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PENNSYLVANIA

## SPECIAL EDUCATION HEARING OFFICER

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Student's Name: SS

Date of Birth: xx/xx/xx  
O.D.R. #5635/05-06 LS

Dates of Hearing: September 6, 2005; October 11, 2005; October 13, 2005

Type of Hearing: Closed

### Parties to the Hearing:

Parents

Represented by:

Date Written Closing Arguments Received:

Phillip Drumheiser  
P. O. Box 890  
Carlisle, PA 17013

October 25, 2005

School District

Represented by:

Date of Decision:

Upper Dauphin Area S.D.  
5668 State Route 209  
Lykens, PA 17048

Jane Williams  
P. O. Box 5069  
New Britain, PA 17023

December 7, 2005\*

Hearing Officer:

Linda J. Stengle

\* HO notified parties that additional time would be need to issue decision by email.

## Background

The student is xx years old and resides with her mother within the geographic area served by the Upper Dauphin Area School District (herein “District”). The student’s father died several years prior to the hearing. She has not been deemed eligible for special education supports and services. The parent requested the hearing asserting that the student was eligible for special education supports and services under IDEA and/or Section 504. She asserted that the student was entitled to compensatory education for the period from September 2003 through the culmination of this hearing, and she requested placement for the student in an alternate public school or a private school.

The district raised an objection to the sufficiency of the complaint by the parent, and I ordered that it be amended. Counsel for the parent amended the complaint in compliance with the Order, and the hearing was scheduled in accordance with IDEIA timelines after it was re-submitted. The parent received an unclear letter from the district stating that educational records would be destroyed. She requested and obtained an Order preventing the destruction of any records relating to the student.

After the record was generated and before the decision was rendered, the United States Supreme Court issued its ruling in *Schaffer v. West* (USSC, #04-698, 2005), changing the long time Third Circuit practice of placing the burden of proof on school districts in IDEA hearings. *Schaffer* was silent on the issue of burden of production but states that the burden of persuasion is on the requesting party in IDEA cases. In Pennsylvania, all special education due process proceedings are conducted in accordance with the due process hearing requirements identified in IDEA, so this case, which encompasses rulings under Section 504 of the Rehabilitation Act of 1973 and the IDEA is affected by *Schaffer*. Arguably, placing the burden of persuasion on the parent has always been the intention in Pennsylvania. Explicit language in the PARC Consent Decree (1973) states that districts could very easily fulfill their burdens of production by presenting their reports (IEPs, ERs) for a hearing, and then outlines several parent-directed “rights,” or opportunities, for the presentation of evidence.

Introduction by the school district or intermediate unit of the official report recommending a change in educational assignment, provided a copy of such report was given to the parent at the time notice was given, shall discharge its burden of going forward with the evidence, thereby requiring the parent to introduce evidence (as contemplated in paragraphs f, r, s, and t herein) in support of his contention. (id at 22)

It should also be noted that while the Decree originally conceived that decisions were to be based on substantial evidence, IDEA has expressly lowered the standard to a “preponderance” of the evidence. This record was reviewed and the decision rendered in accordance with *Schaffer* and the explicit review requirements of IDEA, as required by Chapter 14 and 15 of 22 PA Code.

### Parent’s Complaints

The amended complaint filed by the parent on August 5, 2005, listed five allegations. These allegations were that the district failed to screen and identify the student at the appropriate time, failed to initiate an evaluation upon request, failed to complete its evaluation in a timely manner, failed to acknowledge the fact that the student was eligible for services when presented

with an independent educational evaluation, and failed to properly safeguard the student's personal privacy with the community. The amended complaint included numerous supporting assertions which are detailed in HO – 4.

