

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

**HEARING ORDER**

**Student's Name:** E.W.(File # 6342/05-06 LS)  
**Date of Birth:** xx/xx/xx  
**Date of Hearing:** 3/28/06, 6/2/06  
**Type of Hearing:** Closed

**Parties To the Hearing**

**Parents' Names:** Parent(s) **Date Transcripts Received:**6/10/06

**Parent's Home Address:**

**Parents' Representative:** John Bogdanovitz, Esq. **Date of Order:** June 15, 2006

**Representative's Address:**  
North Penn Legal Services  
507 Linden Street  
Scranton, PA 18503

**Hearing Officer's Name:**  
William J. Wall, Esq.

**School District:**  
Scranton City School District

**School District's Address:**  
425 N. Washington Avenue  
Scranton, PA 18504-3419

**School District Contact:**  
Ms. Lee Carr  
Supervisor of Special Education

**Representative's Name:**  
Harold McGrath, Esq.

**Address:**  
Scranton Life Bldg. Suite 532  
538 Spruce Street  
Scranton, PA 18503

**SPECIAL EDUCATION HEARING ORDER**  
STUDENT (FILE # 6342/05-06 LS)  
Scranton City School District

**BACKGROUND INFORMATION**

The student, a resident of the Scranton School District, is in a Half day Itinerant Learning Support class at High School and a Half day Community-Work Program. The parent requested a due process hearing because he wanted his son to return to a full academic program so that he could graduate with his class at the end of the 2006/2007 academic year.

On March 28, the first day of hearings, a great deal of time was spent in negotiations between the parties in an effort to resolve the matter. At the conclusion of that day, I was advised that an agreement in principle was reached and the agreement would be finalized and executed within a week or two and at that time a withdrawal would be entered by the parent and the case closed. The negotiations did not result in an executed agreement and it became necessary to conduct the June 2, 2006 hearing.

Neither parent nor the student was present at the hearing but both the parents and the student were represented by counsel who confirmed that the hearing was to go forward without their attendance. He also represented that he was authorized to proceed and offered third party testimony that this was in fact the case. Based on counsel's representation and the sworn testimony of the witness I determined it was appropriate to proceed with the hearing.

**FINDINGS OF FACT**

1. The parent requested a due process hearing and advised the school district on or about 2/24/06 of his intention to seek due process. However, there was a delay in the

actual notification by the parent to the district of the demand for a due process hearing.

2. I was appointed as the Hearing Officer on March 3, 2006 and at the request of both parties the initial hearing was scheduled for March 28, 2006 at the offices of the School District.
3. I attended the hearing as scheduled on March 28, 2006. At the request of both parties, I postponed commencing the hearing so that they might negotiate a settlement. The parent, the student and counsel for both parties as well as necessary representatives of the school district all participated in the negotiations for several hours and at the conclusion of the negotiations both counsel advised me that an agreement in principle had been reached but neither party wished to withdraw the request for the hearing unless an executed agreement was in place.
4. Therefore, I went on the record to record the status of the case and schedule another hearing date in the event the agreement was not able to be reduced to writing and executed. The agreement was not executed and as a result the second hearing date was necessary.
5. At that hearing the district reported that extensive discussions with the student and the parent with the participation of their counsel resulted in a proposed plan of action to provide an opportunity for the student to graduate with his class in June, 2007. Because of the failure to obtain a binding settlement earlier, counsel for both parties requested that the plan be ordered after testimony and evidence confirmed that the plan was feasible and acceptable to the parties.

