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# PENNSYLVANIA SPECIAL EDUCATION HEARING OFFICER

ODR File Number: 8341/07-08 AS  
Student: NB  
School District: Penn-Delco  
Type of Hearing: Closed

For the Student:

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Dates of Hearing: February 27, March 5, March 27, April 3, 2008  
Date Record Closed: April 14, 2008  
Date of Decision: April 24, 2008  
Hearing Officer: Daniel J. Myers

### **Background**

Student is a xx year old autistic resident of the Penn-Delco School District (School District) seeking a residential program and placement rather than the day program in a private school offered by the School District. For the reasons described below, I find for the Student.

### **Issues**

Whether or not Student requires a residential program and placement?

Whether or not the School District's proposed day program and placement is appropriate?

### **Findings of Fact**

1. Student is a xx year old autistic resident of the School District. (N.T. 42-44, 58; SD2; SD3; SD4, pp.143-158)<sup>1</sup> He is not yet toilet trained, but he does eliminate in the toilet and he does remain dry on some days. (SD4, p.2) Student is essentially non-verbal with no spontaneous speech, but capable with prompting of saying "thank you", his numbers to ten, and the letters of his name in order. He can focus his attention upon teacher-directed tasks for up to one minute at a time, and he can do puzzles of up to twelve pieces, write his name with hand over hand assistance, feed himself, and point to activities on his classroom picture schedule. (SD4, p.3; N.T. 326-327, 700-703, 709-710) Student has always exhibited relatively aggressive behaviors, including self-injury such as hand-biting and head-banging, as well as aggression towards others such as biting, spitting, and

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

- throwing things. (N.T. 51-52, 146-147, 151-152, 411-412; SD3; SD4) While he has demonstrated loving and affectionate behavior, including laughing and tickling, Student currently is very unpredictable and he cannot safely interact with other children. (N.T. 326, 680)
2. For the three (3) years preceding the 2007-2008 school year, Student was in an autistic program at the Delaware County Intermediate Unit's (DCIU) [redacted] school. (SD4) Student's DCIU classroom employed Applied Behavioral Analysis (ABA) in its Competent Learner Program. (N.T. 636-637) Student also received various mental health services, including therapeutic support staff (TSS), an Intensive Case Manager, and a Behavior Specialist, from a local mental health/mental retardation (MH/MR) agency known as "Child Guidance" (hereinafter MH/MR Agency)."<sup>2</sup> (N.T. 324, 345, 353, 366)
  3. On March 19, 2007, Student's DCIU teacher drafted an IEP that included a Personal Care Assistant (PCA) because it was becoming increasingly difficult to manage Student in the classroom without assistance. (P2; SD4, p.9; N.T. 167, 380-381) Apparently, because Student's summer 2007 Extended School Year (ESY) summer camp program was operated by MH/MR Agency, the School District believed that any summer adult assistance should be provided by a MH/MR Agency TSS rather than by a School District PCA. Thus, School District personnel rejected the teacher's draft IEP because it provided the PCA for an entire year (from March 2007 through March 2008), and agreed only to

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<sup>2</sup> It was never clear to me during the hearing whether "Child Guidance" was the actual local government agency responsible for Student's MH/MR services, or a subcontractor providing services for a local government MH/MR agency.

- provide the PCA from mid-April 2007 to the end of June 2007. (SD4, p.44; N.T. 70, 345, 611-613)
4. During his summer 2007 ESY program, Student was more aggressive and more easily agitated than he had been in the past. He was unpredictable, and staff members never knew when his aggressive behaviors would start. (N.T. 315-316) He engaged in self-injurious behavior, and had very little interaction with other children except to bite and scratch them either when they were near him or when he became over-stimulated or agitated. (N.T. 281-282; SD17; SD18; SD19; SD20; SD21; SD22) When he appeared about to become over-stimulated, which seemed to happen often when he was in the classroom around other children, he would get up and walk around, at which time staff would either move him to the gym or to the sensory room (which has padded walls) to give Student a break so that he could “collect” himself. (N.T. 316)
  5. Around July 2007 the parties conducted an interagency meeting and started discussing the possibility of a residential placement. (N.T. 72-73, 77, 443, 468, 469) Student’s parents visited the [redacted 1], [redacted 2] and [redacted 3] schools. Student’s parents rejected the Redacted 1 residential placement, which is only a few minutes from their home, because they did not think it was geared to treat autistic children, the cottages appeared dirty, and Student’s mother was concerned that the other, older children in the cottage might physically retaliate if Student exhibited his typically aggressive behaviors. (N.T. 80, 94, 400-401, 424, 426-427) Student’s parents liked Redacted 2 and Redacted 3, but they testified that Student was rejected by those schools because he was too violent. (N.T. 84-

- 85, 394, 396) Student's parents testified that Redacted 3's admissions director told them that, if Student spent six to nine months at the [redacted] Neurobehavioral Unit in [state redacted], his behavior might improve enough to become suitable for Redacted 3. (N.T. 89-90, 400, 427-429; SD14)
6. Neurobehavioral Unit is only a short distance from Student's home, across the [redacted] River in [state redacted], and family members could readily visit Student there. (N.T. 232, 428-429) Neurobehavioral Unit treats developmentally disabled people with severe behavior problems, including autistic children, offering a short-term ABA program designed to assess and treat those problem behaviors. (N.T. 232-233; SD14) Using a one-to-one or one-to-two ratio, depending on the severity of the client's condition, Neurobehavioral Unit's formal ABA sessions last between one and three hours per day, with staff members following a written behavior plan for the rest of the resident's waking hours. (N.T. 233-234, 242) A Neurobehavioral Unit witness testified that residents receive 24/7 consistency in behavioral reinforcement and extinction practices. (N.T. 243)
7. Student's MH/MR agency Magellan Behavioral Health (Magellan)<sup>3</sup> will not approve residential placement at Neurobehavioral Unit, apparently because Neurobehavioral Unit is not "enrolled" with Magellan. Magellan has, however, approved Student's residential placement in three facilities – in Florida, New Hampshire, and Wisconsin. (N.T. 81, 93-94, 113; SD15) Student's parents

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<sup>3</sup> Similar to my confusion regarding Child Guidance, it was never made clear to me during the hearing whether Magellan is the actual, responsible, local county MH/MR agency, or serves as some sort of subcontractor for the actual, unnamed and responsible MH/MR agency.

