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File No.: 6454/05-06 AS

## **Student**

Date of Birth: xx/xx/xx

Dates of Hearing: May 16, 2006  
May 24, 2006  
June 23, 2006

Closed Hearing

Parties to the Hearing:  
Parents:  
Dr. & Mrs. Student

District:  
Ambridge Area

Date Transcript Received:  
June 28, 2006  
Date Briefs Received:  
July 8, 2006  
Date of Decision:  
July 16, 2006  
Gerald Dambach, Ed.D  
Hearing Officer

## **Background:**

Student is a [teenaged] grade 11 (2005-06) student in the Ambridge Area School District. He has educational diagnoses of Other Health Impaired (OHI) and Specific Learning Disability (LD). His OHI diagnosis includes Tourette's Syndrome, Attention Deficit Hyperactivity Disorder (ADHD) and Obsessive Compulsive Disorder (OCD). During grade 11 he attended the Huntington Learning Center (HLC) part-time and a job placement the remainder of the time.

The District stipulated that they did not provide a Free Appropriate Public Education (FAPE) for two years, and as such is offering compensatory education. The parent is alleging that there is a basis for an additional number of years of compensatory education. The parent is seeking compensatory education beginning with the 2001-02 school year thru the 2005-06 school year (5 years of compensatory education). The parents are also seeking expenses incurred from 2001-02 thru 2005-06. While the district has stipulated to two years of compensatory education the question becomes how much compensatory education for those two years.

This Hearing Officer agreed to take testimony relative to the compensatory education issue and to request legal briefs from both parties. The issue of compensatory education will then be determined. The other issue for this proceeding involves Student's program and placement for 2006-07. The parties are to meet on this issue and if not resolved then testimony will be taken.

This decision will address two basic issues:

1. How much compensatory education is Student entitled to for 2004-05 and 2005-06?
2. Is Student entitled to (and how much) compensatory education for 2003-04, 2002-03, and 2001-02?

The issue of an appropriate program and placement for 2006-07 will be decided at subsequent sessions of this proceeding.

## **Findings of Fact:**

1. Student is a [teenaged] grade 11 (2005-06) student in the Ambridge Area School District. He is currently diagnosed as OHI, ED, and LD. (P 2)
2. The district stipulated to not providing FAPE (2004-05 and 2005-06) and offered to provide two years of compensatory education to Student. (NT 13)
3. At the request of the district this Hearing Officer issued a subpoena to Mr. B from HLC and Mr. B did attend the June 23, 2006 hearing session. (NT 222, NT 229)
4. The parent-district effort for a pre-hearing resolution was met with two pretrial conferences. (NT 10)
5. Student has attended HLC, a tutorial program, for 3.5 hours/day for 4 days/week since June 2001. (NT 246, NT 399)
6. Student's parents started bringing him to HLC without the district. The parents brought him there on their own in June 2001. (NT 205)
7. The HLC staff met with Student's parents every two months to review progress. (NT 266)

8. The parents did not express any dissatisfaction with HLC. They never really expressed any negative things toward HLC. (NT 267)
9. The HLC staff indicated that Student was continuing to make progress with his goals and they really did not have any behavioral concerns that needed to be addressed. (NT 287-8)
10. For the five years at HLC Student received no report cards from HLC. (NT 416)
11. Student has not received any credit for anything he's done at HLC towards graduation for the entire time he's been at HLC. (NT 416)
12. Student was promoted each year even though he wasn't given passing grades and didn't earn any credits. (NT 416)
13. For two years that Student attended HLC there were no IEPs. (NT 420)
14. While at HLC Student was provided with regular progress summary reports. SD 1A, P 5)
15. While at HLC there was no progress reporting concerning mastery or achievement on specific goals and objectives. (NT 420-1)
16. Student was referred for an Independent Educational Evaluation (IEE) by [an attorney]. The IEE was completed by Dr. K on May 25, 2005. (P 1)
17. According to Dr. K, Student would be appropriately classified as a student with OHI (Tourette Syndrome and ADHD) and LD. (P 1)
18. According to Dr. K, Student has taken a variety of medications that are typically used to treat ADHD and Tourette, but he has experienced adverse side effects and is currently medication free. Because his problems in behavior, attention, concentration and learning are biochemically driven, it is likely that the solution to his problems (if there is one) will also need to be biochemical. (P 1)
19. The most recent district Evaluation Report (ER) was completed on September 6, 2005 by Ms. R, School Psychologist. (P 2)
20. According to the September 6, 2005 ER by the district, Student meets the criteria for Special Education as OHI (Tourette Syndrome and ADHD), ED, and LD. (P 2)
21. According to the September 6, 2005 ER Student demonstrates a severe discrepancy for LD in the areas of reading comprehension, math calculation and math reasoning. (P 2)
22. According to Dr. K, Student's Tourette's is so severe it is hard to imagine how it could get worse. (NT 105)
23. According to Dr. K, in addition to a lot of ridicule because of the Tourette's, it is not likely he could keep up with regular academic tasks demands. He would not be able to function in a regular education setting. (NT 106)
24. The district staff, Ms. R and Ms. S, testified that two years of compensatory education was appropriate. (NT 312-314, NT 410-411)
25. Dr. K testified that 990 hours a year for two years of compensatory education would not address Student's lack of progress. (NT 60)
26. Dr. K believed that Student needed an intensive program in reading comprehension, mathematics, and written expression. She believed it would

