

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

B.R.  
Child's Name

Xx/xx/xx  
Date of Birth

7074/06-07 AS  
ODR File Number

November 29, 2006, December 7, 2006  
Dates of Hearing

Closed Hearing

Parties to Hearing

Parent  
Mrs.

Dates Transcript Received:  
December 4, 2006;  
December 10, 2006

Parent Representative  
Pro Se

School District  
James McAnulty  
Bristol Township School District  
6401 Mill Creek Road  
Levittown, PA 19057-4014

Date of Decision:  
December 19, 2006

District Representative  
Andrea Saia, Esq.  
1800 Byberry Road  
1301 Mason's Mill Business Park  
Huntington Valley, PA 19006

Kenneth Rose  
Hearing Officer

## **Background**

The student is a xx-year old student in the school district. He is currently in eleventh grade. He is an eligible student identified as having a Specific Learning Disability (SLD) in reading and Other Health Impairment (OHI). He has generalized seizure disorder status post VP shunt for congenital hydrocephalus, Attention Deficit/Hyperactivity Disorder (AD/HD), frequent nosebleeds and Osgood-Schlatter disease. There is a history of animosity between the parent and the school district. There is currently ongoing legal action between the parent and school district concerning the student. The nature of this is not part of this due process hearing except as occasionally referenced in the proceedings.

The complaint before this hearing officer is the parent's contention that the Individualized Education Program (IEP) was not implemented and the proposed IEP is inappropriate. She is seeking that the proposed IEP contain her proposed additions. In her opening statement several additions were requested. A Behavior Plan (BP) was requested, as well as a solution to his failing classes.

## **Stipulations**

1. The student's date of birth is xx/xx/xx.
2. The student is a resident of the Bristol Township School District.
3. The student is an eligible student with a Specific Learning Disability (SLD) in reading and Other Health Impairment (OHI).

## **Findings of Fact**

1. The parent agreed with the Re-evaluation Report (RR) of July 19, 2004. (NT-22; P-1)
2. The student's IEP for last year was amended four times during the year. These revisions were at the request of the parent. (NT-208; P-16)
3. On March 24, 2006 the student's IEP was revised so that the student would not have direct contact with a special education teacher, but would be monitored. The student attended "resource seminar" until the parent had him removed from the class.  
  
The parent refused a BP developed through the Intermediate Unit (IU) last year and requested it be removed from the IEP. (NT-162, 163, 209, 210, 290; P-13, P-16)
4. Last school year there were fifteen or sixteen changes of teachers because the parent was dissatisfied with them. This included being removed from reading at parent's request and against the school district's recommendation. (NT-163, 164)

5. Last school year the student's special education teacher filed a complaint in court against the parent. (NT-229, 230)

### **September 19, 2006 IEP**

6. The IEP of September 19, 2006 has present levels of functional performance. Transitional services are listed. There is a measurable reading goal. Organization is addressed through measurable goals and SDIs.

The student's behavior is addressed on the September 19, 2006 IEP through measurable annual goals. These include starting class work, assignment book, getting out of seat, inappropriate questions, attendance, getting to class on time and remaining in class. A variety of measurements are to be used including daily check sheets, reports to parent, frequency of referrals and observations. These were refined in subsequent IEP revisions. (NT-140-145, 147; S-9)

7. The parent received the September 19, 2006 IEP at the meeting. (NT-99, 101; S-6)

8. The parent approved the IEP of September 19, 2006 and the placement by way of a Notice of Recommended Educational Placement (NOREP). (NT-74, 75; S-6)

9. The September 19, 2006 IEP reflects the needs stated in the last RR. (NT-150-157; S-7; P-1)

### **Implementation of September 19, 2006 IEP**

10. The student has contact with and help from special education teachers in his co-taught classes. (NT-173, 281)

11. The student is given extra time on tests when needed. This is done after school since the parent does not want the student to meet with the special education teacher during the school day. Re-testing is done when appropriate.

To help the student's grades it was agreed not to take the student out of his sixth period class for discipline meetings.

The student receives study guides to help him. He is given extra time for tasks because of his distractability. (NT-170, 171, 172, 174, 257, 258, 276; P-3)

12. The student does better using visual skills. (NT-34; P-4)

13. The student sometimes does better on re-tests. (NT-35, 36; P-5)

14. Absent a BP the school district developed a rubric to measure behavior addressed in the IEP goals. This is given to the parent quarterly; she didn't want it weekly. (NT-164; S-8)

15. The school district met with the parent several times early in the school year to attempt to solve issues. When this failed, the parent's due process request was filed. (NT-225)

16. The student's behavior is similar to last year, but academics are poorer. (NT-46, 289)

17. The parent feels the special education teacher currently responsible for monitoring the student and his IEP is biased due to her past history with the parent and student. The teacher denies this.

