



The University of the State of New York

The State Education Department State Review Officer

No. 07-126

**Application of a CHILD WITH A DISABILITY, by his parents,
for review of a determination of a hearing officer relating to the
provision of educational services by the Board of Education of
the Croton-Harmon Union Free School District**

Appearances:

Keane & Beane, P.C., attorney for respondent, Stephanie M. Roebuck, Esq., of counsel

DECISION

Petitioners appeal from the decision of an impartial hearing officer which denied their request for an independent educational evaluation (IEE). The appeal must be dismissed.

The student's eligibility for special education services is not in dispute in this appeal. Although the hearing record is sparse regarding the student's educational history, the hearing record reveals that the student was identified as having difficulties with attention/concentration, transitioning, motor planning, organization and self-regulation when he was two years old (Parent Ex. C at p. 2). Difficulties with attention, impulsivity, poor frustration tolerance and mood lability as evidenced by temper tantrums and head banging were also reported at an early age (*id.* at pp. 1-2). He is described as having difficulty adjusting to social demands at school and at home, and as having ineffective coping abilities characterized by opposition or withdrawal (*id.* at p. 2). The student's mother reported that her son began experiencing irregularities in his sleeping patterns at age four, with difficulty falling and remaining asleep during the night and falling asleep at inappropriate times during the day (*id.*). When the student was six years old, he began receiving private occupational therapy (OT) to address gross and fine motor difficulties (*id.* at p. 1). Difficulties with organization and time management were also reported (*id.* at p. 2). The student received remedial reading services for two months in second grade, after which petitioners reportedly requested that these services be discontinued (*id.*). The student was classified as a student with a disability in the third grade (Tr. p. 39). Terra Nova testing in April 2004 indicated academic performance at or near grade level, with a reading score at the 58th percentile and a science score at the 68th percentile (Parent Ex. D at p. 2), but petitioners and the student's teachers reported that the student always had difficulty participating in class discussions (Parent Ex. C at p. 3). He also had difficulty with extracurricular activities and with developing peer relationships

(id.). During the 2004-05 school year at respondent's school, the student received special education resource room services as well as "in-class small group writing support" (id. at p. 2). Also during the 2004-05 school year, the student received individual instruction from his mother for approximately two hours, three to four mornings per week before leaving for school (id.). During the 2006-07 school year, the student received resource room services, consultant teacher services in English language arts, and OT consultation (Dist. Ex. 11 at p. 4). An assistive technology evaluation was completed in October 2006 (id. at pp. 3, 5).

In August 2004, a developmental pediatrician who had examined the student and reviewed school records expressed serious concerns regarding the student's academic difficulties and the impact of these difficulties on his self-esteem (Dist. Ex. 7 at p. 1). Noting "significant and severe learning disabilities, particularly in the area of language" (id.), as well as fine motor deficits related to apraxia (id. at p. 2), the developmental pediatrician offered specific recommendations regarding the student's need to learn basic reading concepts, understand the written word, and overcome difficulties with distractibility (id. at pp. 1-2).

In December 2004 and January 2005, a comprehensive neuropsychological evaluation of the student was conducted at Blythedale Children's Hospital (Parent Ex. C at p. 1). The evaluator described the student as "polite, yet somewhat anxious" during the three two-hour evaluation sessions, indicating that the student made only sporadic eye contact and limited social interactions to topics of interest (id. at p. 3). The evaluator further reported that conversational speech was scripted, with limited reciprocity (id.).

Administration of the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV) yielded scores in the average range, with relative weakness in processing speed (Parent Ex. C at p. 4). Specifically, the evaluator noted that the student's variable attention, poor scanning for details and grapho-/fine motor weaknesses could interfere with his ability to process and comprehend novel information, making learning new information more time-consuming for him (id. at p. 5).