### **Findings of Fact**

1. The student's date of birth is xx/xx/xx. (Stip. At N.T. 25)
2. She resides within the geographic area served by the District with her mother. (Stip. At N.T. 25)
3. In the 2000-2001 and 2001-2002 school years, the student received a number of awards for high grades on report cards, for outstanding artistry, and for perfect attendance. (P 1)
4. In the 2002-2003 school year, her grades ranged from a low of 85 in math for one quarter to 100s in vocal music, band, and computer. Accompanying comments by teachers were, without exception, positive. (P 2)
5. Also in the spring of 2003, the student won a county-wide coloring book contest. (P 3)
6. In May 2003, the student sustained a head injury. [Redacted]. The student was not provided with medical attention. The mother did not report the head injury to anyone until she responded to an interview question by an independent evaluator in spring of 2005. (N.T. 381-383)
7. On September 12, 2003, shortly after the start of her seventh grade school year, the student's mother received a notice that the student's work in pre-Algebra was incomplete and that she had been assigned a mandatory homework session as a result. (P 4)
8. The parent received more such notices for different subjects in October and November of 2003 and another in January, 2004 . (P 5, P 6, P 7, P 15)
9. The student became [involved with a boyfriend]. [Redacted.] (N.T. 243, 433-438)
10. The principal referred the student to the Student Assistance Program (SAP) sometime after November. The principal took this action because she felt the student was getting too many negative reports from school. (N.T. 385)
11. The SAP team referred the student for outside counseling because they felt she had some issues regarding her father's death that were resurfacing. The SAP team felt that those issues might be leading to some of the misbehavior and academic problems. (N.T. 362, 387)
12. Students are referred to the SAP team when they are "at risk" because of social or academic issues. The SAP team can provide supports to regular education students. SAP teams make decisions regarding referral for special education evaluations. A counselor sits on the SAP team and if the student is referred for counseling, the counselor performs a comprehensive evaluation of that student. (N.T. 45-47, 362-363)
13. In December, the student participated in the first of fourteen increasingly severe disciplinary incidents. Infractions ranged from excessive talking to [redacted]. She was required to attend detention initially and was eventually suspended. (N.T. 133-134; P 9, P 10, P 11, P 12, P 13, P 14, P 16, P 18, P 19, P 21, P 25, P 29)
14. The student was referred to the Student Assistance Program (SAP). The school referred her to an outside therapist, and she was being counseled by the school guidance counselor. (N.T. 153)
15. For one incident, the district sent the student to a "time out" room. The "time out" room was described as a "last resort" used to deal with students who are refusing all efforts to

- try to not be disruptive to the learning of others. (N.T. 130-131, P 9)
16. In late December, the student began seeing a counselor as recommended by the school. By June, 2004, she had attended nine sessions, which had increased in frequency in May and June. (P 38)
  17. In February, the school implemented what it considered to be a “behavior plan.” This action was taken in response to a disciplinary incident. The plan listed three target behaviors – not talking out in class, being respectful, and handing in work. The student received one point for each of the three behaviors for each of nine of ten periods in which she exhibited the target behaviors. (P 64, S 7 {behavior plan reference on p. 13}; N.T. 390, 392)
  18. Communication with the parent regarding the behavior plan was sporadic. For example, the guidance counselor did not talk to the parent about the student’s behavior for three weeks at one point, because the guidance counselor was busy. The guidance counselor had not looked at the behavior checklists during this period. (N.T. 391)
  19. The checklists showed that on 2/20/04, the student missed nine points. On March 18, 2004, she missed six points, with one point not applicable. On April 20, 2004, she missed twelve points, with one point not applicable. The last date on a checklist was 5/13/04, and that checklist showed that the student missed ten points, with two not applicable. There were several undated checklists, making it difficult to identify what, if any, effect they had. (P 64, S 7)
  20. In March 2004, the student received an interim progress report noting that she had low test scores and was unprepared for class. She, at the time, had a score of 69 for the course. She improved this score to 81 for the third quarter and 92 for the fourth quarter. (P 17)
  21. The parent received more notices that the student was not completing coursework in a variety of subjects in May 2004. She failed to complete much of the work on a test in pre-algebra, yielding a score of 39 while the average score for the class was 81. (P 23, P 24, P 26)
  22. On May 19, 2004, the parent was notified that the student had been suspended for five days for [redacted]. The mother was advised that she could have an informal hearing with the principal. The principal stated that the student could return to school on May 27, 2004, if she could provide documentation that she had been seen weekly by a counselor, and the district’s psychologist was to assess the student to gauge her “stability.” (P 29)
  23. On May 26, 2004, the district extended the student’s suspension through the end of the 2003-2004 school year. It required the student to undergo a psychiatric evaluation over the summer in order to inform a decision about whether or not the student could return to the Middle School in the fall. (P 30)
  24. Grades for the 2003-2004 school year ranged from a low of 69 in pre-algebra to a high of 100 in vocal music and art. There were a few accompanying negative comments, ranging from “doesn’t pay attention” to “late assignments.” (P 32)
  25. On June 9, 2004, the district notified the parent that it had scheduled a hearing to determine whether or not the student should be suspended or expelled from attendance in the district for June 24, 2004. [Redacted.] (P 31)
  26. On June 13, 2004, the parent requested a multi-disciplinary evaluation of the student for the first time. There had not previously been any requests or referrals for an evaluation of the student for determination of eligibility for special education. (P 34; N.T. 33-34)