The parent has forbidden the student to meet with the special education teacher for progress monitoring or help with school work. (NT-231, 232, 258, 277, 278)

18. The student's behavioral and academic problems span all his classes. (NT-218)

19. The student has walked out of classes. The parent has removed the student from classes because she didn't like the teacher. (NT-88, 89, 284; S-2)

20. During the current school year the student has been suspended for two days and citations have been filed in court against him by the school district. (NT-68, 69, 151)

21. The student's behavior impedes his success in class. He also misses assignments. Incomplete work is a reason for the student's poor grades. (NT-171, 277)

22. As of October 31, 2006 the student was doing poorly in some subjects. He was missing classes due to cutting classes and disciplinary reasons. The parent had instructed him to leave class when he "feels threatened." (NT-117; S-1)

23. In the past two and a third years the parent has had the student's IEP teacher changed six times because she was unhappy with the teacher. (NT-281, 282)

24. During a suspension, the student is expected to request missed work. Teachers were requested to provide assignments to the student for his last suspension. (NT-196, 200; P-14)

25. The student is not taking his ADHD and/or seizure medication regularly due to insurance problems. (NT-56, 57; P-12)

26. This school year the parent wanted a change in social studies teachers. The request was due partly to the speech pattern of the teacher. The request was denied. This

was addressed through providing the textbook on tape. The social studies book on tape arrived November 22, 2006 and the parent was informed to pick it up. (NT-116-122, 123)

27. The student failed geometry, English and American history the first marking period. (S-9)

28. The parent claims areas of RR not being implemented or placed in an IEP are extended time on tests, if class time is used appropriately; accommodations on tests and assignments; providing “cool off” time and a “check-in” person before or immediately after negative behavior and a multi-sensory approach should be used. (NT-24-17; P-1)

### **Revision of September 19, 2006 IEP**

29. There has been an ongoing review and revisions of the IEP since September 25, 2006. The parent started asking for IEP revisions as early as September 25, 2006. (NT-55, 132, 206; P-15)

30. The student has problems with his shunts, changes in medication and parent’s inability to always obtain medications.

The parent feels the school does not give enough consideration to the student’s medical needs. (NT-59, 60)

31. The school district asked the parent for a report from the student’s neurologist giving his current health status and how it affects his education. The report when it arrived was not as complete as the school district had hoped.

The school district still feels a need for more information. (NT-242-244)

32. A September 25, 2006 letter from the student’s doctor at [redacted] Hospital indicates a history of seizure disorder and ADHD. It recommends auditory reinforcement and extra time for assignments and tests. It also recommends no physical activity or gym class due to Osgood-Schlatter disease. It cautions new medication causes drowsiness. (NT-52, 53; P-11)

33. Because of the medical information provided by the parent, the IEP team was reconvened and the IEP was revised October 24, 2006. When and where probes for reading fluency would take place was clarified so that class time would not be missed and placing the social studies book on tape was added. The recording was to be done by November 24, 2006. The audio recording of the student’s history text was given to the parent on November 29, 2006. It was five days late.

Changes were made in the September 19, 2006 IEP to help improve class work and making up work.

The concerns in the parent's October 11, 2006 letter were addressed in the IEP. (NT-18, 20, 75, 85, 185-189, 278; S-9; P-7)

34. After the October 24, 2006 IEP revision the parent disapproved it and requested a due process hearing because of "things denied." (NT-83; S-5, S-4)

35. The school district is not sure why academic success has been less this year, discipline is a problem, attentiveness is a problem, impulsiveness is present and constant inappropriate behavior in class. (NT-150)

36. The process of continuing to revise the IEP continued to happen on October 31, 2006. (NT-88; S-1, S-2)

37. The parent questions whether the student's behavior and poor academics should have caused the questioning of whether these were part of his disability. She inarticulately refers to this as a Manifestation Determination. (NT-95, 96)

38. On October 11, 2006 the parent requested a due process hearing because of medical issues, discipline issues and education concerns. (NT-43-45; P-7)

39. On October 25, 2006 the school district filed for a due process hearing on behalf of the parent. (NT-87; S-3)

40. At one point, the parent wanted the student removed from special education and given a 504 Plan. The school district and the parent's advocate persuaded the parent to keep the student in special education. (NT-214)

41. On November 29, 2006, the IEP was further revised as the result of the resolution meeting.

The proposed IEP of November 29, 2006 has revised present educational levels. The current levels of behaviors are in the present levels. Revised goals include providing study guides. Also, a system of reminders on assignments was added. Some of this was at parent's request. (NT-91, 161-165, 166-168, 177, 178, 239, 240, 271; S-9)

42. The IEP at S-10 is the last "draft" in its complete form containing all revisions to date. (NT-287)

43. The school district's social worker has assisted the parent in getting medical help for the student. (NT-39)

44. The parent is not consistent in what she wants of the school district. Her requests change over time

The parent claims the student's seizures make it hard to determine if class time is being used appropriately. Further, discretion is used by the school district on providing accommodations on tests and assignments. Missed assignments due to absences are not being provided. Concentration problems hinder the student on long assignments.