6. At the hearing, the following facts were established by either testimony or documentary evidence.
7. The student is a [teenaged] student in the eleventh grade at High School.
8. He had been diagnosed with a specific learning disability and continued to be eligible for special education services in numerical operations and basic reading.
9. In addition, it was determined in the 3/28/06 Reevaluation Report that a Functional Behavior Assessment (FBA) should be undertaken and it was accomplished on 5/17/06.
10. At the date of the hearing no Behavioral Intervention Plan had been developed. However, several functional goals relating to problems identified in the FBA were included in the Individualized Education Program (IEP) developed on 6/2/06.
11. At the hearing, District representatives presented the plan that has been developed and reflected in the 6/2/06 IEP. The plan is as follows.
12. The student is in danger of failing math for the semester ending in June, 2006. If that does occur it will be necessary for him to make up the math course in order to graduate.
13. In the event he does fail math (which is not a certainty at the date of the hearing), he has some options to repeat the course or take one that will satisfy his math requirement provided he participates in one of the following programs.
  - a. Take another approved math course this summer in summer school.
  - b. Take another approved math course in “winter summer school”.

- c. Take an approved math course in the fall, 2006 semester by adding an additional hour to his academic schedule and complete the course during that time.
14. In addition, the parent requested that the student participate in the school district work/study program. Upon review of the student's current employment, his IEP and discussions with the transition specialist it was determined that he could attend the regular school curriculum with his IEP in the morning and be part of the work/study program in the afternoon. If he was successful, he could graduate with his class in June, 2007.
15. Testimony revealed that the student has elected to add an additional hour to his academic schedule in the fall semester should he fail math this semester. That is acceptable to the school district. The other options remain available in the event he elects to change his mind but must be exercised before the summer school program begins or the "winter summer school" begins.
16. Counsel for the parent represented that the above stated plan met with the approval of the parent as the parent had two objectives which were met by the development of the plan. The parent wanted his son to have the opportunity to graduate with his class in June, 2007 and participate in the work/study program. Parent's counsel was satisfied that the plan met those requirements.
17. The record reflects corroboration the parent's counsel's articulation of the parent's position by two witnesses, whose testimony I find to be credible.
18. In addition to the IEP, a Notice of Recommended Educational Placement (NOREP) dated 6/2/06 which reflects the plan as outlined above was introduced into evidence.

19. The record was closed at the conclusion of the June 2, 2006 hearing.

CONCLUSIONS OF LAW

The parent chose not to attend the due process hearing and there is no evidence that he participated in the development of the amendment of the IEP. However, counsel for the parent was present at the due process hearing and was given every opportunity to raise any procedural objections to either the IEP or the hearing itself. Counsel is an experienced education lawyer and familiar with the laws and regulations involved in this case. He affirmatively stated that it was the parent's desire that the hearing go forward and also confirmed that he was authorized to proceed on the part of the parent and the student with respect to all aspects of the hearing. Therefore, I conclude that the parent had received notice of his Due Process rights including the right to participate in the development of the changes to the IEP and the hearing. In addition, in an off the record discussion with the parent at the first day of the hearing, the parent did confirm to me that he was familiar with his rights under IDEA and the Part 200 of the Regulations of the Commissioner of Education, especially Part 200.5 of the regulations. My own review of the regulations and the law lead me to conclude that there was no prohibition against proceeding with the hearing as both parties were adequately represented by counsel. The evidence and testimony confirmed that both the student and the parent were informed of what was to take place at the hearing and concurred with the plan and representation at the hearing by their counsel.

ORDER

The plan developed for the student that will permit him to have an opportunity to graduate in June, 2007 and participate in the district's work/study program is so ordered.

The components of the plan are found in the evidence submitted by the district including the Reevaluation Report, dated 3/28/06, the IEP dated 6/2/06 and the NOREP, dated 6/2/06. Implementation of the plan is to begin on 8/29/06 and is to be carried out by the district with the cooperation of the student, who will be eighteen at the beginning of the implementation of the plan.

Dated: June 16, 2006

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William J. Wall, Esq.

DOCUMENTS RECEIVED INTO EVIDENCE ON JUNE 2, 2006

<u>Exhibit #</u>	<u>Name</u>	<u>Date</u>	<u># of pages</u>
S-1	Reevaluation Report	3/28/06	10
S-2	Functional Behavioral Assessment	5/17/06	8
S-3	Individualized Education Program	6/2/06	23
S-4	Notification of Recommended Educational Plan	6/2/06	8