- rejected these approved residential placements because they are so far from home.  
(N.T. 93)
8. Since summer 2007, Student's behavioral problems have increased at home, resulting in two (2) mental health crisis hospitalizations. (N.T. 81-84) Following Student's return from an August 2007 hospitalization, his parents removed Student from some or all of his medications so that they would have "a clean slate" to start future medications. (N.T. 382, 383, 390)
  9. In September 2007, Student returned to his DCIU classroom with a School District-provided PCA. (N.T. 85) Student's behavior was so aggressive that, on one occasion the school's director called Student's parents to have him picked up, threatening to involuntarily hospitalize Student if his parents did not pick him up soon. (N.T. 85-86, 657, 669-670) At the end of September 2007, DCIU assigned Student to a separate room with a separate teacher and also shortened Student's school day to last from 8:30 a.m. to 1:00 p.m., finding that Student gets anxious and becomes more aggressive after a few hours in school. (N.T. 90, 658, 675-677, 685-686, 711-712; SD5) Student engages in injurious behavior on a daily basis-hitting, spitting, pinching and some biting. (N.T. 678) DCIU staff members regularly wear arm guards to protect against Student's biting and goggles to protect against Student's spitting. (N.T. 92, 685) Five DCIU staff members have received injuries from Student severe enough to warrant visits to the emergency room. (N.T. 659-664)
  10. In November 2007, the School District offered, and parents rejected, a day program at the [redacted] Program, which is for autistic children located in [town

redacted], Pennsylvania, which is approximately forty (40) to sixty (60) minutes from the Student's home. (N.T. 95, 432, 444, 446, 502, 540; SD13) The program's Director of Education, who has worked in two residential treatment facilities before creating the Program, met Student and his family for two hours, reviewed School District records, but did not review any reports from either Student's pediatrician or MH/MR Agency. (N.T. 502, 538-543) The Program employs some TEACCH and some ABA methodologies. (N.T. 511) Behavior modification consists of positive reinforcement, with students earning good behavior points that can be spent at the school "store," although the School's Director admitted that Student would have difficulty understanding the point system. (N.T. 551-553) The Program does not provide any in-home training to parents and relies on wrap-around services for home-school coordination. (N.T. 587)

11. On or about April 1, 2008, Student's parents stopped sending Student to the DCIU school that is his pendent placement. On that day, Student was very aggressive at school, pinched his teacher, and hit his PCA in the stomach with a closed fist, causing the PCA to double over in pain. (N.T. 691)
12. Dr. P, Student's developmental pediatrician, has seen up to 5,000 children over the past 10 years, many of whom were autistic, and has treated Student since he was first diagnosed with autism. (N.T. 143-144, 173-174) She has observed Student's behaviors become more aggressive as he has gotten older, including tantrums, mood swings, and wrist- and knee-biting. (N.T. 152-155) Dr. P recommends a residential program, which she has recommended for only about

- six other children over her career. (N.T. 163, 170) Dr. P believes that Student needs a residential program, with applied behavioral analysts on staff, in a facility that works with children with severe behavioral disorders with the degree and frequency of aggression and self-injurious behaviors that are seen in Student. Her opinion is based upon Student's self-injurious and aggressive behavior which is not responding to medication, his very limited communication skills, his need for a great deal of structure and supervision, and the very complex, intensive process required for charting and programming for Student's behavior. (N.T. 170-173, 200)
13. Dr. L is a MH/MR Agency clinical psychologist with a PhD. in psychology and a bachelor's degree in elementary education. (N.T. 252) Both she and MH/MR Agency's psychiatrist Dr. B believe that Student should be placed in a residential facility to control his aggressive behaviors so that he can learn appropriate interactions and eventually listen and learn. (N.T. 254, 258-259; P10) Dr. L's opinion is based upon the fact that, even with the wrap-around services of a behavior specialist, a mobile therapist, and a TSS over a considerable period of time, Student continues to be aggressive across all sites (school and home), which prevents him from the focus necessary to learn. (N.T. 253-255) At the due process hearing, I encouraged Student's counsel, during an off-the-record conference, to save time and not call Dr. B as a witness because it appeared to be redundant evidence. (P10)
14. MH/MR Agency's Director of Autism Services has an MSW degree and is taking course work towards an ABA post-graduate certificate. (N.T. 278) She has never



worked in the educational field, is not a certified educator and, other than being a TSS for a child of autism, has had no other training or experience in the area.

(N.T. 320, 321) She believes that Student's severe behavioral problems require an intensive, consistent ABA program that is incorporated into Student's entire day, in school, at home and in the community. (N.T. 283-285)

15. Student's MH/MR Agency Behavioral Specialist has a master's degree in counseling psychology and received some in-house training of no more than five (5) or six (6) days in areas of the autism spectrum. (N.T. 329, 331) She testified that Student's ability to be taught at the wraparound level has declined since June 2007 and he is unable to acquire any skills at present due to the level of his aggression. (N.T. 324)

16. The Director of the DCIU program that Student had been attending until April 1, 2008 has worked not only at DCIU but also as a special education consultant for the Pennsylvania Department of Education. (N.T. 659) She testified that Student needs intensive intervention, probably 24 hours a day. (N.T. 659) Student's DCIU teacher testified that Student's self-injurious and aggressive behavior severely impacts his education. (N.T. 713-714) She further testified that Student would have a difficult time with a 40 to 90 minute bus ride (to the School District's proposed day Program). She based this opinion on the fact that Student had a difficult time even with DCIU's shorter school day and shorter bus ride. She testified that Student even got upset when the traffic light outside the school was red. (N.T. 717)

17. Student's family needs relief from Student's aggressive activities at home. (N.T. 405, 406, 412) A residential placement would provide such relief to Student's family. (N.T. 413)
18. Student's parents assert that the director of the Program told them, off the record, that while Program could accept Student, she believes he needs a residential placement. (N.T. 96-97) At the hearing, the Program director admitted that she might have told the parents that she would recommend a residential placement. (N.T. 565, 579) She also testified, however, that she does not now recommend a residential placement for Student because she does not believe a residential placement for any nine-year-old child is appropriate. (N.T. 566, 582-583)
19. On November 19, 2007, Student's parents requested a due process hearing, seeking residential placement at Neurobehavioral Unit. (N.T. 94, 431; P9) Hearing sessions were conducted on February 27, March 5, March 27 and April 3, 2008. Written closing arguments were due on April 11, 2008, with an extension granted until April 14, 2008. The record was closed on April 14, 2008. School District exhibits SD1 through SD31 were admitted into the record. (N.T. 722) Parent exhibits P2, P5, P8-P10 were admitted into the record. (N.T. 727, 733) P1 was withdrawn and the School District's objections to the admission of P3, P4, P6 and P7 were sustained. (N.T. 727, 732-733) Hearing Officer exhibits HO1 through HO3 are admitted into the record.

## Discussion

Under the Individuals with Disabilities Education Improvement Act (IDEIA), the School District is required to provide FAPE to all Students who qualify for special education services. 20 U.S.C. § 1412 The School District will meet its FAPE obligation if it provides special education and related services in conformity with an individualized education program (IEP.) Bd. Of Education of Hendrick Hudson C. S.D. v. Rowley, 458 U.S. 176, 102 S.Ct. 3034 (1982); Stroudsburg Area School District v. Jared N., 712 A.2d 807 (Pa. Cmwlth. 1998) An IEP must provide meaningful access to education and confer for the child for whom it is designed some educational benefit likely to produce progress, not regression or trivial educational advancement. Ridgewood Board of Education v. N.E., 172 F.3d 238 (3d Cir. 1999); M.C. v. Central Regional High Sch. Dist., 81 F.3d 389 (3d Cir. 1996); Polk v. Central Susquehanna Intermediate Unit 16, 853 F.2d 171 (3d Cir. 1988)

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) The Shaffer decision does 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, 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, and Schaffer does not come into play.