27. In response to a call from the school's psychologist, the parent met with him on June 16, 2004. The psychologist presented "options" to the parent because he felt it was best to try to meet the child's needs without "throwing a special ed label on them." He also felt that such a label might somehow interfere with the student's right to least restrictive environment. As a result of a conversation with the psychologist, the mother decided to postpone her request for an evaluation. (S 15; N.T. 40-41, 194-195)
28. At the time of this meeting, the student was placed in a juvenile detention facility. (N.T. 167)
29. On June 18, 2004, the student wrote a two page letter of apology to the district. (P 36)
30. On June 21, 2004, the parent reiterated her request for an evaluation of the student. (P 37)
31. The school board belayed the decision regarding the expulsion of the student. (N.T. 31-32)
32. After some negotiation regarding the content of the form, the district issued a form to obtain permission to perform the evaluation, and the parent signed it on July 8, 2004. (S 16, S 17, S 18)
33. As required by the district, the parent obtained a psychiatric evaluation of the student. [Redacted.] She was diagnosed with Attention Deficit Disorder, Combined Type, and Possible Bipolar Disorder, Type II. (P 39)
34. [An] incident had occurred in response to a determination from the mother that the student would not be permitted to see the boyfriend. (N.T. 438)
35. The psychiatrist opined that the student could be reintegrated into the regular middles school with close supervision. (P 39)
36. The principal called the parent over the summer and asked if the student wanted to start school in the fall in an alternative education class. The parent did not want the student to attend the alternative education program, so she asked her doctor to write a prescription placing the student on homebound instruction. The doctor agreed. (N.T. 406)
37. The district sought permission and obtained the psychiatric report. It also requested permission to obtain information from the private counselor. (S 20, S 21)
38. The counselor responded with a one page confirmation that the student had been attending counseling sessions. She also reported that her impression was the student "demonstrates clearly the developmental tasks of adolescence that includes oppositional behavior as she seeks identity formation and separating self from her mother." (S 22)
39. The district prepared a draft Evaluation Report and met with the parent. The parent requested several changes to the report on December 6, 2004. The district adopted several of the changes. (S 3, S 1)
40. The district concluded that the student did not have a disability because "data could not conclusively rule out a non-pathological etiology to explain [Student's] presenting profile." (P 49)
41. The district issued a Notice of Recommended Placement that proposed to maintain the student in regular education with supports and services, like guidance counseling. The NOREP stated that an IEP was not considered to be appropriate because the student had been, would, and could continue to be successful socio-academically without special education programming. (P 50)
42. The NOREP also stated that a 504 plan was not necessary because there was conflicting evidence regarding whether or not the student had a disability and the team believed that

