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

Student  
ODR #8311/07-08 KE

Date of Birth: xx/xx/xx

Dates of Hearing

January 11, 2008

January 16, 2008

January 17, 2008

January 28, 2008

January 29, 2008

**OPEN HEARING**

For the Student:

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For the School District:

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Date Record Closed: February 18, 2008  
Date of Decision: March 2, 2008  
Hearing Officer: Daniel J. Myers

### **Background**

Student contests the School District's proposed educational placement, arguing that his middle school's requirement that he give up special area subjects in order to receive learning support services in the resource room violates his right to special education in the least restrictive environment appropriate. Student also complains about the substantive appropriateness of his IEP. For the reasons described below, I find for Student.

### **Issues**

- Whether or not Student is receiving special education in the least restrictive environment appropriate;
- Whether or not Student's needs require pull-out learning support services; and
- Whether or not the middle school's schedule of Student's pull-out learning support services illegally restricts Student's access to special subjects.

### **Findings of Fact**

1. This School District's middle schools begin with 5<sup>th</sup> grade. Each day, over a cycle of six days, the middle school offers instruction in eight, 45 minute periods, with core 5<sup>th</sup> grade academic subjects (Math, Science, English, Social studies, and Reading) occurring during periods 1 through 5, between 8 a.m. and noon. (N.T. 456-457, 474, 1154)<sup>1</sup> Sixth period is reserved for lunch and an activity (what I call "decompression") period. (N.T. 460) It is during this activity period that some regular education students receive extra time for tests if needed. (N.T. 198, 276)

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<sup>1</sup> References to "SD," "P," and "HO" are to the School District, Parent, and hearing officer exhibits, respectively. References to "N.T." are to the transcripts of the hearing sessions in this matter.

Seventh and eighth periods are reserved for 5<sup>th</sup> grade special area subjects, such as art, music, physical education, health, Foreign Language in the Elementary School (FLES), and a rotation of applied technology, technology education and family and consumer sciences. (N.T. 198, 326-328, 460-461, 466)

2. Also during 7<sup>th</sup> and 8<sup>th</sup> periods, 5<sup>th</sup> grade special education students who need learning support services in a resource room environment are assigned to the resource room (N.T. 40, 42, 490, 502), and 5<sup>th</sup> grade regular education students who are not proficient in the Math and/or English areas of the Pennsylvania System of School Assessment (PSSA) are assigned to regular education Math and English Seminars that are designed to provide extra support in those subject areas. (N.T. 466, 494, 503-504)
3. One result of the School District's middle school scheduling system is that students attending 7<sup>th</sup> / 8<sup>th</sup> period resource room must miss the special subject area classes that are offered at that time. There is no study-hall or period of non-instruction during the middle school day. (N.T. 40, 42, 468-469, 490, 502) The School District would have to change its current scheduling model significantly to allow special education students to attend both the resource room and all special area classes that are available to regular education students. (N.T. 472-473)
4. Student, whose date of birth is xx/xx/xx, is a xx year old 6<sup>th</sup> grade student with Pervasive Developmental Disorder-Not Otherwise Specified (PDD-NOS), Attention Deficit Hyperactivity Disorder (ADHD) and Obsessive-Compulsive Disorder (OCD). (N.T. 803, 806 ; SD301; SD336)