For some reason, our culture (including the state and federal governments) creates such a distinction between home and school that two distinctly separate public systems exist for providing services to meet the complex needs of the same child. See Kruelle v. New Castle County School District, 642 F.2d 687 (3<sup>rd</sup> Cir. 1981); Bloomfield Board of Education v S.C. ex rel T.M., 2005 U.S.District LEXIS 21424, 44 IDELR 128 (D.N.J. 2005); In Re J.K. and the Susquenita School District, Special Education Opinion No. 1150 (2001) Each system appears to apply distinctly separate quality, supervisory and due process standards, and incredibly, MH/MR standards apparently condone disapproving an appropriate, local residential placement at a facility such as Neurobehavioral Unit simply because it is not “enrolled,” while simultaneously approving residential placement of a nine year old autistic child in three facilities that are much farther away – in Florida, New Hampshire, and Wisconsin. (N.T 81, 93-94, 113; SD15) The State Departments of Education, Public Welfare, Labor and Industry, and Health, have a memorandum of understanding establishing, among many things, that in the event of funding disputes of necessary services, school districts shall provide or pay for necessary services to the child and then claim reimbursement from the appropriate agency. ( [www.able.state.pa.us/special\\_edu/lib/special\\_edu/semou.pdf](http://www.able.state.pa.us/special_edu/lib/special_edu/semou.pdf) )

A school district can only be responsible for full-time residential placement including room and board where it is necessary for educational purposes and not when the residential placement is a response to medical, social or emotional problems that are segregable from the learning process. Where the social, emotional, medical and

educational problems are so intertwined that they cannot be readily separated, however, the student is entitled to a residential placement. 34. C.F.R. 300.104; Kruelle v. New Castle County Sch. Dist., 642 F.2d 687 (3d Cir. 1981)

Where an autistic child attending a residential private school began to continually display severe self-injurious behaviors both at school and on home visits, and was hospitalized, prompting his school to request that the child be discharged into an alternative placement as soon as possible because he posed a danger to himself and to others, the appropriate residential placement was Neurobehavioral Unit, the same [state redacted] neurobehavioral program that is at issue in this case. In Re J.K. and the Susquenita School District, Special Education Opinion No. 1150 (2001) Similarly, a student with notably limited verbal ability and behavior marked by unpredictable aggression, receiving full-time autistic support in an intermediate unit classroom and TSS services both at school and home, who was throwing things, head-banging, tantruming and was sent home from school several times because his aggressive behaviors posed a safety risk, was awarded 250 hours of compensatory education for the time he had to wait for Neurobehavioral Unit placement. In Re S.C. and the Lake Lehman School District, Special Education Opinion No. 1800 (2007) Obviously, then, the educational need for Neurobehavioral Unit's programming options have been recognized for some autistic children in Pennsylvania whose severe and dangerous behaviors have posed a programming challenge to the professionals charged with helping him.

The School District points to the recent Pennsylvania Special Education Due Process Appeals Panel Decision, In Re R.B. and the Eastern Lancaster County School District, Special Education Opinion No. 1802 (2007) as an example of a denial of

residential placement under a factual situation very similar to the present case. The issue in that case, however, concerned a settlement agreement between the parties, whereby the school district had promised to place the student into the next available residential “60/40” placement (referring to the funding arrangement whereby the state department of education pays 60% of the cost while the school district pays 40%.) Tired of waiting for one of the few “60/40” slots to open up, the child’s parents unilaterally enrolled him at the residential school for 100% of the cost and sought reimbursement from the school district. The hearing officer and appeals panel refused reimbursement, considering the settlement agreement to be a contract between the parties. Thus, to the extent that the Eastern Lancaster County School District case is instructive, it supports my conclusion, described below, that Student requires a residential placement for educational purposes and, since there is no settlement agreement in this case, nothing prevents immediate placement.

The School District also argues that any need for residential programming in this case is more related to Student’s social and medical needs than to his educational needs. It further argues that MH/MR Agency’s failure to adequately service the family home environment with trained and experienced individuals is an insufficient reason for requiring the School District to pay for Student’s residential placement. The School District refers to D.B. v. Ocean Township Board of Education, 985 F.Supp. 457, 27 IDELR 151 (D.N.J. 1997), where the parents’ primary reason for seeking a residential placement appeared to be respite care from the actions of the child at home, the student’s behavior at school had been controlled to a great extent, and in addition, the professionals

who had written the evaluations and IEPs for the student had not made any recommendation of residential placement.

I reject this argument for the same reason that a subsequent decision from the same court found the D.B. distinguishable. In S.C. v. Deptford Township Board of Education, 248 F.Supp. 2d 368, 38 IDELR 212, 103 LRP 9291 (D.N.J. 2003), the Court that the D.B. case hinged upon the severity of the child's mental retardation, which was so severe that residential placement would not offer a realistic chance at improving her life skills. In contrast, while the child in S.C. did suffer from severe behavioral problems that negatively impacted, and in some instances precluded, his ability to participate in educational activities, his mental and physical capabilities nevertheless created the potential for academic advancement at Neurobehavioral Unit with twenty-four-hour-a-day behavior modification, and thus the case was distinguishable from D.B. Id.

The instant case is distinguishable from D.B. for the same reasons. He has demonstrated loving and affectionate behavior, including laughing and tickling. (N.T. 326, 680) While not yet toilet trained, Student does eliminate in the toilet and he does remain dry on some days. (SD4, p.2) While essentially non-verbal with no spontaneous speech, Student is capable with prompting of saying "thank you", his numbers to ten, and the letters of his name in order. He can focus his attention upon teacher-directed tasks for up to one minute at a time, and he can do puzzles of up to twelve pieces, write his name with hand over hand assistance, feed himself, and point to activities on his classroom picture schedule. (SD4, p.3; N.T. 326-327, 700-703, 709-710)

The School District also argues that the requirement of placement for programming in a least restrictive environment is one of the overriding tenets of IDEIA,

and a more restrictive placement is justified only where the nature or severity of the disability is such that education using supplementary aides and services cannot otherwise be achieved in accordance with the abilities of the student. 34 C.F.R. 300.114(a)(2)(ii); Oberti v. Board of Education, The Borough of Clementon District, 101 F.2d 691, 19 IDELR 908 (3<sup>rd</sup> Cir. 1983); Gaskin v. Commonwealth of Pennsylvania, 389 F. Supp. 2d. 628 (E.D. PA. 2005) The School District argues that a full-time residential placement, particularly one out of state, is the most restrictive placement under IDEA, Todd D. v. Andrews, 17 IDELR 986 (11<sup>th</sup> Cir. 1991), and only for a very extremely limited number of students with severe disabilities who are unable to function in a more mainstreamed environment that this most restrictive placement is available. Carlisle Area School District v. Scott P., 62 F.3d 520, 22 IDELR 1017 (3d Cir. 1995)

