

**DELAWARE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING PANEL**

In The Matter Of:	)	
	)	
B.S.	)	
	)	DP 06-07
Petitioner,	)	
	)	
v.	)	
	)	
BRANDYWINE SCHOOL	)	
DISTRICT	)	
	)	
Respondent.	)	

**HEARING DECISION AND ORDER**

**Hearing dates:** April 25, 2006 (adjourned)  
April 28, 2006  
June 6, 2006

**Parents:** XXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXX

**Counsel for Petitioner:** **Patricia M. O'Neill, Esquire**  
Law Offices of Patricia M. O'Neill PA  
22 West Front Street  
Media, PA 19063

**Counsel for District:** **Ellen Marie Cooper, Esquire**  
Staff Attorney  
Brandywine School District  
1000 Pennsylvania Avenue  
Claymont, DE 19703

The Decision and Order refers to the parties, witnesses and others generically, to protect personally identifiable information. An Index of names is attached for the benefit of the parties. The Index will permit the parties to identify specific witnesses and other persons and pertinent references. The Index is designed to be detached before this Decision and Order is released as a public record.

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Due Process Hearing Panel for B.S. consisted of the following individuals:

- (a) Noel C. Burnham, Esquire, Panel Chair;
- (b) Dr. Harold Tarriff, Panel Member; and
- (c) John Werner, Panel Member

The original Due Process Complaint Notice was filed by PO with the Delaware Department of Education (“DDOE”) on or about November 15, 2005.

On or about December 1, 2005, the Brandywine School District (“LEA”) filed and served its Answer and Prior Written Notice.

A Pre-Hearing Conference was conducted on December 2, 2005. Participating in the Pre-Hearing Conference were the Panel Chair, Dr. Panel Members, PO and EC. At the Pre-Hearing Conference, the parties agreed to waive the 45 Day Rule and to hold a subsequent Pre-Hearing Conference after the parties had completed their Resolution Session(s).

On or about March 6, 2006, PO and EC informed Panel Chair that as a result of the Resolution Session(s), a Resolution Agreement was in the process of being implemented. However, the parties informed Panel Chair that one issue remained outstanding.

On March 27, 2006, the continued Pre-Hearing Conference was conducted. Participating in the March 27, 2006 Pre Hearing Conference were Panel Chair, Panel Members, PO and CE. At the March

Pre-Hearing Conference, the parties agreed that all issues raised in the hearing request filed on behalf of BS had been resolved except for the issue of compensatory education with respect to reading levels/grades. PO estimated that she would present the testimony of three witnesses as a subsequent hearing. EC estimated that the LEA would present the testimony of up to four witnesses at a subsequent hearing and it was determined that the hearing would require at least two days of testimony. The parties agreed that the hearing would commence April 25, 2006 at 9:00 a.m. and continue on April 28, 2006 if needed and that the hearing was to take place at the DNREC Office, 715 Grantham Lane, New Castle, Delaware 19711.

On or about April 12, 2006, the LEA forwarded copies of the LEA's exhibits intended to be offered in evidence at the hearing to the Panel Chair, Panel Members and PO.

At the request of PO and without objection from the LEA, the April 25, 2006 hearing date was adjourned to the April 28<sup>th</sup> hearing date. Therefore, the first day of testimony was received by the Due Process Panel on April 28, 2006.

On April 28, 2006 the hearing was opened with opening statements by both counsel.

On April 28, 2006, subsequent to the opening statements of counsel, the LEA presented its testimony to the Due Process Hearing Panel.

Subsequent to the presentation of the LEA's testimony, and due to the time of day, the hearing was adjourned to June 6, 2006 to accommodate the schedules of all parties and their counsel.

On June 6, 2006 the continued hearing was held at the Brandywine School District Office at 1000 Pennsylvania Avenue, Claymont, Delaware commencing at 9:00 a.m.

PO presented the petitioner's testimony. In addition, PO moved for admission of Petitioner's Exhibits into the record. CE on behalf of the LEA noted for the record that Petitioner had not supplied the exhibits by the date required (five days prior to the commencement of the hearing to wit: April 20, 2006), but that LEA would not object to the admission of Petitioner's Exhibits. Petitioner's Exhibits, therefore, were admitted.

At the conclusion of Petitioner's testimony, LEA recalled one rebuttal witness.

At the conclusion of all testimony the parties agreed to submit their closing arguments in writing on or before June 29, 2006.

### **STATEMENT OF ISSUES**

1. Did the LEA fail to implement an appropriate IEP which resulted in specific educational deficits in BS's reading level?

### **EXHIBITS**

The following exhibits were admitted into evidence at the hearing:

1. LEA's Exhibits 1 through 35;
2. BS's Exhibits 1 through 8.

### **FINDINGS OF FACT**

1. The LEA and BS's initial IEP was September 5, 2001.
2. BS's 2004-2005 school year IEP (as amended from time to time) is at LEA's Exhibit 6.
3. BS's Parents participated in the development of and approved BS's 2004-2005 school year IEP.
4. BS's 2004-2005 IEP contained Measurable Goals for Reading as more fully set out in LEA's Exhibit 6.
5. BS's test scores indicate that as of November 22, 2005, BS was reading at a second grade, three-month level. LEA's Exhibit 30.
6. BS's test scores indicate that as of March 2, 2005, BS was reading at a first grade, five-month level. LEA's Exhibit 16.
7. As of April 12, 2006, BS's oral reading fluency percentile ranking was 91. LEA Exhibit 32.
8. As of May 2005, BS's reading tests score was 81/100.
9. LEA unnecessarily withheld BS's assessment test results from BS's Parents. BS Exhibits 3,4,5.

### **DECISION**

On the sole issue of BS's request for compensatory education for services denied with respect to reading levels/grade. It is the conclusion of the Panel that the request be denied based on the uncontroverted evidence presented to the Panel that BS's reading test scores indicate that he is reading substantially at his grade and age level and, therefore, BS made reasonable, meaningful progress to attaining and maintaining reading at present grade level.

It is recommended that the LEA develop a written policy regarding the response to parent requests in relation to special education evaluation, program and/or placement. Written requests for information or documents should be responded to in a timely fashion, possibly in no more than 10 business days, excluding school holidays.

### **RIGHT TO APPEAL**

The decision of the Due Process Hearing Panel is final. Any party may make an appeal of the decision by filing a civil action in the Family Court of the State of Delaware or United States District Court within the later of 30-days of the receipt of this decision, or such period as is permitted by the United States 3<sup>rd</sup> Circuit Court of Appeals.

Dated: 7-13-06\_\_\_\_\_

*/s/ Noel Burnham, Esquire*\_\_\_\_\_  
Panel Member - Chair

*/s/ Harold Tarriff, Ed.D.*\_\_\_\_\_  
Panel Member - Educator

*/s/ John Werner*\_\_\_\_\_  
Panel Member – Lay Member