5. In 4<sup>th</sup> grade (elementary school), Student was mainstreamed in regular education classes except for language arts. (N.T. 806)
6. In 5<sup>th</sup> grade (2006-2007), Student was not mainstreamed, but rather he was placed initially in the resource room for every class, except lunch, art and physical education. (N.T. 821, 1067; P317; P319) Student also received social skills training once per week, speech and language consultation once per week, and OT consultation once per week. (SD308, pp.19, 23) Shortly after starting 5<sup>th</sup> grade (September 2006), Student was moved to an on-level regular education math class. (SD303; P319; P320; N.T. 831, 1068) At that time, he was also removed from the resource room social studies class so that he could receive additional reading instruction using the FastForWord program. (SD331; P320; N.T. 1068-1069) Later in the school year, Student's reading instruction changed to the Wilson Reading Program in place of the FastForWord program. (N.T. 1070) At some point, his reading instruction was reduced from two daily periods to one daily period so that Student could begin taking social studies and science classes. (SD317; N.T. 1071)
7. In May 2007, the parties agreed to a written, independent educational evaluation report from neuropsychologist Dr. R of the [redacted] Institute. (P325; SD308; SD322; SD340; N.T. 845-846, 856-857, 1122) Dr. R found Student's cognitive ability to be in the Above Average range. (SD322, p.15) She found that Student demonstrated generally adequate phonological processing skills, but well below average decoding and encoding skills with minimal improvement in recent years despite individualized programming. (SD322, p.15) She estimated Student's reading level to be in the 2.2 to 3.0 grade equivalent range, and recommended multisensory,

systematic instruction for at least 90 minutes per day to address Student's reading, spelling and writing deficits. (SD322)

8. Over summer 2007, the parties developed a 6<sup>th</sup> grade IEP that included two periods of reading instruction per day. Student began his 6<sup>th</sup> grade, 2007-2008, school year with mainstream math, science, social studies and music classes. In the morning, he receives 3<sup>rd</sup> grade level instruction (which is appropriate for Student) in the Wilson Reading System, which focuses heavily on decoding and is intended to build fluency. He also receives instruction in the Reading Milestones program, which has a heavier emphasis on comprehension, vocabulary, syntax and word usage. (N.T. 942, 945, 948-949) In the afternoon, Student receives additional reading instruction focusing on fluency and comprehension through the SRA program. (SD340; N.T. 858, 924, 942-943, 952-953, 1086, 1123-1124) To fit in the extra, second period of reading instruction, Student's mother was asked which special subject area class she wanted Student to give up. (P338; P339; N.T. 864-867)
9. To address Student's writing needs, he receives instruction in the SRA writing program and the MYAccess program in a special education English class rather than a regular education English class because "[Student] gets very frustrated with the pace of a class. And he gets very discouraged and down on himself if the class moves too fast." (N.T. 917-922, 938) Student's learning support teacher agrees, however, that if Student were in an inclusive setting receiving differentiated instruction, he could progress at his own pace, although not necessarily the pace of the rest of the general education class. (N.T. 939)

10. No regular education teacher collects data regarding Student's reading goals. (N.T. 932-935) Student's learning support teacher does not co-teach or have common planning time with any regular education teachers. (N.T. 935) Student has not taken health class since he's been in middle school. (N.T. 870-872; P346)
11. Student requires social skills instruction, and he does not appear to be receiving systematic social skills instruction, although the record is muddled with respect to the actual social skills instruction that Student is receiving and the parties' positions regarding it. A May 17, 2007, communication evaluation recommended that Student participate in a social skills group. The school district proposed a theater-based program called Acting Antics, taught in learning support classes with other special education students. (SD324; S353; P324; N.T. 843-844, 860-861, 1078-1079, 1092) Student's mother asked that Student and his personal care assistant (PCA) attend the after school Homework Club, which is open to all students, but the School District apparently refused, because it could not schedule an aide for that time of day. (N.T. 847-849)
12. Similarly, the record is muddled with respect to the actual assistive technology that Student is receiving and the parties' positions regarding it. Student had access to an Alpha Smart and a word processor, as required by his IEP. His parent appears to admit this access, but finds it unacceptable because Student did not find them very motivating. (N.T. 837-838, 909-910) She also appears to reject any use of assistive technology, such as a Smart Board, if it is routinely used for all students in the regular classroom. (N.T. 909-910)