Academic testing yielded results in the average range (Parent Ex. C at pp. 6, 14). Administration of the Woodcock Johnson Tests of Achievement – III yielded standard (and percentile) subtest scores of 90 (26) in word identification, 94 (36) in word attack, 95 (38) in reading fluency, 90 (26) in spelling, 102 (55) in math calculations, 108 (71) in applied problems, 80 (9) in math fluency and 88 (22) in writing fluency (id. at p. 18). The evaluator observed that the student's academic performance was affected by relative weaknesses in phonetic awareness and in knowledge of phonetic rules (id. at pp. 6, 14). His oral reading was characterized by dysfluency and word-for-word reading as well as poor phrasing, frequent word omissions and a disregard for punctuation (id. at p. 7). The evaluator also noted that the student's tendency to skip lines when reading affected his comprehension (id.). The student's performance on standardized math tests yielded scores ranging from borderline/low average to average and was affected by "numerous careless errors, reversal of operational signs and lack of automaticity" (id. at pp. 8, 14). Written expression was compromised by the student's difficulty formulating and organizing information and thematic content, as well as by weaknesses in spelling, grammar and punctuation (id. at p. 14). The evaluator also noted that the student's written work "lacked any moral or philosophical themes and the characters were often devoid of emotions/feelings" (id. at p. 9).

Tests of attention and planning/organizational ability identified deficits in overall processing speed, mental flexibility and self-monitoring (Parent Ex. C at p. 9). Visual motor integration as measured by the student's performance on the Beery-Buktenica Test of Visual Motor Integration (VMI) were within the average range, but the evaluator noted a significant discrepancy between formal test results and the student's ability to integrate visual-motor and grapho-motor skills or execute tasks that relied on fine motor control or dexterity, all of which declined when the student was confronted with more complex tasks (id. at pp. 12-13).

Completion of the behavior rating scales (BRIEF) by the student's parent suggested weaknesses in his ability to initiate tasks, to shift from one task to another and to self-regulate and monitor (Parent Ex. C at p. 10). A Connor's Parent Rating Scale Revised: Long Form completed by the student's parents resulted in "Atypical" ratings for all but one category, with six of the thirteen ratings in the "Markedly Atypical" range (id. at p. 21). Results of the Connor's Teacher Rating Scale, Revised: Long Form resulted in all scores rated as average or below with the exception of a "Markedly Atypical" rating for only one category (social problems), characterized by lack of social reciprocity, failure to develop age-appropriate social relationships and preoccupation with restricted patterns of interest (id. at pp. 13, 21). A similar discrepancy was identified in the parent and teacher ratings on the Achenbach Child Behavior Checklist (id.).

Language testing identified weaknesses in higher-level receptive and expressive language skills, as well as word retrieval and sequencing/organizational deficits which the evaluator noted would hinder the student's ability to express ideas effectively (Parent Ex. C at p. 10). The evaluator also noted that the student's word retrieval difficulties were exacerbated by his performance anxiety (id. at p. 11).

The evaluator concluded that the student's continued weaknesses in "motor praxis, slow processing speed and moderate dysfunction in executive activities (i.e., mental flexibility, organization/sequencing, and self-monitoring)" affected his overall performance (Parent Ex. C at p. 13). Weaknesses were also identified in expressive language formulation and aspects of verbal and working memory (id.). Variable attention, moderate impulsivity and "noticeable performance anxiety" for unstructured tasks or tasks requiring speed were also noted (id.). The evaluator noted that the student was "acutely sensitive" to his difficulties performing academic tasks and would frequently become anxious and either say he did not know the answer, request a break, or answer quickly and impulsively (id. at pp. 3, 14). The evaluator also noted that the student would cough and clear his throat when exhibiting anxiety, and reported that petitioners indicated that he had exhibited this behavior for some time but it had not been addressed by the student's pediatrician (id.).

Noting "substantial social difficulties . . . both at home and at school several of which are often seen in children with PDD," the evaluator offered a diagnosis of Pervasive Developmental Disorder Not Otherwise Specified (PDD-NOS) (Parent Ex. C at p. 14). He recommended that the student receive a neurological consultation to address sleep disturbances, which he noted had not been evaluated medically (id. at pp. 2, 14), and to rule out a possible tic disorder, as well as a psychiatric evaluation to "explore possible psychopharmacological intervention for several of the behavioral sequelae associated with his PDD (i.e. attentional difficulties, cognitive rigidity/perseverative thinking, and anxiety)" (id. at p. 14). Academically, the evaluator recommended, among other things, that the student's need for language therapy be re-evaluated,

that he continue OT, and that he be afforded opportunities for structured social experiences to gain competence in social skills (id. at pp. 15-16).