I reject this argument. The Third Circuit has found that a residential placement can be the least restrictive environment for particular, severely disabled, children. Bd. Of Educ. v. Diamond, 808 F.2d 987, 992 (3d Cir. 1989); Kruelle v. New Castle County Sch. Dist., 642 F.2d 687, 693-95 (3d Cir. 1981)

The School District also argues that the medical nature of Student's need for full-time residential placement is further supported by the facts that Student's mental health crisis interventions all occurred as a result of events at the home, and the residential placement recommendations of Dr. B and Dr. P are based on medical, not educational, reasons. The School District also argues that Dr. L's testimony, admitted over the objection of counsel for the School District, must be completely discounted or stricken because her evaluation of the Student was solely for medical reasons (N.T. 273, 274, 275), she had no background, training, or state certification in special education and had



just become licensed as a psychologist in 2007 (N.T. 273), she had not reviewed Student's educational evaluation or IEP or visited his educational program (N.T. 265, 266), and Dr. L opined that only a psychiatrist could recommend residential placement and the recommendation of MH/MR Agency's psychiatrist was based on a medical reason. (P18; N.T. 274) The School District argues that no member of the team that conducted the Student's re-evaluation or created his IEP recommended residential placement. (N.T. 442)

I reject the School District's arguments. The Director of the DCIU program that Student had been attending until April 1, 2008, who has worked not only at DCIU but also as a special education consultant for the Pennsylvania Department of Education, did not expressly use the word "residential," but testified that Student needs intensive intervention, probably 24 hours a day. (N.T. 659) In September 2007, Student's behavior was so aggressive that the Director called Student's parents to have him picked up, threatening to involuntarily hospitalize Student if his parents did not pick him up soon. (N.T. 85-86, 657, 669-670) Student's DCIU teacher testified that Student's self-injurious and aggressive behavior severely impacts his education. (N.T. 713-714) By the end of September 2007, Student was segregated in a separate room with a separate teacher and a shortened school day because his behaviors were so unpredictable that he could not safely interact with other children. (N.T. 90, 658, 675-677, 680, 659-663, 685-686, 711-712; SD5) His teachers regularly wore arm guards to protect against Student's biting, goggles to protect against Student's spitting, and this nine-year old Student has sent five DCIU staff members to the emergency room. (N.T. 92, 659-664, 685)

I conclude that this record demonstrates an overwhelming need for consistent instruction across all settings in behavior, self-care, communication, safety awareness and social skills. G.B. and the Colonial School District, Special Education Opinion No. 1619 (2005) Student's medical and educational needs are so intertwined at the moment that they cannot be readily segregated, and residential placement is necessary

Noting that Student's parents removed Student from some or all of his medications after his summer 2007 hospitalizations, so that they would have "a clean slate" to start future medications (N.T. 81-84, 382, 383, 390), the School District argues that it is not surprising that Student experienced behavioral difficulties when he returned to his educational programming at the DCIU in September 2007. There is no evidence, however, linking Student's Fall 2007 behaviors to his medications or lack thereof. Further, Student's behaviors were getting out of control even before his summer 2007 hospitalizations. On March 19, 2007, Student's DCIU teacher drafted an IEP that included a Personal Care Assistant (PCA) because it was becoming increasingly difficult to manage Student in the classroom without assistance. (P2; SD4, p.9; N.T. 167, 380-381) During his summer 2007 ESY program, Student was more aggressive and more easily agitated than he had been in the past. Around July 2007 the parties conducted an interagency meeting to start discussing residential placement. (N.T. 72-73, 77, 443, 468, 469) It does not appear from this record that Student's behaviors are linked to parental medication decisions in Fall 2007.

The School District argues that its proposed placement at the Program, a specialized private autistic day program, is more appropriate than a residential placement. It notes that the Program was developed by an expert with educational background,

training, and certification (N.T. 501) as well as experience in dealing with autistic children, both in a day and residential setting (N.T. 502, 503), specifically for the purpose of providing to students with severe cognitive disability and behavioral problems an alternative to residential placement. (N.T. 507) The School District notes that the Program services eighty-five (85%) percent autistic children, including those with mental retardation and behavioral problems, as well as autistic children at the other end of the spectrum who are diagnosed with Asperger's Syndrome, and many of these students have the same characteristics of autism and behavioral problems as Student, such as self-injurious behavior, hitting, biting themselves and others, and are verbally aggressive. (N.T. 509, 510) The School District argues that the Program is less restrictive than Neurobehavioral Unit, servicing students from the Delaware Valley area, including Bucks, Philadelphia, Berks, Lehigh, Delaware, Chester, and Montgomery counties as well as the State of Delaware, and one student even commutes daily from Reading, Pennsylvania. (N.T. 510, 528, 529, 530, 585) The School District argues that the Program is a licensed private school in the Commonwealth of Pennsylvania, providing a "real life" program directed toward providing students with the learning and ability to function in a community, vocational opportunities and training, and using positive reinforcement and incorporating many different behavioral plans and approaches to learning and behavioral modification. (N.T. 514, 515) The Program would involve Student in a classroom with six (6) or seven (7) adults and five (5) students, and a full-time school psychologist and nurse are available on the premises. Student would also participate in gym, art, music, and computer classes as well as receive his related services, (N.T. 520, 521, 527, 567, 568, 575)

Regardless of the fine quality of the Program in general, I conclude that it is not appropriate for Student because he needs a residential educational program and placement. The Program's Director admitted that Student would have difficulty understanding the program's behavior modification point system. (N.T. 551-553) The Program also does not provide any in-home training to parents and relies on the same wrap-around services for home-school coordination that the School District has already labeled as inadequate. (N.T. 587) I also note that the Program director's opinion of Student's needs appears to be based more upon her general opinion that residential placement is not appropriate for any nine-year-old child, rather than upon her understanding of Student's particular educational needs. (N.T. 566, 582-583) The DCIU teacher and director, both of whom know Student's needs much better than the Program director, testified that Student's self-injurious and aggressive behavior severely impacts his education and that Student needs intensive intervention, probably 24 hours a day. (N.T. 659, 713-714) Student even gets upset when the traffic light outside the school is red (N.T. 717), indicating that he would have a difficult time with a 40 to 90 minute bus ride to the School District's proposed day Program.