13. Student's IEP provides that he will participate in the PASA, rather than the PSSA. (SD306, N.T. 836-837) Student offered the testimony of Dr. B, a Supervisor of Instruction for Radnor Township School District, to discuss the testing requirements of the Pennsylvania Alternate State Assessment (PASA), which is an alternative to the PSSA. (N.T. 1042) Dr. B testified that use of the PASA for a child of average intelligence, like Student, violates the criteria establish by the Commonwealth of Pennsylvania, Department of Education for administration of the PASA. (N.T. 1050-1051) I give no credibility to Dr. B's testimony because she has no knowledge of this particular School District's statewide testing processes. (N.T. 1054) Frankly, I do not feel that her simple assertions regarding the PASA criteria, without more context regarding this School District's particular PSSA/PASA testing procedures, allows me to rule with any certainty regarding whether or not Student is receiving a free and appropriate public education with respect to his PSSA/PASA testing.
14. Student also offered the expert testimony of Ms. P, a certified reading specialist, secondary English teacher, and professor of developmental reading for [redacted] Community College. (N.T. 983-986) Ms. P apparently believes the School District's determination that Student is reading at a 3<sup>rd</sup> grade level is inflated, because he seems to be having so much difficulty at that reading level. (N.T. 993) She criticized the School District's October 29, 2007 reading diagnostic report (SD355) because it did not determine Student's independent word recognition level. (N.T. 990-991) She also thinks that there are too many students (7) and too wide of a range of reading levels (from primer to 3.5) in Student's 90 minutes per day of reading instruction. (N.T. 993, 1003, 1031) She criticized the School District's use of patented reading

programs, believing that Student needs a specifically designed, individualized reading prescription that borrows concepts from various patented reading systems. (N.T. 1006, 1035, 1039) She also thinks that Student should receive physical education because it will help him maintain attention in his other classes by giving him a sensory break from academic sitting time, and that he should receive art instruction because it is an area of high interest for Student. (N.T. 1018) Ms. P testified that, given Student's measured intelligence and his listening comprehension score of sixth grade level, he should be able to read on grade level and achieve at the same level as his peers in the future with appropriate instruction. (N.T. 997-998)

15. I do not find Ms. P's testimony to be credible because she has never met Student, never tested Student, never observed Student's middle school, and never discussed Student's education with School District personnel. She based her opinion upon a three hour meeting with Student's mother and a review of his records since preschool. (N.T. 987-988, 1009, 1027) Ms. P admitted that, without having met Student, she cannot prescribe an individualized program for him. (N.T. 1020)

16. Dr. R's very credible report contrasts sharply with Ms. P's testimony in the following ways. Dr. R tested Student extensively, analyzed Student's history thoroughly, and observed Student in his educational setting. (SD322) Dr. R offered no opinions regarding the efficacy, or lack thereof, of patented reading programs. Dr. R's conclusions and Ms. P's conclusions are, however, similar with respect to Student's reading level and rate of achievement. Dr. R found Student's cognitive ability to be in the Above Average range. (SD322, p.15) She found that Student demonstrated generally adequate phonological processing skills, but well below average decoding

and encoding skills with minimal improvement in recent years despite individualized programming. (SD322, p.15) She estimated Student's reading level in the 2.2 to 3.0 grade equivalent range, and recommended multisensory, systematic instruction for at least 90 minutes per day to address Student's reading, spelling and writing deficits. (SD322)

17. Student offered the expert testimony of Ms. L, a staff developer in differentiated instruction and co-teaching in a neighboring school district. She testified that "differentiated instruction" is a method for ensuring that all the students in a classroom "are being taught in the way that they can learn," based on the premise that "if you have children who have a variety of needs, you need to be teaching them in a variety of ways." (N.T. 724) In addition, co-teaching can be an effective mainstreaming methodology and a powerful tool for instruction when both teachers are engaged in instructional activities during the time they are with students in the classroom. (N.T. 743-745) Co-teaching and differentiated instruction enables one teacher to deliver either targeted remediation or enrichment to a smaller group of students while the other teacher teaches the larger group. (N.T. 744-750, 786)
18. Some school districts schedule resource room time so that it does not conflict with either core or special subjects. Sometimes they schedule a period during which some students go to resource room and others go to optional activities (that is, activities that are not graded nor a part of the curriculum) such as band. In other school districts, ninth period "study hall" is scheduled, during which neither core nor special subjects are scheduled, and during which all students can receive additional instruction of various types, including instruction in a resource room. Some middle schools have a