On September 22, 2005, petitioners requested an impartial hearing (Hearing 1). As discussed below, a private psychological evaluation of the student was conducted prior to the conclusion of Hearing 1 (Dist. Ex. 4). Hearing 1 was resolved by an agreement of the parties dated June 26, 2006 (Dist. Ex. 5 at pp. 4-6). The impartial hearing officer in Hearing 1 (Impartial Hearing Officer 1) incorporated the parties' agreement into an order, which included a provision for the private psychologist and a psychiatrist to be selected by respondent to observe the student in the school setting (id.). According to the terms of the agreement, the reports based upon these observations were to be submitted to the Committee on Special Education (CSE), which was then to "meet towards the end of October, in consultation with both [the private psychologist] and [respondent's] psychiatrist, to make a determination as to the proper classification for [the student]" (id. at p. 4).

As mentioned above, a private psychological evaluation of the student was performed on May 13, 2006 (Dist. Ex. 4). The evaluator stated that the student's mother reported diagnosis of a tic disorder and also described self-stimulatory behavior (rocking, flapping his left hand) as well as episodes of screaming a specific word in situations where the word was not relevant or appropriate (id. at p. 2).

The evaluator described the student as friendly and polite during testing, with rapport easily established (Dist. Ex. 4 at p. 2). During clinical interview, the student stated that he enjoyed school and liked his teacher, but that he was often critical of how his teacher ran the classroom and frequently became upset when classroom routines were changed (id.). During projective testing, the student provided age-appropriate responses to the Rorschach Test, but had significant difficulty with the Thematic Apperception Test, providing only simple descriptions and indicating he did not know what the scenarios and facial expressions on the test items represented (id. at p. 3). The evaluator indicated that this difficulty was "consistent with a diagnosis of Asperger's Disorder" (id.). The student's mother was interviewed using the Child Asperger Syndrome Test (CAST) and her responses indicated a "significant number of features of Asperger's Disorder" (id.).

The evaluator concluded that the student exhibited "behavior consistent with a diagnostic impression of Asperger's Disorder," specifically citing the student's "significant qualitative impairment in social interaction . . . as well as repetitive and stereotyped patterns of behavior, interests, and activities" (Dist. Ex. 4 at p. 3). The evaluator noted that this diagnostic impression was "on the autistic spectrum" and consistent with an educational classification of autism (id.). He recommended social skills training "designed specifically for children with Asperger's Disorder;" individual counseling to provide academic and social support; structure and consistency in his academic environment to help him with transitions; and that tasks be explained to him in advance to decrease his anxiety and frustration (id. at pp. 3-4).

Respondent conducted an educational evaluation of the student during six sessions in September and October 2006 (Parent Ex. F at p. 1). The student knew the evaluator from previous interactions and appeared to be comfortable and to enjoy the individual attention of the testing sessions, even though he did not enjoy the tasks presented (id.). The student frequently expressed his dislike for school (id. at pp. 1, 5). Attention to task varied during testing depending on the student's mood and level of interest (id. at p. 1). When engaged, the student could sustain attention

for up to 40 minutes (id.). Cooperation was also highly variable, and the examiner noted that the student was particularly resistant to activities involving writing or those he considered easy (id. at pp. 1-2).