A residential program and placement at a facility such as Neurobehavioral Unit is more appropriate to meet this Student's needs than a day program at a facility such as the Program. Neurobehavioral Unit treats developmentally disabled people with severe behavior problems, including autistic children, offering a short-term ABA program designed to assess and treat those problem behaviors. (N.T. 232-233; SD14) Using a one-to-one or one-to-two ratio, depending on the severity of the client's condition, Neurobehavioral Unit's formal ABA sessions last between one and three hours per day,

with staff members following a written behavior plan for the rest of the resident's waking hours. (N.T. 233-234, 242) A Neurobehavioral Unit witness testified that residents receive 24/7 consistency in behavioral reinforcement and extinction practices. (N.T. 243) Neurobehavioral Unit is only a short distance from Student's home, across the [redacted] River in [state redacted], and family members could readily visit Student there. (N.T. 232, 428-429) While Student's family needs relief from Student's aggressive activities at home (N.T. 405, 406, 412) and a residential placement would provide such relief to Student's family (N.T. 413), this is simply coincidental and not a basis for my conclusion.

Finally, Student's parents requested several times during these proceedings that if I found a residential placement to be appropriate, I also make a determination as to the particular facility to which Student should be sent. I suspect that Student's parents are concerned that, if Magellan is willing to recommend residential placement in Florida, New Hampshire, and Wisconsin in lieu of nearby Neurobehavioral Unit, then the School District might do the same. (N.T 81, 93-94, 113; SD15) I refuse, however, to supplant the IEP team at this stage. I have overruled the IEP team's recommendation that the day Program is appropriate, and I will give the IEP team some direction as to the type of residential educational program and placement that is appropriate, but I will leave to the IEP team the determination as to which particular residential facility Student shall attend. If either party disagrees with that decision, they still have many dispute resolution options, including another due process hearing.

### **Conclusion**

Student's social, emotional and medical and educational problems are so intertwined that they cannot readily be separated for purposes of educational programming and placement. Accordingly, I will order that the IEP team provide the type of residential program and placement with intensive applied behavioral analysis that Neurobehavioral Unit provides, i.e., one that is a short distance from Student's home, that offers an ABA program for developmentally disabled people with severe behavior problems, including autistic children, that uses a one-to-one or one-to-two ratio, that follows a written behavior plan for the whole of the resident's waking hours, and that provides 24/7 consistency in behavioral reinforcement and extinction practices.

**Order**

- The School District's proposed educational program and placement are inappropriate;
- The School District shall reconvene the IEP team immediately to develop an IEP requiring residential programming of Student in a facility that:
  - is only a short distance from Student's home so that family members can readily visit Student;
  - treats developmentally disabled people with severe behavior problems, including autistic children;
  - offers an ABA program designed to assess and treat severe problem behaviors;
  - uses a one-to-one or one-to-two ratio, depending on the severity of the client's condition;
  - follows a written behavior plan for the whole of the resident's waking hours;
  - provides 24/7 consistency in behavioral reinforcement and extinction practices.

*Daniel J. Myers*  
Hearing Officer

April 24, 2008

8341/07-08 AS  
Student  
Penn-Delco School District

## MEMORANDUM OF UNDERSTANDING

### AMONG

PENNSYLVANIA DEPARTMENT OF EDUCATION  
PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE  
PENNSYLVANIA DEPARTMENT OF LABOR AND INDUSTRY  
PENNSYLVANIA DEPARTMENT OF HEALTH

WHEREAS, the administrative agencies of the Commonwealth have the responsibility to develop practical and efficient means for coordination of their work pursuant to Sections 501 and 502 of the Administrative Code of 1929, 71 P.S. §§181, 182; and

WHEREAS, the Department of Education is the agency responsible for ensuring that each local education agency provides a free, appropriate, public education to eligible students pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1412(a)(1); and

WHEREAS, the Department of Public Welfare is the agency responsible to administer the State Plan for Medical Assistance under Title XIX of the Social Security Act, 42 U.S.C. §§1396-1396v; to provide grants to counties for public child welfare services pursuant to Article VII of the Public Welfare Code, 62 P.S. §§701-774; and to provide grants to counties for services to individuals with mental illness or mental retardation pursuant to the Mental Health and Mental Retardation Act of 1966, 50 P.S. §§4101-4704; and

WHEREAS, the Department of Labor & Industry is the agency responsible to promote the employment of individuals with disabilities by providing vocational rehabilitation, job training, and placement services pursuant to the Rehabilitation Act of 1973, as amended, 29 U.S.C. §701, et seq., the Vocational Rehabilitation Act of 1988, 43 P.S. §682.1, et seq., Article XXII of the Administrative Code of 1929, the act of June 22, 1999 (No. 15), 71 P.S. §§561, et seq., and the Workforce Investment Act, 29 U.S.C. §2801, et seq.; and

WHEREAS, the Department of Health is the agency responsible to protect the health of the people of this Commonwealth pursuant to Section 2102 of the Administrative Code of 1929, 71 P.S. §532, and is authorized to administer certain maternal and child health programs under 42 U.S.C. §701 et seq., and certain drug and alcohol programs under 42 U.S.C. §300x-21 et seq.; and

WHEREAS, Commonwealth agencies cooperate and collaborate, in whole or in part, in the provision of services to children with disabilities in a variety of contexts in the continuum of services to children with disabilities from ages 3 through 21, including but not limited to early intervention; special education and related services; transition from school to employment; adult, continuing, and postsecondary education; adult services; independent living; and community participation; and



WHEREAS, the Commonwealth has programmatic and fiscal responsibilities for early intervention, special education and related services relating to transitioning of students with disabilities to adult life; and

WHEREAS, the agencies listed above, and their respective offices and bureaus, have been directed to execute an interagency agreement to establish coordination and collaboration at the state level by defining fiscal and programmatic responsibilities for each agency under applicable law by Executive Order 1998-4; and

WHEREAS, Section 101(a)(8)(B) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §721(a)(8)(B), requires participating states to have in place an agreement or other mechanism for interagency coordination to ensure the provision of vocational rehabilitation services that: (i) identifies financial responsibility; (ii) specifies terms and conditions; (iii) provides a system for the resolution of interagency disputes; and (iv) sets forth procedures for coordination of services; and Whereas, Section 101(a)(11)(D) of the Rehabilitation Act, 29 U.S.C. §721 (a)(11)(D), provides for an interagency agreement with the state educational agency that at a minimum provides for: (i) consultation and technical assistance to educational agencies in planning for transition of students with disabilities; (ii) transitional planning that facilitates the development and completion of individualized education programs under the Individuals with Disabilities Education Act; (iii) the roles and responsibilities, including financial responsibilities of each agency; and (iv) procedures for outreach to and identification of students with disabilities who need transition services; and

WHEREAS, the Individuals with Disabilities Education Act requires participating states to have in place an agreement or mechanism to: (i) identify the state agency responsible to provide services that are also special education or related services to ensure a free appropriate public education; (ii) specify the terms and conditions under which responsible agencies reimburse local educational agencies for providing certain services that are special education and related services; (iii) resolve interagency disputes; and (iv) coordinate the provision of services which are also special education or related services. 20 U.S.C. §1412(a)(12).

