sup>

Under the circumstances presented by this case, Parents’ LRE claim concerning the District’s proposed special education class could be dismissed solely because attending the special education class does not diminish or interfere in any way with “student’s” full integration into a regular kindergarten class where “student” will have ample opportunities to interact with typical peers.

Moreover, Parents do not truly contend that “student” could receive all of the speech/language and OT services “student” needs within a 15 hour half-day regular kindergarten program. (F.F. 9; N.T. p. 207) Parents propose, therefore, that the District deliver the speech/language, OT services and social skills training “student” continues to need either before or after “student’s” kindergarten classes, continuing with a home-

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<sup>1</sup> Nothing in the statute or regulations supports Parents’ implicit argument that an IDEA LRE violation can be based upon a proposal for school-based special education services that purportedly diminishes an eligible child’s opportunities for informal, out of school contacts with typical peers. The LRE requirements specifically refer to an eligible child’s opportunities to interact with non-disabled peers while at school or engaged in non-instructional school-related functions, such as extra-curricular activities. See 34 C.F.R. §§300.114(a), 300.116, 300.117, all of which refer to school-based “educational” placements and activities. There is no statutory/regulatory basis for the notion that a school district’s LRE obligations explicitly extend to assuring that disabled students have informal, community-based, out of school opportunities to interact with non-disabled peers.

based program for behavior support services. Such proposal is actually a request by Parents to provide “student’s” special education services in a more restrictive environment than the District proposes. In the continuum of placements described in the federal regulations, a special education class is listed as a less restrictive environment than home-based services. 34 C.F.R. §§300.39(a)(1)(i), 300.115(b)(1): Continuum of placements “includes instruction in regular classes, **special classes**, special schools, **home instruction**, and instruction in hospitals and institutions.” (Emphasis added) Even providing speech/language and OT services at school but on a 1:1 basis, without any peer contact is more restrictive than the special education class in which the District plans to place “student”. As Parents have argued throughout, “student” clearly benefits from classroom-based services, so depriving “student” of any peer contact at all while receiving special education services is not appropriate for “student”.

In addition, although Parents provided testimony and documents in support of their contention that “student” can succeed if placed entirely in a half day regular education kindergarten class in “student’s” home school, the persuasiveness of Parents’ evidence was considerably undermined by the lack of any evidence concerning how “student” will function in a public school kindergarten setting. Such evidence is, of course, non-existent at present, since “student” has not yet attended a school-aged public school program. There was also, however, no attempt to establish that “student’s” 2008/2009 pre-school placement was similar to the District’s kindergarten program. Presumably, Parents believe that there are obvious close parallels. It would, however, be speculative to draw that conclusion without at least some evidence.

Among the documentary evidence that Parents offered in support of their position was a 1 page letter from a Widener University pediatric neuropsychologist, in which she refers to what appears to be her only knowledge of “student”, a February 2009 evaluation, as to which no report was offered unto evidence. The letter states the writer’s beliefs and conclusions that “student” does not need an autistic support classroom and that “student” is able to succeed in “student’s” home school, the author of the letter does state a factual basis for her conclusions that can be compared to other evidence. *See* P-8, p. 6. It is unclear whether the psychologist’s opinion was based upon her full understanding of the specific autistic support program the District proposes for “student”. In addition, with respect to the regular kindergarten class, she states only that a regular education class located in another District elementary school “may be detrimental” because it will diminish opportunities for out of school contact with neighborhood peers but does not comment on whether “student” is likely to be able to benefit from such contacts at “student’s” current level of social functioning without explicit instruction in generalizing and transferring social skills to other settings.

The psychologist also referred to “student’s” need for behavior and social skills support, which will be provided in the District’s program, and both her letter and the letter provided by the director of “student’s” pre-school program noted the need for a 1:1 aide in the neighborhood school without explaining why services of that nature would not create a barrier between “student” and “student’s” peers and perhaps discourage spontaneous contact. The District’s proposed IEP does not provide for an aide in the regular kindergarten class. (S-10)

The letter provided by “student’s” pre-school program director fails to provide strong support for the Parents’ position, since it paints a fairly detailed picture of still-significant needs that must be addressed in order for “student” to succeed in a typical classroom, and emphasized “student’s” need for a 1:1 aide. *See* F.F. 9; P-8, p. 7.