Administration of the Woodcock-Johnson Tests of Academic Achievement yielded standard (and percentile) subtest scores of 102 (57) in passage comprehension, 100 (49) in word attack, 111 (77) in picture vocabulary, 125 (95) in reading vocabulary, 102 (67) in math applied problems, 108 (69) in calculation, 111 (78) in quantitative concepts and 92 (30) in spelling (Parent Ex. F at p. 2). The examiner reported that the student's performance in reading was variable, but that test results indicated that he was reading at or close to grade level and that he displayed strengths in reading comprehension (id.). During administration of the Qualitative Reading Inventory, the student read the test passage with appropriate expression and phrasing, and although he made mistakes, they seldom affected the meaning of the passage (id. at p. 3). He answered seven of eight literal and inferential comprehension questions without difficulty (id.). On graded word lists, the student correctly read 80 percent of fifth grade words and 85 percent of sixth grade words (id.). The evaluator reported that the student's performance indicated that his instructional level was at the beginning of sixth grade (id.). Math skills as measured by the Woodcock-Johnson Tests of Achievement were in the average to high average range, with problem solving skills stronger than computational skills (id.). The evaluator noted that problem solving was a strength for the student, as he was able to solve multi-step problems involving money, read a graph and compare information, and recognize number patterns (id. at p. 4). Writing skills were described as variable (id.). If the student initiated a writing activity, he was able to write fluently, but he wrote as little as possible when assignments were "imposed" upon him (id.). Writing fluency also varied in relation to the student's level of interest in the curriculum, and the evaluator noted that in science class, the student was able to produce lengthy, detailed work consistent with grade level expectations (id.).

In accordance with the order of Impartial Hearing Officer 1, respondent conducted a psychiatric observation of the student on October 19, 2006 (Dist. Ex. 1). The psychiatrist who observed the student also reviewed the student's current individualized education program (IEP) and recent evaluation reports, spoke with the student's mother on the phone, spoke with the student and his special education teacher, spoke with the student's humanities teacher and vice principal, and referred to his report as a psychiatric "evaluation" of the student (id. at pp. 1-3).

The student's special education teacher reported that the student's mood was variable and appeared to affect his motivation to complete written work (Dist. Ex. 1 at p. 1). At times, the student reported that he "hates school and wants to quit" (id.). The student's humanities teacher reported that the student understood the routine in the class and was able to follow class instructions (id. at p. 2).

The psychiatrist observed the student during a humanities class and a science/math class (Dist. Ex. 1 at p. 2). During the humanities class, the student covered his head with his sweat shirt, exhibited a "dysphoric affect," stabbed a pencil into his folder, exhibited an intermittent eye tic, and eventually put his head down on the desk (id.). He was able to follow all classroom instructions and wrote required responses with encouragement (id.). The student transitioned to science class appropriately and spontaneously interacted with other students in the class (id.). He responded to a joke made by his teacher and also responded appropriately to the teacher's directions

to begin the class (id.). The psychiatrist described the student's affect in the science class as "bright and full range" and noted that no tics were observed (id.).

When the student was removed from the class and introduced to the psychiatrist, he spontaneously introduced himself and easily engaged in conversation (Dist. Ex. 1 at p. 2). He did not demonstrate any abnormal involuntary movements during the interview, his affect was "full range," his speech volume and tone were within normal limits and his thought processes appeared logical and non-tangential (id.). The evaluator reported that the student spoke about enjoying playing tennis and baseball, but his mother reported that he had never played tennis and that he often incorrectly claimed to be an excellent baseball player (id. at pp. 1-2).

The psychiatrist concluded that the student had difficulty modulating his feelings and had the potential to become oppositional and defiant toward adults (Dist. Ex. 1 at p. 3). He further concluded that the student did not exhibit the skills deficits or circumscribed interests which typify children with autism spectrum disorders that were identified in the 2005 neuropsychological evaluation report from the Blythdale Children's Hospital (id.). The psychiatrist opined that the student was at risk for future development of depression, and recommended individual counseling outside of school to address his frustration/anger and to monitor for emerging signs of depression (id. at pp. 3-4). The psychiatrist also opined that the student would respond to a positive behavioral approach (id. at p. 4).

On January 8, 2007, petitioners' private psychologist who had evaluated the student in May 2006 observed the student in respondent's school (Dist. Ex. 6 at p. 2). The evaluator indicated that the purpose of the observation was to obtain information about the student's social interactions with peers in a school setting (id.). During an indoor recess period in a setting described by the evaluator as a very crowded gym, the student played basketball by himself for approximately ten minutes, then engaged in parallel play with a group of children who were playing ball (id.). He abruptly left the game and leaned against a wall, engaging in self-stimulatory behavior described as making sounds by blowing into cupped hands and flapping one hand (id.). He engaged in brief conversation with another student, then remained alone for the rest of the period (id. at pp. 2-3). During lunch, the student sat with a group of boys and occasionally participated in conversation (id. at p. 3). When he was not conversing, the student would occasionally rock while shaking his head from side to side (id.). The evaluator concluded that the student's parallel play, self-stimulatory behavior and socially "odd" behaviors in social interactions were "commensurate with a clinical impression of Asperger's Disorder" (id.).