NOW, THEREFORE, the parties to this Memorandum of Understanding (MOU) set forth the following as the terms and conditions of their understanding:

#### I. AGENCY FINANCIAL RESPONSIBILITY

The parties agree that, consistent with applicable State and Federal law, students with disabilities are entitled to

- special education and related services which are necessary for the student to receive a free appropriate public education; and

- medically necessary services covered by Title XIX of the Social Security Act (Title XIX), including those services provided by a local educational agency (LEA) through Project ACCESS, if the student is enrolled in the Commonwealth's Medical Assistance Program.

The parties further agree that students with disabilities may be eligible for, but are not otherwise entitled under State and Federal law, to other services, including but not limited to mental health and mental retardation services, vocational rehabilitation services, employment and training services, drug and alcohol services and other Department of Health services herein referenced.

A. The parties agree to take the following steps to define the responsibility to provide or pay for special education and related services:

1. The Department of Education agrees to continue to request the Governor and the General Assembly to set aside for each school year a portion of the state special education appropriation for extraordinary expenses to be incurred in providing a special education program or service to students with disabilities as approved by the Secretary of Education.

The Department of Education agrees to continue to request the Governor and the General Assembly to set aside appropriations for community support services to Cordero class members, which appropriations are not to be included in the base calculations of the special education program components.

2. The Department of Public Welfare agrees to ensure the capability to access Title XIX federal funding for medically necessary (as defined by applicable law) physical and behavioral health services.

The Department of Public Welfare agrees to inform the counties that they may agree to provide financial support for services delivered to persons in special education according to agreed upon local arrangements, and that they may do so with state funds, provided that the cost of such services fall within the allowable costs for the respective county programs.

3. The Department of Labor and Industry agrees to provide vocational rehabilitation services to assist eligible students with disabilities prepare for, enter and/or maintain employment as specified on an Individual Plan for Employment (IPE). Such services may include, but are not limited to assessment, vocational guidance and counseling, physical restoration services, career counseling and/or job placement.

The Department of Labor and Industry agrees to ensure coordination of Workforce Investment Act (WIA) Title I comprehensive services to Title I eligible youth, which services are the responsibility of local Workforce Investment Boards and Youth Councils; assure the provision of such services that are set forth in the individual employment plan of the WIA system, based upon the objective assessment under that system; and ensure coordination of services with participating State and local agencies offering youth programs.

4. The Department of Health agrees to facilitate access to health and rehabilitative services provided by the Department for eligible children. Such services are available to children with hemophilia, cystic fibrosis, spina bifida, cleft palate, sickle cell disease, phenylketonuria, cardiac and orthopedic conditions, hearing and speech impairment, and children who are ventilator dependent. Drug and alcohol services and genetic counseling services are also available as needed in accordance with those program guidelines.

B. In the event any public agency other than an educational agency fails to provide or pay for special education or related services that it is otherwise obligated to provide or pay for under State or Federal law, the LEA shall provide or pay for such services to the child and claim reimbursement from the appropriate agency in accordance with Sections II and III of this MOU.

C. State agencies will be responsible for oversight of their local counterparts to ensure compliance with all applicable laws.

## II. CONDITIONS AND TERMS OF REIMBURSEMENT

In the event any LEA provides or pays for special education or related services for a particular student with a disability under section I.B., the LEA may claim reimbursement from any other public agency by stating in writing the legal basis for the claim. If the other public agency disputes that it is responsible or fails to respond in writing to the LEA's claim for reimbursement within 30 days, the LEA may seek to resolve the dispute according to the procedures detailed in section III.B. of this MOU. Such reimbursement claims shall be in accordance with State and Federal laws and regulations.

## III. INTERAGENCY DISPUTES

A. Any dispute between two state level agencies that are parties to this MOU regarding the implementation of this MOU shall be referred to the Interagency Committee to Coordinate Services Provided to Individuals

with Disabilities (Committee) as described in Section V., below, for informal resolution. In the event the Committee cannot resolve the dispute, any party to this MOU may refer the dispute to the Office of General Counsel by submitting a written request for resolution and providing supporting documentation.

- B. Any dispute between two local agencies regarding securing reimbursement for special education or related services shall be resolved in one of the following ways: (1) in accordance with the statutory provision for practice and procedure before local agencies, 2 Pa.C.S. §§ 551-555, and for judicial review of local agency action, 2 Pa.C.S. §§ 751-754; or (2) by submission of the dispute to the Committee, in accordance with the procedures set forth in Addendum A, and in the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1-35.251 and the Administrative Agency Law, 2 Pa.C.S. §§ 501-508, 701-704.
- C. Any dispute between a local educational agency and any state level agency that is a party to this MOU regarding securing reimbursement for special education or related services shall be resolved by following the procedure set forth in the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§31.1-35.251, and the Administrative Agency Law, 2 Pa.C.S. §§ 501-508, 701-704.

#### IV. COORDINATION OF SERVICES PROCEDURES

In order to coordinate the provision of services to students with disabilities, the parties agree as follows:

- A. The Department of Education agrees to
  - 1. In conjunction with the other parties, develop guidelines on the implementation of this MOU and train state level staff as well as local entities.
  - 2. Assign a case manager to each student identified as a Cordero class member.
  - 3. Promptly address and respond to requests for technical assistance from the case managers assigned under section IV.A.2., which may include contacting other State agencies.
  - 4. Advise LEAs that they should request families to identify any other agencies from which they receive services, so that these agencies can be offered the opportunity to participate in the development meetings for Individual Education Programs (IEP).

5. In conjunction with the other parties, develop procedures under which agencies other than LEAs should be contacted regarding their involvement in IEP meetings.
  6. Train LEAs, in conjunction with the Department of Public Welfare, regarding the procedures for families to register for services with county Mental Health/Mental Retardation (MH/MR) programs.
  7. Advise LEAs that they should notify families of students with mental retardation of the necessity of registering with the appropriate county MH/MR program in order to be eligible for MH/MR services.
  8. Advise LEAs to notify the appropriate MH/MR program regarding students with mental retardation who are placed in Approved Private Schools, two years before these students turn 21 years of age.
  9. Provide training and technical assistance regarding the IDEA, special education and the IEP process to Single County Authorities (SCA) and drug and alcohol treatment providers.
  10. Continue to administer Project ACCESS.
- B. The Department of Public Welfare agrees to
1. In conjunction with the other parties, develop guidelines on the implementation of this MOU and train state level staff as well as local entities.
  2. Promptly address and respond to requests for technical assistance from the Department of Education and/or the Cordero case managers under section IV.A.3., which may include contacting local county agencies.
  3. Provide information to the LEAs explaining the eligibility criteria and services that may be offered by a county MH/MR program, a county Children and Youth program and through Title XIX.
  4. Inform county programs that they should, when requested by an LEA, participate in an IEP meeting.
  5. Provide technical assistance to LEAs on the basis for medical necessity.