float period or curriculum review time (CRT) that allows children to see teachers for extra help, go to learning support, and/or attend extracurricular activities. (N.T. 143-144, 184-185)

19. The School District contends that students are not required to receive any particular amount of instruction in special subjects; they are only required to have “some experience” in special areas, which requirement is met through the School District’s current middle school scheduling system. (N.T. 461-462)
20. Student’s parent requested this due process hearing on November 15, 2007.  
(Student’s post-hearing memorandum, p.1)
21. At the due process hearing I admitted the following exhibits into the record.
  - a. HO1-HO5 (N.T. 1165);
  - b. P4-P7, P10-P13, P18, P19, P23-P25, P101, P201-P204, P301-P309, P312, P313, P315, P317-P332, P337-P350, P352, P353, P356. P345 was admitted over School District objection. (N.T. 1167-1169);
  - c. SD2, SD5, SD6, SD13-SD15, SD17-SD19, SD21-SD35, SD38, SD107-SD110, SD113-SD120, SD123, SD124, SD126, SD128-SD134, SD136-SD38, SD143, SD144, SD203, SD207, SD208, SD210, SD214-SD216, SD218, SD221-SD223, SD227, SD301, SD303, SD305, SD306, SD308-SD312, SD314, SD315, SD317, SD322, SD324, SD327, SD330, SD331, SD335, SD336, SD340, SD344, SD345, SD347, SD349, SD350, SD353-SD356, SD360, SD361. (N.T. 1169-1170)

## DISCUSSION

Under the Individuals with Disabilities Education Improvement Act (IDEIA), the School District is required to provide a free appropriate public education (FAPE) to all Students who qualify for special education services. 20 U.S.C. § 1412 The School District program will meet its FAPE obligation if it provides special education and related services at public expense, that meet the standards of the state educational agency, and that are provided in conformity with an individualized education program (IEP.) Stroudsburg Area School District v. Jared N., 712 A.2d 807 (Pa. Cmwlth. 1998)

### Burden of Proof

The United States Supreme Court has held that, in an administrative hearing challenging a special education IEP, the burden of persuasion (which is only one element of the larger burden of proof) is upon the party seeking relief, whether that party is the disabled child or the school district. Schaffer v. Weast, 546 U.S. 49, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005); In Re J.L. and the Ambridge Area School District, Special Education Opinion No. 1763 (2006) If the evidence produced by the parties is completely balanced, or in equipoise, then the non-moving party prevails and the party with the burden of persuasion (i.e., the party seeking relief) must lose. Schaffer v. Weast, supra. If the evidence is not in equipoise, but rather one party's evidence is preponderant, or of greater weight or more convincing than the other party's evidence, then that party prevails whose evidence tips the scales.

The Shaffer decision did not address who bears the burden of persuasion when both parties seek relief from the hearing officer, e.g., when both parties seek to change the pendent IEP. Of course, as I just noted above, where any party has produced more

persuasive evidence than the other party (regardless of who seeks relief), then the evidence is not in equipoise, and the Supreme Court's ruling is not at issue – in that case I must simply find in favor of the party with the more persuasive evidence.