take 2 to 3 years of intensive daily remediation to get his skills up to an acceptable level. (NT 61-65)

27. Mr. K, parent educational consultant, testified that 3 and possibly 4 years of compensatory education was required. (NT 177)
28. The parents previously requested Special Education Due Process Hearings in August 2002, December 2004, and January 2005 and then withdrew their request. (SD 6, NT 409)

**Issues:**

1. How much compensatory education is the Ambridge Area School District obligated to provide to Student for the 2004-05 and 2005-06 school years?
2. Is the Ambridge Area School District obligated to provide Student with compensatory education for the 2003-04, 2002-03, and 2001-02 school years? If the district is obligated to provide compensatory education, how many hours are appropriate?

**Discussion and Conclusions of Law:**

Student is a [teenaged] student in the Ambridge Area School District. He has completed grade 11 (2005-06) and will be considered a grade 12 student in 2006-07. He currently has a primary diagnosis of OHI because of Tourette's Syndrome, ADHD, and OCD. He also has secondary diagnoses of ED and LD. There was a discussion concerning the diagnosis of ED based upon his Tourette's. The diagnosis of LD is new as a result of Dr. K's IEE in May 2005 and the district's evaluation in September 2005.

The district has stipulated that Student was not provided FAPE for the 2004-05 and 2005-06 and were willing to provide compensatory education. The specific amount of compensatory education for these two years was not stipulated by the district. The amount of compensatory education for 2004-05 and 2005-06 must be determined. The parent is also alleging that the district did not provide FAPE for the 2001-02, 2002-03, and 2003-04.

Outlined below is a brief chronology of Student's educational placements:

1994-1995	Kndg.	District Child Study Team
1995-1996	Grade 1	MDT evaluation in December 1995 and not found eligible for Special Education Continue in grade 1 with strategies for improving attention and processing difficulties. Evaluated by Dr. D in January 1996 - Recommended a Chapter 15 Service Agreement
1996-1997	Grade 2	
1997-1998	Grade 3	MDT reevaluation in October 1997 and determined to be OHI – Special Education provided as supportive intervention in regular education with teaching assistant
1998-1999	Grade 4	Behavioral observations in November 1998 by

	<p>IU behavior specialist and developed behavior support plan that was part of the IEP</p> <p>MDT reevaluation in February 1999 and found he continues to be eligible for Special Education as OHI</p>
1999-2000 Grade 5	<p>Behavioral observation completed in May 2000 by IU behavior specialist</p> <p>In June 2000 neuropsychological evaluation completed by Dr. H and found Student was presenting with full spectrum Tourette Syndrome. Dr. H diagnosed Student with Severe Neurological Impairment, Tourette Syndrome, OCD and ADHD</p>
2000-2001 Grade 6	<p>In October 2000 evaluated at Western Psychiatric Institute and Clinic (WPIC) by Child Psychiatrist, Dr. K</p> <p>Student has been a patient at WPIC since 1997 for treatment of Tourette Syndrome and ADHD</p> <p>Student was unable to be maintained for a whole day in school despite IEP, wrap-around, medication and consultation with Psychologist</p> <p>District completed MDT reevaluation in October 2000. Eligibility for Special education changed to neurological impairment and ED based on neuropsychological evaluation</p> <p>In October 2000 IEP meeting recommended placement at an APS.</p> <p>Started at APS in November 2000</p> <p>Suspended at APS three times from January to February 2001 due to his behavior</p> <p>In May 2001 Student was withdrawn from APS and placed on Homebound Instruction with a doctor's prescription</p> <p>Hospitalized twice at WPIC from March 13 to April 30, 2001 and from July 11 to July 20, 2001</p>
2001-2002 Grade 7	<p>In September 2001 the IEP indicated 15 hours/week at HLC, 6 hours/week at a residential Treatment Program and 1 hour/week in physical education at [redacted]</p>
2002-2003 Grade 8	<p>Same program as in Grade 7 based on September 2002 IEP</p>
2003-2004 Grade 9	
2004-2005 Grade 10	<p>Placement was half-day at HLC and half-day at a Voc-Tech</p> <p>Behavioral observation at Voc-Tech in December 2004 by IU behavior specialist because of inappropriate comments to peers including threats – recommended behavior</p>

supports  
Withdrawn from Voc-Tech in January 2005 by his parents  
Placed at [redacted] as a community based, on the  
Job Training  
Discontinued placement at [redacted] because of inappropriate  
Behavior in May 2005  
IEE by Dr. K on May 25, 2005