During a May 22, 2007 CSE meeting and by letter dated May 24, 2007, petitioners notified respondent that they disagreed with the psychiatrist's evaluation and requested a complete psychiatric IEE (Tr. pp. 97-98; Dist. Ex. 3).

By letter dated June 29, 2007, respondent denied petitioner's request for an IEE (Parent Ex. A). A prehearing conference subsequently was conducted on August 2, 2007. The impartial hearing (Hearing 2) in the instant case began on August 23, 2007 and concluded on September 6, 2007 after two days of testimony. By decision dated October 5, 2007, the impartial hearing officer (Impartial Hearing Officer 2) deemed respondent's psychiatric evaluation appropriate and denied petitioners' request for an IEE (IHO Decision at p. 11). The impartial hearing officer found that the psychiatrist testified credibly when defending his evaluation report as his professional assessment of the student's psychiatric profile in the educational setting (IHO Decision at p. 8).

While the results of the psychiatric evaluation differed from prior evaluation results, the impartial hearing officer found that petitioners did not call witnesses or introduce documentary evidence to show that the psychiatric evaluation report was inconsistent with professional standards, incomplete, inaccurate, or inappropriate (id. at p. 9). The impartial hearing officer also found that respondent acted pursuant to Impartial Hearing Officer 1's order in conducting the evaluation and that petitioners had assented by their actions to the psychiatric evaluation (id. at p. 10).

Petitioners appeal and assert that respondent refuses to classify the student as autistic without a medical diagnosis of autism from a psychiatrist.¹ Petitioners also contend that respondent did not provide them with notice that it planned to initiate a psychiatric evaluation, nor did it request petitioners' written permission for a psychiatric evaluation because it only had permission pursuant to Impartial Hearing Officer 1's order for a psychiatrist to observe the student, not to evaluate him. Petitioners further contend that the psychiatrist who observed the student does not specialize in autism spectrum disorders, has previously worked for the district's CSE chairperson, and was only asked to do a school-based assessment evaluation, not a complete psychiatric evaluation. Petitioners allege that respondent has failed to arrange for its psychiatrist to meet with petitioners' private psychologist at a CSE meeting as ordered by Impartial Hearing Officer 1. Petitioners further allege that respondent delayed the proceedings. Petitioners also contend that the impartial hearing officer applied the wrong burden of proof by stating that they did not meet their burden. Furthermore, petitioners assert that the psychiatric evaluation was inappropriate, incomplete and inaccurate because: (1) it was based on a classroom observation that did not include unstructured time; (2) the techniques used by the psychiatrist were not complete because he did not speak to both teachers of the classes that he observed; and (3) he did not include the family history, the student's medical conditions or developmental history in his report. Petitioners request an IEE and an order directing respondent to conduct a CSE meeting as ordered by Impartial Hearing Officer 1.

In its answer, respondent asserts that it met its burden to show that its evaluation was appropriate and therefore petitioners' request for an IEE was properly denied. Respondent also contends that petitioners failed to rebut its testimony and evidence showing that respondent's psychiatrist was competent and that the evaluation conducted was appropriate. Respondent further alleges that it did not delay the proceedings.

Federal and state regulations provide that a parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the school district. If a parent requests an IEE at public expense, the school district must, without unnecessary delay, ensure either an IEE is provided at public expense or initiate an impartial hearing to show that its evaluation is appropriate or that the evaluation obtained by the parent does not meet the school district criteria. If the impartial hearing officer finds that a school district's evaluation is appropriate, a parent may not obtain an IEE at public expense (34 C.F.R. § 300.502; 8 NYCRR 200.5[g]; Application of a Child with a Disability, Appeal No. 06-067; Application of the Bd. of Educ., Appeal No. 05-009;

¹ I note that medical diagnoses are not a part of the definition of a student with a disability of autism in the Commissioner's regulations (8 NYCRR 200.1[zz][1]; see Application of a Child with a Disability, Appeal No. 97-51).