### **Least Restrictive Environment (LRE)**

School Districts are required, to the maximum extent appropriate, to educate children with disabilities with children who are nondisabled. 34 CFR §300.114(a) Carlisle Area School District v. Scott P., 62 F.3d 520, 535 (3d Cir.1995) A school district's obligation to make reasonable efforts to accommodate a disabled child in a regular education classroom is substantial. Girty v. School District of Valley Grove, 163 F.Supp.2d 527 (W.D. Pa. 2001)

School districts must include disabled students in regular education classrooms even if the curriculum must be modified to permit such placement. 34 C.F.R. §300.116(e) The School District must tailor a program and placement to the Student's capabilities and limitations; it cannot simply attempt to fit the Student into a program, placement and curriculum that already exists within the School District. In Re C.D. and the Great Valley School District, Special Education Opinion No. 1858 (2008) An individualized educational program does not mean a separate class or room, but a set of coordinated services and interventions, delivered by persons capable of providing them, in the least restrictive environment appropriate. Id.; 34 CFR §300.114 Learning support services can be provided in any classroom by competent professionals; it does not require the aggregation of disabled students in a room. Great Valley School District, supra.

The two-part Oberti LRE test is to determine: 1) whether education in the regular classroom can be achieved satisfactorily with the use of supplementary aids and services;

and 2) if not, what is the extent to which the child can be mainstreamed with regular education peers. Oberti v. Board of Education, 995 F.2d 1204 (3d Cir. 1995) It not necessary to move to the second part of Oberti's two-part test unless the first part demonstrates that placement outside the regular classroom is required. Id.

This analysis involves several factors, including: 1) whether the school district has made reasonable efforts to accommodate the student in a regular classroom; 2) the educational benefits available to the student in a regular education classroom with supplementary aids and services, as compared to the benefits of a segregated special education classroom; and 3) the possible negative effect of the student's inclusion on the other children's educations.

If the School District has given no serious consideration to including the child in less restrictive classes with supplementary aids and services, and to modifying the curriculum to accommodate the child, then it has most likely violated the IDEA's mainstreaming, or LRE, directive. Even if the child receives less academic benefit in an inclusive setting, such setting may be warranted if the benefit of social modeling, language development and social skills development outweighs the potential academic benefit of a segregated setting. Girty v. School District of Valley Grove, 163 F.Supp.2d 257 (W.D. Pa. 2001)

In this case, I find that the School District has failed the Oberti test by not according serious consideration to including Student in regular education special subject classes with supplementary aids and services. I believe that serious LRE consideration requires that the School District eliminate from the IEP team's deliberations any

artificial, arbitrary and super-imposed restrictions – such as a particular class-scheduling system.<sup>2</sup>

It is not difficult to schedule resource room time and core classes and special subjects for middle school students – other school districts do it. N.T. 183-185 Student’s learning support teacher agrees that if Student were in an inclusive setting receiving differentiated instruction, he could progress at his own pace, although not necessarily the pace of the rest of the general education class. (N.T. 939) Student’s learning support teacher does not co-teach or have common planning time with any regular education teachers. (N.T. 935) Student has not taken health class since he’s been in middle school. (N.T. 870-872; P346) Student’s mother asked that Student and his personal care assistant (PCA) attend the after school Homework Club, which is open to all students, but the School District apparently refused, because it could not schedule an aide for that time of day. (N.T. 847-849) All of these circumstances demonstrate unnecessary and artificial barriers to serious consideration of LRE possibilities.

I can only imagine how much creativity, less restrictiveness, and greater responsiveness to Student’s needs is possible if the IEP team is not hamstrung by arbitrary limitations. The fact that I must imagine, and cannot read in this record, evidence of creative mainstreaming in all areas of Student’s needs, unconstrained by any artificial class-scheduling system, is proof that this School District has not satisfied its Oberti/ Girty “serious consideration” requirement. Artificially restricted consideration is not “serious consideration.”

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<sup>2</sup> This does not mean that the School District must change its entire middle school class scheduling system. It simply means that, in designing Student’s IEP, his IEP team cannot be restricted by that system.

My ruling in this case does not mean that there is, in fact, a less restrictive environment into which Student must be placed. It simply means that the School District has not met its obligation to give serious consideration to including Student in LRE settings with appropriate supplementary aids and services.