- she could be successful without a 504 plan. (P 50)
43. On December 20, 2004, the mother disagreed with the NOREP and requested an Independent Educational Evaluation at district expense. (P 50)
  44. On January 10, 2005, the parent requested a Due Process Hearing because the district would not allow her to choose the independent evaluator. The district had taken the position that it would choose the independent evaluator. (P 52, S 5)
  45. On January 21, 2005, the parent's attorney submitted the request directly to the Office for Dispute Resolution because he had learned that the district had not submitted it. (P 53)
  46. The Due Process Hearing was scheduled for February 4, 2005. The parties were able to settle the matter, however. The district agreed to allow the parent to choose a particular certified school psychologist. The agreement obviated the need for a hearing. (P 55, P 59, P 60, P 62)
  47. The student had an intake meeting with a county mental health provider on February 11, 2005. She was assigned to a case manager who was responsible for assisting with locating mental health services and monitoring her behaviors. The student and/or her mother met with the case manager at least one time per month. (P 66)
  48. The independent evaluator is a licensed psychologist and a certified school psychologist. He has been practicing since 1977. Since 1988, he has been in private practice conducting evaluations, providing therapy to children, educating parents, and consulting with schools. (P 57)
  49. The district's psychologist is a certified school psychologist, but not licensed. He "did a little private therapy with families, adolescents, couples, through a couple different agencies" when he became certified. He has been the district's psychologist for four years. (N.T. 26-29)
  50. The independent evaluator and the school district cooperated fully in the independent evaluation. The evaluator met with several teachers and other school personnel. (P 58, P 61)
  51. The independent evaluator found that the student has a disability and needs specially designed instruction. He stated that she should be found eligible under the IDEA category of Other Health Impaired, with a secondary exceptionality of Specific Learning Disability in math. (P 65)
  52. The parent disclosed to the independent evaluator the head injury. The evaluator stated, "That got me going down a path that really helped put together some pieces for the whole thing." He also stated that up until after the first session, "I couldn't see anything going on and actually until I scored it." (N.T. 476-477, 479, P 65)
  53. The evaluator found that the student demonstrated inconsistencies in her cognitive abilities on the Wechsler Intelligence Scale for Children (IV). He noted weaknesses and dysfunctions in her executive functions. He found that the difference in her General Ability Index score and her score on the math reasoning subtest of the WIAT II was 1.6 standard deviations, which led to his conclusion that she had a learning disability in math. (P 65)
  54. In addition to the previously mentioned disabilities, the evaluator determined that the student has neurobehavioral disorders and Oppositional Defiant Disorder. (P 65)
  55. When asked why problematic behaviors did not arise earlier in her development, the evaluator cited the increased demands of higher level math, adolescence, and a head injury as factors which caused the student's behavior to deteriorate. (P 65)

56. The independent evaluator reviewed the district's Evaluation Report. Though he did not agree with the results, he understood how the team arrived at them. (P 65)
57. On June 7, 2005, the team reconvened to discuss the independent evaluation. It reconsidered the question of eligibility through a formal re-evaluation report. The district's report said that the student was "not a student with a disability, which is to say that regardless of whether [Student] has a disability per se or not, at that time evidence indicated that [Student] did not need special education supports." It went on to say that the student was successful in regular education with regular education supports. (S 8)
58. The report stated that the majority of the team agreed that a 504 plan could provide the appropriate and necessary supports for the student. (S 8)
59. Despite this statement on the report, the school's psychologist stated that the 504 plan was offered as an "olive branch" and such a plan was not actually necessary. (N.T. 36-37)
60. The reevaluation report stated that the student was not eligible for special education supports and services. (S 8)
61. The same day, the district rendered a NOREP, which stated that the student was not a student with a disability. The NOREP acknowledged that there was "some agreement on symptomatic patterns regarding [Student's] oppositional defiance and as well agreement regarding technically/statistically supported/driven disability impression with her math. (sic) [Student] does not need special education to address any perceived 'problematic socio-academic patterns' that she may be experiencing, because the same did not rise to the level of special education. However, the majority of the team agreed that [Student] could be supported through regular education channels." (P 69)
62. The same NOREP stated that the district offered a 504 plan on the basis of the ODD diagnosis, but this option was refused by the parent. (P 69)
63. Group standardized test scores from fifth to late seventh grade show that the student's Terra Nova scores stayed roughly the same overall when compared to her peers. Her total scores were 86 in fifth grade, 80 in sixth grade, and 85 in seventh grade. Math scores declined. In fifth grade, she scored 93; in sixth, she scored 75; in seventh, she scored 79. (P 70)
64. The student was placed on homebound instruction through a prescription written on July 26, 2005. (S 29)

## **Issues**

Is the student eligible for special education supports and services under IDEA and/or Section 504?

If so, is the student entitled to compensatory education for the period from September 2003 through the culmination of this hearing?

What is appropriate program and placement for the student for the current school year? Specifically, should the student be placed in an alternate public school or a private school?