2005-2006 Grade 11      Placement for half-day at HLC with community based job  
training at [redacted]  
MDT reevaluation by district on September 6, 2005  
On March 3, 2006 the parents requested a due process hearing

2006-2006 Grade 12      Program and placement not determined

#### COMPENSATORY EDUCATION FOR 2004-05 AND 2005-06

The district has stipulated to not providing FAPE for the two school years of 2004-05 and 2005-06. What must be determined is the amount of compensatory education due Student. Testimony by both parties was not specific in terms of the amount of compensatory education that was due to Student. Both Ms. R and Ms. S testified for the district that two years of compensatory education was appropriate.

Dr. K testified that 990 hours a year for two years of compensatory education would not address Student's lack of progress. Dr. K testified that 2 or 3 years of intensive daily remediation was necessary. Mr. K testified that 3 or 4 years of compensatory education was required.

Given the significance and the amount of infractions by the district during 2004-05 and 2005-06 this Hearing Officer is concluding that 990 hours a year for two years is an appropriate amount of compensatory education to address these two years. A total of 1980 hours of compensatory education shall provided to Student for the 2004-05 and 2005-06 school years.

#### COMPENSATORY EDUCATION FOR 2001-02, 2003-03, AND 2003-04

The district believes that this case is controlled by IDEA's two-year statute of limitations and the Parents are only entitled to receive two years of compensatory education.

The Individuals with Disabilities Education Act now specifically contains a two-year statute of limitations. It provides:

“(C) Timeline for requesting hearing – A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint....

(D) Exception to the timeline – The timeline ...shall not apply to a parent if the parent was prevented from requesting the hearing due to –

- (i) specific misrepresentation by the local educational agency that it had resolved the problem forming the basis of the complaint; or
- (ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent."

20 USC Chapter 1415(f)(3)(C) and (D)

The revised IDEA was signed into law in December 2004 and its provisions became effective as of July 1, 2005. The Parents request for due process was made March 2, 2006; therefore, IDEA 2004 is applied. The Parents are prohibited from claiming any violation of the IDEA prior to March 3, 2004.

The IDEA states that a request for a due process hearing must be made within two years of the date that the parent or agency knew or should have known about the alleged action that forms the basis of the complaint. In this case, the parents have been represented by Charles Jelley, Esq. In their dealings with the district regarding Student's education since at least 2002. Since 2002, the parents have requested due process on three separate occasions; June 2002, December 2004, and March 2006. The first two requests were withdrawn by the parents.

In addition, the specific exceptions of the IDEA's two-year statute of limitation do not apply. No testimony was presented that the district misrepresented that it had not resolved the problem nor was there any evidence presented that the district withheld any information from the parents.

The continuing violation doctrine also does not apply in this case because the parents have twice previously filed for due process. This is not a situation where the parents did not have any knowledge concerning Student's education. The parents have been actively and fully involved with the School District in the education of Student.

No compensatory education is awarded for 2001-02, 2002-03, and 2003-04.

**Order:**

It is hereby ordered that:

1. The School District provide Student with 1980 hours of compensatory education for not providing FAPE for the 2004-05 and 2005-06 school years. This compensatory education cannot be used to replace an appropriate program and placement by the district.
2. The 1980 hours of compensatory education shall specifically focus on instruction in reading comprehension, mathematics and written expression. The instruction shall also include training for future life skills.
3. The 1980 hours of compensatory education shall be determined by the parents and provided at district expense at current local prevailing rates of reimbursement. The parents shall provide the district with pre-approval documentation concerning instructional areas, instructors, and fees. The district has the right to refuse approval if the costs do not reflect current prevailing rates of reimbursement.
4. The 1980 hours of compensatory education must be provided prior to Student becoming 21 years of age. The district is not obligated to provide any compensatory education after Student becomes 21 years of age on December 20, 2009.
5. The School District is not legally obligated to provide Student with any compensatory education because of alleged violations which occurred prior to the 2004-05 school year.
6. The issue of an appropriate program and placement for 2006-07 is still not resolved. The hearing will reconvene by August 7, 2006 unless this Hearing Officer receives a letter from the parent withdrawing their request to address this issue.

Submitted by,

Gerald Dambach, Ed.D  
Hearing Officer

July 16, 2006

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