I suspect that, when unencumbered by artificial class-scheduling restrictions, Student's IEP team will be very creative in brainstorming additional inclusion opportunities in Student's other areas of need.<sup>3</sup> While such brainstorming does not guarantee that Student actually will benefit from any less restrictive program and placement than that which has already been offered by the School District, it does mean that the resulting proposed placement is more likely to satisfy the rigorous Oberti/ Girty "serious consideration" requirement than does the current proposed placement. It should also result in a more concrete, data-driven record of what truly is the least restrictive environment appropriate for Student.

### **Reading**

I disagree with parent's concerns regarding Student's reading instruction. Dr. R found Student's cognitive ability to be in the Above Average range. (SD322, p.15) She found that Student demonstrated generally adequate phonological processing skills, but well below average decoding and encoding skills with minimal improvement in recent years despite individualized programming. (SD322, p.15) She estimated Student's reading level in the 2.2 to 3.0 grade equivalent range, and recommended multisensory,

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<sup>3</sup> Inclusion experts are available for school districts in listing a full continuum of supports and services, for development of universal design for learning, for curriculum planning, and/or for professional development. See C.M. and the Central Bucks School District, Special Education Opinion No. 1430 (2003); G.A.B. and the Hempfield Area School District, Special Education Opinion No. 1467 (2004)

systematic instruction for at least 90 minutes per day to address Student's reading, spelling and writing deficits. (SD322) Student receives 3<sup>rd</sup> grade level instruction (which is appropriate for Student) in the Wilson Reading System, which focuses heavily on decoding and is intended to build fluency. He also receives instruction in the Reading Milestones program, which has a heavier emphasis on comprehension, vocabulary, syntax and word usage. (N.T. 942, 945, 948-949) In the afternoon, Student receives additional reading instruction focusing on fluency and comprehension through the SRA program. (SD340; N.T. 858, 924, 942-943, 952-953, 1086, 1123-1124)

I do not find Ms. P's testimony regarding the inappropriateness of Student's reading program to be credible because Ms. P has never met Student, never tested Student, never observed Student's middle school, and never discussed Student's education with School District personnel. She based her opinion upon a three hour meeting with Student's mother and a review of his records since preschool. (N.T. 987-988, 1009, 1027) Ms. P admitted that, without having met Student, she cannot prescribe an individualized program for him. (N.T. 1020) Further, Dr. R, whose report I find very credible, offered no opinions regarding the efficacy, or lack thereof, of patented reading programs.

Thus, I conclude that the School District's proposed IEP is inappropriate in addressing Student's reading needs. Of course, the School District and Student's IEP team are expected to monitor Student's progress and adjust his reading program appropriately in response to progress monitoring data.

### **Social Skills**

Although the record is muddled with respect to the actual social skills instruction that Student is receiving and the parties' positions regarding it, Student does not appear to be receiving systematic social skills instruction. A May 17, 2007, communication evaluation recommended that Student participate in a social skills group. The school district proposed a theater-based program called Acting Antics, taught in learning support classes with other special education students. (SD324; S353; P324; N.T. 843-844, 860-861, 1078-1079, 1092) Student's mother also asked that Student and his personal care assistant (PCA) attend the after school Homework Club, which is open to all students, but the School District apparently refused, because it could not schedule an aide for that time of day. (N.T. 847-849)

The School District's inability to schedule an aide is an insufficient reason for not addressing an eligible student's need. This Student with PDD-NOS and OCD can definitely benefit from social skills assistance. (N.T. 803, 806 ; SD301; SD336) The after school Homework Club may, indeed, be an appropriate program to meet Student's peer-relationship needs. This program cannot be summarily refused simply because it is not administratively convenient to provide it. I will order the IEP team to consider whether the after school Homework Club program would be appropriate to meet Student's social skills needs. If the IEP team considers this program to be appropriate, then of course the School District will be expected to ensure that it is provided.