6. Inform county MH/MR and Children and Youth programs, providers and Medical Assistance Managed Care Organizations that, after obtaining necessary consent, they should inform the LEA when a child has been placed for services, during school hours, in partial hospitalization, as defined by 55 Pa.Code § 5210.3, or in a day treatment center (facility), as defined by 55 Pa. Code § 3800.5.
7. Continue to fund Student Assistance Program (SAP) liaisons through county MH/MR programs to provide consultation services to SAP core teams.
8. Continue to require the annual revision of letters of agreement between LEAs and MH/MR-contracted SAP liaison providers outlining the responsibilities of each entity.
9. Continue to require letters of agreement between HealthChoices Behavioral Health Managed Care Organizations and LEAs, including procedures for prior authorization of services.

C. The Department of Labor & Industry agrees to

1. In conjunction with the other parties, develop guidelines on the implementation of this MOU and train state level staff as well as local entities.
2. Promptly address and respond to requests for technical assistance from the Department of Education and/or the Cordero case managers under section IV.A.3., which may include contacting Office of Vocational Rehabilitation (OVR) District Offices.
3. Be responsible, through the Office of Vocational Rehabilitation, for the provision of vocational rehabilitation services to eligible students with disabilities, pursuant to the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998 (WIA), and the Vocational Rehabilitation Act of 1988. Such services may include:
  - (i) Accepting student referrals from LEAs commencing 2 years prior to graduation and, for eligible students with disabilities, development and approval of an Individual Plan for Employment (IPE) before the student leaves the school setting, where practical;
  - (ii) Responding to LEAs regarding input for development of IEPs. Providing consultation and technical assistance to aid

LEAs in planning for transition of eligible students with disabilities. OVR staff may participate in IEP meetings to share and coordinate information regarding OVR services and eligibility criteria, and information regarding any other services available under the Workforce Investment Act.

(iii) Providing outreach to LEAs:

(a) By providing general information about OVR and its services through brochures and personal contact with LEAs; and

(b) By providing the Department of Education and LEAs with a listing of OVR local district office liaisons.

4. Pursuant to the Workforce Investment Act:

a. Oversee the provision of comprehensive employment and training services to eligible youth (aged 14 through 21) as described in the WIA State plan and local plans as developed by Local Workforce Investment Boards and as set forth in the individual employment plan, including activities to assist youth with disabilities who have special needs and barriers to employment.

b. Facilitate coordination of youth activities funded under WIA with other youth-directed state and local agencies offering youth programs. This collaboration ensures the non-duplication of services and maximizes returns on financial investments. Eligibility issues and special needs program issues are resolved and the coordinated delivery of services is facilitated with entities that may include local educational agencies, adult educational agencies, local housing authorities, job corps centers/agencies, rehabilitation agencies and/or community based organizations.

D. The Department of Health agrees to

1. In conjunction with the other parties, develop guidelines on the implementation of this MOU and train state level staff as well as local entities.
2. Promptly address and respond to requests for technical assistance from the Department of Education and/or Cordero case managers under section IV.A.3., which may include contacting relevant Department of Health programs.

3. Issue informational bulletins explaining what each applicable Department of Health program offers for eligible children.
4. Issue a list of providers experienced in treating various conditions, which can be accessed by LEAs as necessary when technical assistance is required.
5. Provide technical assistance and specialized training to LEAs through established Department of Health training initiatives.
6. Provide information to LEAs on the availability of drug and alcohol treatment programs and services, eligibility requirements, and the medical necessity criteria for service.
7. Direct Single County Authorities (SCA) to designate liaisons to LEAs to facilitate access to drug and alcohol treatment and case management services.
8. Work toward the establishment of letters of agreement, or modify existing letters of agreement, between LEAs and SCAs allowing for drug and alcohol representation on SAP teams.

V. INTERAGENCY COMMITTEE TO COORDINATE SERVICES PROVIDED TO INDIVIDUALS WITH DISABILITIES

- A. The parties to the MOU agree to establish the Interagency Committee to Coordinate Services Provided to Individuals with Disabilities (Committee).
  1. The Committee shall consist of five (5) core representative members. The respective Secretaries of the state level agencies that are parties to this MOU shall each appoint one core representative member, and the Governor's General Counsel shall appoint one core representative member. Respective Secretaries may appoint additional advisory members who can provide relevant program perspective to the Committee.
  2. The Committee shall meet every two months or as often as may otherwise be required to carry out its responsibilities.



- B. The Committee shall be responsible for:
1. Ensuring that the agencies that are parties to this MOU comply with the commitments contained herein.
  2. The review and resolution of pertinent interdepartmental matters, which would not otherwise be considered through either this MOU, existing interagency administrative procedures or compliance dispute procedures.
  3. An annual review of this MOU, and if necessary, revision upon the written consent of all parties; and
  4. Compliance dispute resolution: (a) between two state level agencies that are parties to the MOU, prior to the submission of such unresolved disputes to the Office of General Counsel under section III.A.; or (b) between two local agencies under section III.B. The Committee may, with the consent of the Secretaries and General Counsel, arrange and contract for hearing officers for the establishment of a record to be used for the resolution of disputes under section III.B.

The Governor's Policy Office shall initially convene the Committee and shall oversee the establishment by the Committee of the Committee's protocol for convening and carrying out its responsibilities.

## VI. CONDITIONS

The following conditions will apply to this Memorandum of Understanding and all parties:

- A. This MOU may be amended only by written consent of all parties.
- B. This MOU shall become effective on the date it is last endorsed by a necessary party.
- C. This MOU is not intended to and does not create any contractual rights or obligations with respect to the signatory agencies or other parties.
- D. Except as specified above, any dispute arising hereunder shall be submitted to the Office of General Counsel for final resolution.



## Procedure for Submitting a Dispute to the Committee

In the event any LEA provides or pays for special education or related services for a particular student with a disability under section I.B. of the MOU, the LEA may claim reimbursement from any other public agency by stating in writing the legal basis for the claim. If the other public agency disputes that it is responsible or fails to respond in writing to the LEA's claim for reimbursement, the LEA may submit the dispute to the Committee in accordance with the following procedures<sup>1</sup>:

1. If the LEA has submitted a claim for reimbursement from another public agency pursuant to section II of the MOU, it may file a written complaint with the Committee within either (a) 30 days of the mailing date of the other public agency's written response to the claim disputing that it is responsible; or (b) 60 days of the mailing date of the LEA's claim for reimbursement if the other public agency has not provided a written response. Such complaints must be filed at the following address:

Office of Chief Counsel  
Pennsylvania Department of Education  
333 Market Street  
Harrisburg PA 17126-0333

2. The complaint must include the following information:
  - a. the names, addresses and telephone numbers of all persons involved in the dispute;
  - b. the facts underlying the dispute, including an identification of all agencies providing special education and related services to the student;
  - c. a description of the legal authority upon which each public agency is otherwise obligated under State or Federal law, or State policy to provide or pay for special education or related services; and
  - d. the specific remedy sought by the LEA.
3. The LEA must attach to the complaint all documentation it relies upon in support of its position in the dispute.
4. The complaint must be served by the LEA on the other public agency by hand delivery or any form of mail requiring the recipient to sign a receipt, and a certificate attesting to this service must be attached to the complaint.
5. Upon receipt of a complaint, the Committee will assign an identifying docket number to the dispute that must be used in all future filings.