## **Credibility Assessments**

The mother of the student, teacher [Ms. B], and assistant principal [Mr. W] all testified, and they were all credible witnesses. All three were forthcoming and helpful to the hearing process. Because of the nature of the issue and the positions taken by the parties, explanation of the weighting of the two psychologists that testified, [Mr. C] and [Mr. B], is required. [Mr. B's] testimony and report were weighted significantly higher than were the testimony and reports authored by [Mr. C]. Mr. B possesses much more experience, and his experience is more directly relevant to the task at hand. Mr. C's experience is far less than Mr. B's, and while both are certified school psychologists, Mr. C is not licensed. (FF 48, FF 49) The demeanor and the responses provided by the two psychologists were also considered in the decision to give greater weight to Mr. B's testimony and reports. Mr. B was straightforward, clear, assured, and consistent in his responses to questions. Mr. C, though pleasant and obliging, answered questions in ways that were sometimes unclear and less than helpful. For example, during the second session, Mr. C was asked if he had seen progress reports, and Mr. C repeatedly qualified his answer by saying he had not seen "a hard copy." Unfortunately, qualifications like these were abundant throughout Mr. C's testimony and raised more questions, though not significant ones, than were necessary.

## **Discussion**

### **Eligibility**

Section 504 of the Rehabilitation Act of 1973 protects all qualified persons with a disability who have a physical or mental impairment which substantially limits one or more major life activities. The student is considered "qualified" because she is of an age at which he qualifies to attend school. The Section 504 regulations define a "physical or mental impairment" as any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin or endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

To fall within the protection of Section 504, a person's physical or mental impairment must have a substantial limitation (permanent or temporary) on one or more major life activities - functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working. Students who qualify for services under IDEA also are protected under Section 504.

§300.535 of IDEA's procedures for determining eligibility and placement require that:

- (a) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.7, and the educational needs of the child, each public agency shall—
  - (1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and



adaptive behavior; and

(2) Ensure that information obtained from all of these sources is documented and carefully considered.

(( Authority: 20 U.S.C. 1412(a)(6), 1414(b)(4))

In this case, there is no question that the necessary data to make the determination is present in the record and was previously in the possession of the district. The problem lies with skillful interpretation of that data. Mr. B's interpretation, because of the aforementioned credibility considerations, was accorded significantly greater weight than that of the school's psychologist. The explanations and positions of Mr. B were more consistent with the totality of the record presented at the hearing.

The district's consistent position is that the student is successful in regular education and does not demonstrate a need for special education supports is simply inconsistent with a preponderance of the evidence. The student had several problems with academics and conduct during the 2003-2004 school year, ultimately resulting in her removal from school and her placement in a juvenile detention facility. The district itself considered the student to be at least "at risk" for more serious problems early in the school year because it initiated a referral to the school's Student Assistance Program. (FF 12) The student's behavior deteriorated, and the district implemented a behavior management plan. (FF 13, FF 17) Progress reporting on the behavior plan was sporadic, but a review of data collected from one month to the next shows no improvement in behavior resulted. Though it stated that the student did not need special education supports, its "regular education" interventions here did not result in success, nor did the district attest that it achieved success as a result of these interventions or that the behavior plan was effective. (FF 18, FF 19) The district's decision that the student was not eligible under IDEA or Section 504 because she was successful in regular education without special education supports was flawed in that it did not accurately interpret evaluation data, and it did not properly assess the student's performance in the regular education environment. No one could reasonably describe the student's seventh grade year as "successful."

The student does have disabilities which adversely impact her education, and she does require specially designed instruction. (FF 51)

To be fair, the student's conglomeration of issues affecting her education requires significant skill to identify. Mr. B himself was unable to identify the student as eligible after a session with her. He expressed that the conclusions reached by the psychiatrist and the school's team were understandable. It is reasonable and prudent to determine then, that the first time that the district had all the information that it needed to identify the student with a disability was when it received Mr. B's report. Prior to that, the district was not provided with information about the head injury, a vital piece to the diagnostic puzzle, according to Mr. B. (FF 52) The district erred in deciding that the student was not eligible after it reviewed Mr. B's report.

The student is eligible for special education supports and services under the IDEA as a student with Other Health Impairment and a secondary diagnosis of Specific Learning Disability in math.

#### Compensatory Education – Fundamental Concepts

The Third Circuit first awarded compensatory education in *Lester H. v. Gilhool* [916 F.2d 865, 872, (3<sup>rd</sup> Cir. 1990)] reasoning that compensatory education required school districts to

belatedly pay expenses that they should have paid all along. *M.C. v. Central Regional School District*, 23 IDELR 1181 (3<sup>rd</sup> Cir. 1996), further clarified that a grant of compensatory education did not require a showing of bad faith or gross violations of IDEA on the part of the district. This case indicated that a child is entitled to compensatory education if a district knew or should have known that a child had an inappropriate IEP or was not receiving more than a de minimis educational benefit and did not correct the situation. The period for which compensatory education can be granted is equal to the period of deprivation minus time reasonably required to rectify the problem.