### **Remedy**

Student clearly seeks relief in the form of a less restrictive educational environment. In his post-hearing brief, he also suggests, almost half-heartedly, that he is

entitled to compensatory education somewhere in the neighborhood of between 1400 hours and 180 days. Compensatory education is an appropriate remedy where a school district has failed to provide a student with FAPE. M.C. v Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996); Lester H. v. Girlhood, 916 F.2d 865 (3<sup>rd</sup> Cir. 1990), cert. denied, 488 U.S. 923 (1991) for many years the period of compensatory education has been calculated to be equal to the period of deprivation, less a reasonable rectification period. Ridgewood Board of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999) Since 2006, hearing officers can also focus on what it will take to bring the student to the point she should have been if not for the deprivation of FAPE. B.C. v. Penn Manor, 906 A.2d 642 (Pa. Cmwlth. 2006)

With regard to Student's social skills needs, it is not clear from the record that the after school Homework Club would have been an appropriate program to meet Student's peer-relationship needs. What is clear is that the School District's inability to schedule an aide is an insufficient reason for not addressing that proposal by Student's parent. My sense is that the appropriate remedy in this case is prospective and, lacking any evidentiary basis for determining the amount of compensatory education required to bring Student to the position he would have attained had the reading goal been more systematic, I will not award compensatory education. Instead, I will order the IEP team to consider whether the after school Homework Club program would be appropriate to meet Student's social skills needs. If the IEP team considers this program to be appropriate, then of course the School District will be expected to ensure that it is provided.

In this case, I believe that the appropriate remedy for LRE failure in this case is to order, not compensatory education, but IEP team reconsideration of the proposed program and placement, giving serious consideration to including Student in less restrictive classes with supplementary aids and services, and to modifying the curriculum to accommodate Student's needs. In Re B.T. and Derry Township School District, Special Education Opinion No. 1781 (2006); In Re A.G. and Wissahickon School District, Special Education Opinion No. 1455 (2004) For the social skills issue, I will the IEP team to consider whether the Homework Club would appropriately address Student's needs.

### **Conclusion**

The School District has not satisfied the Oberti/Girty test because it has not accorded serious consideration to including Student in regular education special subject classes with supplementary aids and services. In addition, the School District's refusal to consider the Homework Club because it could not schedule an aide is unacceptable. Student's reading programs appear appropriate.

**ORDER**

- The School District's proposed program and placement is inappropriate because it was not developed with the intention to accommodate Student in a regular education classroom with supplementary aids and services to the maximum extent appropriate;
- The School District shall reconvene the IEP team to develop an IEP with the intention to accommodate Student in a regular classroom with supplementary aids and services to the maximum extent appropriate. This IEP development shall include:
  - consideration of why particular mainstreaming opportunities are, or are not, appropriate for Student, without reference to any arbitrary, self-limiting conditions such as a class scheduling system;
  - systematic matching of Student's IEP goals to the general curriculum, including all special area subjects;
  - consideration of the development of universal design for learning, use of co-teachers, and differentiated and/or parallel instruction;
  - consideration of the professional development necessary to implement LRE requirements;
  - consideration of the educational benefits available to the student in a regular education classroom with supplementary aids and services, as compared to the benefits of a segregated special education classroom;
  - consideration of the possible negative effect of the student's inclusion on the other children's educations;

- consideration of the use of outside inclusion experts for assistance in listing a full continuum of various supports and services that might be considered for Student; and
- a mechanism for monitoring and fine-tuning Student's inclusion experiences in another IEP meeting before the end of the current semester.
- The IEP team shall also convene to determine whether or not the after school Homework Club would appropriately meet Student's social skills needs.

*Daniel J. Myers*

Hearing Officer

Date: March 2, 2008

Re: ODR No. 8311/07-08 KE  
Student  
Tredyffrin-Easttown School District