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<sup>1</sup> These procedures shall comport with the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§31.1 – 35.251 and the Administrative Agency Law, 2 Pa.C.S. §§501-508, 701-704.

6. The agency or agencies against which an LEA files a complaint must file a response thereto with the Committee within 20 days after the date of service. The response must be served by the other public agency on the LEA by hand delivery or any form of mail, including first class mail, and a certificate attesting to this service must be attached to the response.
7. The Committee may choose to schedule a Prehearing Conference to provide the parties an opportunity to resolve the dispute, discuss whether the parties are able to stipulate to relevant facts and the authenticity of documents, and consider the means by which the hearing will be conducted.
8. In accordance with the MOU, the Committee may arrange and contract for hearing officers for the establishment of a record to be used for the resolution of disputes. If a hearing officer conducts the hearing, he or she will present a Proposed Report to the Committee in accordance with 1 Pa. Code §§35.201 – 35.207.
9. Hearings, whether before a hearing officer or the Committee, will be conducted in accordance with the General Rules of Administrative Practice and Procedure.
10. The Committee will issue all final orders in accordance with 1 Pa. Code §35.226.
11. Appeals of Committee final orders by aggrieved parties shall be made to Commonwealth Court within 30 days of the date of the order.

## Glossary

ACCESS – A cooperative effort among the Departments of Education and Public Welfare, the federal Health Care Financing Administration (HCFA), Leader Services (Department of Education contractor) and LEAs through which LEAs receive partial reimbursement for health-related services provided to students with disabilities as part of their IEPs.

Cordero v. Pa. Department of Education and Commonwealth of Pa. (Cordero) – Class action lawsuit brought against the Department of Education and the Commonwealth of Pennsylvania by Pennsylvania children with disabilities whose school districts have determined that they cannot currently be appropriately educated in a public educational setting and who have been waiting for more than thirty days for the provision of an appropriate educational placement; and all Pennsylvania children who may in the future meet these criteria.

HealthChoices – Pennsylvania's mandatory, Medical Assistance managed health care program.

Individualized Education Program (IEP) – A written statement for each child with a disability that includes, among other things, the child's present level of educational performance; measurable annual goals; the special education and related services and supplementary aids and services to be provided to the child; the extent, if any, to which the child will not participate with other nondisabled children in the regular class; a statement regarding modifications to State or districtwide assessments which will allow the child to participate; the projected date for the beginning of services with the anticipated frequency, location and duration of such services; a statement of transition services for students beginning at age 14; and as statement of how the child's progress will be measured.

Individual Plan for Employment (IPE) – An OVR document developed jointly by the customer and rehabilitation counselor outlining the customer's informed choice in selection of an employment outcome, specific services, providers and methods used to procure the services.

Title XIX – The federal/state financed health insurance program, administered by the states, providing medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children or qualified pregnant women or children. Within broad federal rules, states determine eligibility groups, types and range of services, payment levels for services and operating and administrative procedures.

## Abbreviations

Individuals with Disabilities Education Act (IDEA)

Local Education Agency (LEA)

Mental Health/Mental Retardation (MH/MR)

Office of Children, Youth and Families (OCYF)

Office of Vocational Rehabilitation (OVR)

Single County Authority (SCA)

State Education Agency (SEA)

Workforce Investment Act (WIA)<sup>1</sup>

Workforce Investment Board (WIB)

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<sup>1</sup> Under WIA, a document is created as an ongoing strategy jointly developed by the participant and the case manager that identifies the participant's employment goals, the appropriate achievement objectives, and the appropriate combination of services for the participant to achieve the employment goal. [20 CFR §663.245] This document, which is referred to as an individual employment plan, is different from the Individualized Education Program (IEP), and the Individual Plan for Employment (IPE) developed by OVR, both of which are defined in the Glossary.

## Contacts List

Bureau of Special Education  
333 Market Street, 7<sup>th</sup> Floor  
Harrisburg PA 17126-0333  
Voice (717) 783-6913 TDD (717) 787-7367 FAX (717) 783-6139  
*Consult Line for Families* 1-800-879-2301  
E-Mail [00specialed@psupen.psu.edu](mailto:00specialed@psupen.psu.edu)  
Web site [www.pde.state.pa.us](http://www.pde.state.pa.us)

Office of Mental Retardation  
Room 512  
Health & Welfare Building  
PO Box 2675  
Harrisburg PA 17105-2675  
Voice (717) 787-3700 FAX (717) 787-6583  
*OMR Hotline* 1-888-565-9435

Office of Children, Youth and Families  
Room 131  
Health & Welfare Building  
PO Box 2675  
Harrisburg PA 17105-2675  
Voice (717) 783-4756 FAX (717) 787-0414

Office of Medical Assistance Programs  
Room 515  
Health & Welfare Building  
PO Box 2675  
Harrisburg PA 17105-2675  
Voice (717) 787-1870 FAX (717) 787-4639

Office of Mental Health and Substance Abuse Services  
Room 502  
Health & Welfare Building  
PO Box 2675  
Harrisburg PA 17105-2675  
Voice (717) 787-6443 FAX (717) 787-5394

*Public Assistance Helpline (TDD)* 1-800-451-5886

E-mail [webmaster@dpw.state.pa.us](mailto:webmaster@dpw.state.pa.us)

Web site [www.dpw.state.pa.us](http://www.dpw.state.pa.us)

Office of Vocational Rehabilitation  
Room 1300 Labor & Industry Bldg  
7<sup>th</sup> & Forster Streets  
Harrisburg PA 17120  
Voice (717) 787-5244 TTY (717) 783-8917 FAX (717) 783-5221  
E-Mail [ovr@dli.state.pa.us](mailto:ovr@dli.state.pa.us)  
Web site [www.dli.state.pa.us/ovr/index.htm](http://www.dli.state.pa.us/ovr/index.htm)

Bureau of Workforce Investment  
12th Floor  
Labor and Industry Building  
Seventh and Forster Streets  
Harrisburg PA 17120  
Voice (717) 787-3354 FAX (717) 783-7115  
E-Mail [jvogel@dli.state.pa.us](mailto:jvogel@dli.state.pa.us)  
Web site [www.paworkforce.state.pa.us](http://www.paworkforce.state.pa.us)

Department of Health, Bureau of Family Health  
733 Health and Welfare Building  
P.O. Box 90  
Harrisburg PA 17108  
Voice (717) 787-7192 FAX (717) 772-0323

Department of Health, Bureau of Drug and Alcohol Programs  
2635 Paxton Street  
P.O. Box 90  
Harrisburg PA 17108  
Voice (717) 783-8200 FAX (717) 787-6285

*Department of Health – “Special Kids Network”*  
1-800-986-4550

Web site [www.health.state.pa.us](http://www.health.state.pa.us)

Department of Health – V/TDD (717) 783-6514