“Obviously the case against the district will be stronger if the district actually knew of the educational deficiency or the parents had complained...it is the responsibility of the child’s teachers, therapists, and administrators – and of the multi-disciplinary team that annually evaluates the student’s progress – to ascertain the child’s educational needs, respond to deficiencies, and place him or her accordingly[.]”

#### Application

Once it received the [Mr.] B report, the district was entitled to reasonable time to react to the report. The district reviewed the report and declined to adopt the independent evaluator’s conclusions on June 7, 2005. It denied the student eligibility a second time, despite having all the information necessary to render the proper decision. (FF 57) This is the point at which compensatory education should be calculated, should any be owed to the student.

The parent opted to place the student on homebound instruction, her current placement. The mother requested this, and the district approved the placement. The student is performing well on homebound instruction and is often managing her studies independently. There was no evidence to suggest that the homebound instruction was inappropriate for the student or that the mother obtained it inappropriately. There is no evidence to suggest, other than the erroneous eligibility denial, that the student was deprived of anything. The parent did not meet her obligation to persuade me that the student is owed compensatory education.

Therefore, the student is not entitled to compensatory education for the period from September 2003 through the culmination of the hearing.

#### Appropriate Program and Placement for the Current School Year

The team will need to determine an appropriate IEP for the student. The independent evaluator and the psychiatrist agree that the student can be reintegrated into the school with appropriate supports and supervision. The parent asserted that the student needs to be placed in an alternate public school or a private school because of concerns about the way the student might be perceived in the school as a result of the [redacted] incident. The parent did not present persuasive evidence to support her contention.

## Least Restrictive Environment

Very recently, PDE entered into a settlement agreement regarding implementation of least restrictive environment obligations under IDEA, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act. In *Gaskin v. Pennsylvania*, No. Civ. A. 94-4048, (E.D. Pa. September 16, 2005), PDE agreed to require school districts to adhere strictly to the IDEA and the case law construing that statute when making decisions regarding the placement of students with disabilities. To meet this condition of the Settlement Agreement, the PDE agreed to ensure: (1) students may not be removed from regular education classes simply because of the severity of their disabilities; (2) school districts have an obligation to provide students with disabilities, including students with significant cognitive disabilities, specially designed instruction or other supplementary aids and services, if needed, to benefit from participating in a regular education classrooms; (3) before considering removal of a student with disabilities from a regular education classroom, the IEP team must first determine whether the goals in the student's IEP can be implemented in a regular education classroom with supplementary aids and services; and (4) school districts will consider the full range of supplementary aids and services, based on peer reviewed research to the extent practicable, that can be utilized in regular education classrooms before contemplating removal of a student with disabilities from a regular classroom. The legal foundation for the Gaskin Settlement Agreement is really nothing more than a reiteration of statutes and case law that have been in effect for thirty years. IDEA and Section 504 place an affirmative obligation on districts and PDE to provide services in the least restrictive environment, and this is nothing new.

The parent failed to persuade me that the student should be placed in the more restrictive settings of an alternate public school or a private school, and such a determination cannot be made until an IEP is developed, if such a placement is ever considered appropriate for this particular student.

Therefore, the parent's request for placement in an alternate public school or a private school is denied.

## Allegations Regarding Confidentiality Violations

Similarly, due to a paucity of evidence, the parent failed in her assertion that the district violated the student's right to privacy and that such violation infringed upon her ability to access her education or that such a violation was caused by or resulted in discrimination on the basis of disability. Hearing Officers cannot issue decisions based solely on a parent's concerns about what might happen at school. The student was placed on homebound instruction, and no ill effects of the alleged lapse on the part of the district with regard to confidentiality were evidenced on the record generated.

## **Order**

Hereby:

1. Student is eligible for special education supports and services under the Individuals with Disabilities Education Improvement Act of 2004.
2. The District is ordered to convene an IEP team meeting within 30 days of receipt of this Order and to develop an Individualized Education Plan for Student.
3. The District is not obligated to provide the student with compensatory education for the period from September 2003 through the date of this Order.

October 15, 2004

Date

Linda J. Stengle  
Hearing Officer