The parent feels the student should be able to remove himself from the room when he wants to so the problem doesn't escalate.

The parent wants alternative testing methods. The parent wants the student to be informed of tests ahead of time.

The parent wants the student's health issues in the IEP.

The parent wants to be called before disciplinary action is taken and she wants a system of making up missed assignments. (NT-24, 25, 26, 27, 37, 38, 39, 41, 62, 63, 64, 219; P-1)

45. The view of the school district of the parent's remaining issues for the IEP are: the student should be able to retake every test. There can be no progress monitoring in math or reading for remediation. (NT-186)

46. The student has had a BP in the past, but not currently. The parent is requesting one. (NT-60, 67)

47. The school district is not opposed to including a BP in the IEP. (NT-174, 175)

48. Issues about health and medications have been discussed at IEP meetings. (NT-58)

## **Issues**

1. Is the current IEP being implemented?
2. Is the proposed IEP appropriate?

## **Discussion and Conclusions of Law**

### **Issue 1. Is the current IEP being implemented?**

The current IEP is the IEP of September 19, 2006. This IEP follows a line of revisions started last school year where revisions were made at parent's request (FF 2). These included removal of direct learning support through "learning seminar" during the school day (FF 3, 4). The IEP of September 19, 2006 was approved by the parent (FF 8).

It addresses the needs identified in the last RR (FF 9). In Furman v. East Hanover Board of Education, 993 F. 2d 1031, 1040 (3<sup>rd</sup> Cir. 1993) it was established that an IEP adequacy can only be determined at the time it is offered.

The school district implemented the IEP although implementation was hampered by the actions of the student and parent. There were problems with always giving extra time on tests because the parent would not permit the student to meet with the special education teacher (FF 11, 17). The parent did not think it best for the student to stay after school. During this time work was missed due to his walking out of class (FF 19), the parent taking the student out of class (FF 19), failure of the student to request work missed due to suspension (FF 22, 24) and being called to the office (FF 11).

In Schaefer v. Weast 546 U.S.C (November 14, 2005), the burden of proof (burden of persuasion) is placed upon the party bringing the claim. The parent fails to meet this burden in issue one. There is no preponderance of the evidence that the school district has not implemented the IEP of September 19, 2006.

## **Issue 2. Is the proposed IEP appropriate?**

The proposed IEP is the November 29, 2006 draft which is a revision of the October 24, 2006 IEP (FF 41, 42)

There is no doubt that the IEP of September 19, 2006 is not working. The student is failing in two classes and he is having constant discipline problems resulting in missed classes, suspension and citations to court (FF 20, 21, 22).

34 C.F.R. §300.324 (b)(1)(ii) requires that an IEP be revised if progress toward goals is not being made. Shortly after the current IEP was implemented the parent raised concerns (FF 29). The school district showed concern by requesting additional medical data from the parent and starting the IEP revision process which continues to the present. (FF 31). The school district rightly started the IEP revision process in a timely manner with the October 24, 2006 IEP revision.

The parent has requested sundry additions to the IEP (FF 44). These vary over time. These in part include further test accommodations, making up assignments, right of the student to leave class, alternate testing, prior notice of tests, health issues listed, parent notification prior to discipline and a BP (FF 44). The school district has stated its willingness to provide a BP (FF 47)

The school district complains it has over the years tried to address the parent's concerns. In the last couple of years there have been fifteen or sixteen teacher changes at parent request (FF 2, 4). "Resource Seminar" and a BP were eliminated at parent request (FF 3). Parent concerns were included in the IEP revisions last year and this year (FF 3, 33, 41).



It is clear that the current IEP is not working. A preponderance of the evidence shows the IEP of October 24, 2006 and its latest revision of November 29, 2006 are not appropriate. The student is not making progress on his goals especially in behavior, organization and academic classes. There is evidence the school district has attempted to grant some requests and resists others. The school district's efforts to accommodate the parent have led to a paralysis in developing an appropriate revised IEP. The school district describes this as trying to hit a "moving target."

It is not clear what the student's current needs are (FF 31, 34, 37). This needs to be explored. There are questions of the role of his seizure disorder and ADD on his current problems. The student is not consistently on his medications. The responsibility under IDEIA is on the school district to provide FAPE. While it is commendable that the school district is seeking compromise with the parent, the student's needs are not being met at present. The school district is reminded of its duty to develop an appropriate IEP and issue it even if a parent objects to it.

With the continuing behaviors of the student and lack of progress a comprehensive re-evaluation is in order. This will form a foundation for an appropriate IEP.

The question of the timeliness of the school district's delay in submitting the parent's due process request does not rise to the level of a fatal procedural flaw under Board of Education v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982).

**The LEA is ordered to**

1. Within 60 days of receipt of this decision, the school district shall conduct a comprehensive re-evaluation of the student. This will include a functional behavior assessment.
2. Within 30 days of the RR, the school district shall develop an appropriate IEP.

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Date

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Kenneth Rose  
Hearing Officer