All in all, the evidence in this case left the strong impression that Parents believe that “student’s” kindergarten program and placement should mirror “student’s” pre-school placement and services with no basis for that request other than assuring that “student” has the same kindergarten experience as non-disabled peers in “student’s” home school. In light of “student’s” still significant needs, however, that is not possible. The District’s tiered approach to teaching specific skills “student” needs and then providing two levels of opportunity to practice and generalize those skills is a reasonable means of meeting “student’s” needs in a manner that is likely to be successful.

On the other hand, Parents’ desire to continue the success that “student” has experienced in a typical educational setting and their desire to keep “student” in “student’s” neighborhood school is understandable. If “student” meets current IEP goals in less than a full school year and/or if “student” needs less explicit instruction in generalizing skills than the District currently anticipates, as the evidence suggests might be possible, the District should consider whether “student” can succeed with the services and supports available to “student” in a regular kindergarten class in “student’s” home school before an entire school year passes.

The District must, however, have sufficient time to determine how quickly “student” will acquire essential school-related social, language, behavior, fine motor and motor planning skills that “student” will be taught in the autistic support class, and how

much explicit instruction and support “student” needs to generalize those skills to the regular education environment. According to the IEP the District has offered, baseline data for the behavior goals is to be determined by October 2009. (S-10, pp. 20, 21) That is a reasonable amount of time to establish a baseline, since “student” needs to become acclimated to the new classroom routines, classmates, teachers and other service providers. The remaining speech and OT goals do not specify when a baseline will be determined, but the District will be directed to also establish baselines for those goals by the end of October 2009. Thereafter, until the middle of January 2010, the District will continue to collect data to determine “student’s” progress toward “student’s” IEP goals in order to determine whether it is feasible to move “student” to an afternoon kindergarten class at “student’s” neighborhood school for the second half of the school year. If “student” is successful in the regular kindergarten class without a 1:1 aide during the first half of the school year, but Parents believe “student” would need a 1:1 aide if moved to “student’s” home school, that circumstance will be sufficient to justify an IEP team decision that “student” remain in the class in which “student” begins the year in the hope of making sufficient progress to transition to a regular education class without the need for an aide.

### **CONCLUSION**

Parents have not borne their ultimate burden of proving that the North Penn School District’s proposal to provide “student” with 30 hours of educational services in a District elementary school other than the school “student” would attend if not disabled is a violation of the IDEA LRE requirement. The District, therefore, is permitted to implement “student’s” proposed IEP in an autistic support class for 15 hours/week, and



provide “student” with 15 hours/week of regular education in a kindergarten class located in the same building. The District, however, will be required to establish baseline data for all of “student’s” IEP goals by October 31, 2009, to continue collecting data concerning “student’s” progress toward “student’s” IEP goals and assessing “student’s” ability to generalize the skills “student” learns in the special education class to the general education kindergarten setting for the purpose of determining whether “student” can be transferred to “student’s” home school for kindergarten during the second half of the 2009/2010 school year.

### **ORDER**

In accordance with the foregoing findings of fact and conclusions of law, the North Penn School District is hereby **ORDERED** to take the following actions:

1. Implement the most current IEP offered for “student” as set forth in the NOREP dated June 11, 2009 beginning with the first day of the 2009/2010 school year.
2. Establish baseline data with respect to all of “student’s” IEP goals by October 30, 2009.
3. Continue to collect data concerning “student’s” progress toward “student’s” IEP goals from November 2, 2009 until an IEP meeting to be convened no later than January 15, 2010.
4. Determine through “student’s” entire IEP team whether “student” should be moved to “student’s” neighborhood school to join a regular afternoon kindergarten class for the remainder of the 2009/2010 school year, provided, however, that if “student” is able to succeed in “student’s” then-current kindergarten class without a 1:1 aide but would need to have that service at “student’s” neighborhood school, that circumstance will constitute sufficient justification to have “student” remain in “student’s” current regular education kindergarten class.

Anne L. Carroll

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Anne L. Carroll, Esq.  
HEARING OFFICER

August 24, 2009