Application of a Child with a Disability, Appeal No. 04-082; Application of a Child with a Disability, Appeal No. 04-027).

The psychiatrist who observed the student reviewed the student's current IEP and recent evaluation reports, including the 2004-05 comprehensive neuropsychological evaluation report and the report from the May 2006 private psychological evaluation (Dist. Ex. at p. 1). Both evaluation reports provided the psychiatrist with thorough summaries of the student's educational and clinical history and documented the variability of the student's behavior and performance (Parent Ex. C at p. 1; Dist. Ex. 4 at pp. 1-2). The psychiatrist spoke with the student's mother by telephone and obtained information about the student's current behaviors at home, information regarding her insights into the behavior she had observed, and information about the student's tendency to exaggerate his description of his own participation in sports (Dist. Ex. 1 at p. 1). The psychiatrist also spoke with the student's special education teacher, his humanities teacher, and with the school vice principal, and obtained information regarding the student's motivation, variability, his ability to follow classroom routines and instructions, and his ability to complete written work (*id.*). The psychiatrist observed the student in two classes, including a class the student claimed to enjoy and one he did not like (*id.* at p. 2). He also observed the student during less structured times as the student transitioned from one class to another and engaged in unstructured activity before the second class began (*id.*). The psychiatrist interviewed the student and assessed his affect, his speech volume and tone, his ability to engage in conversation, the logic of his thought processes, and the presence or absence of involuntary movements (*id.*). In his report, the psychiatrist summarized his observations, interviews, and review of relevant documents, offered conclusions regarding the student's current difficulty modulating his feelings and a prognosis regarding the student's risk for depression, and recommended a course of action to monitor for symptoms of depression (*id.* at pp. 3-4). He reported that, at the time he conducted his assessment, the student did not exhibit the skills deficits or circumscribed interests typical of children with autism spectrum disorders that had been identified in the 2005 neuropsychological evaluation (*id.* at p. 3).

The hearing record shows that the psychiatrist appropriately reviewed available information, observed the student in school, interviewed appropriate individuals, provided a summary, conclusions and recommendations consistent with his observation, and acknowledged the differences between his findings and those of previous evaluators in light of the student's history of highly variable performance. While his observations and findings were not consistent with the findings of previous evaluators, they provided the CSE with a description and analysis of the student's functioning at the time the evaluation was conducted. Therefore, I agree with the impartial hearing officer that the psychiatric evaluation conducted on October 19, 2006 was appropriate.

Although I have found that the psychiatric evaluation was appropriate, there is sufficient information in the hearing record to suggest that some of the student's educational difficulties may be related to neurological deficits. The hearing record includes an August 2004 letter from a developmental pediatrician who reported "significant and severe learning disabilities, particularly in the area of language," (Dist. Ex. 7 at p. 1) as well as fine motor deficits related to apraxia (*id.* at p. 2). A 2005 comprehensive neuropsychological evaluation report identified relative weaknesses in motor praxis, processing speed and executive abilities as well as weaknesses in expressive language formulation, word retrieval, organization and sequencing, and aspects of verbal working

memory (Parent Ex. C at pp. 4, 10, 13). Tests of attention and planning/organizational ability identified deficits in overall processing speed, mental flexibility and self-monitoring (*id.* at p. 9). The 2005 neuropsychological evaluation report recommended a neurological consultation to address the student's sleep disorders and to rule out a possible tic disorder (*id.* at pp. 2, 14), and the student's mother subsequently reported a diagnosis of a tic disorder (Dist. Ex. 4 at p. 2). However, there is no document in the hearing record describing results of any neurological evaluation. If it has not already done so, the CSE should consider obtaining both a neurological assessment and an updated neuropsychological evaluation to gain insight into the nature of the student's disabilities in order to facilitate the development of an appropriate program.

Next, I will address petitioners' procedural allegations. Petitioners contend that they did not receive a due process complaint notice until after the prehearing conference.² Contrary to petitioners' belief that they eventually received a valid due process complaint notice, the hearing record reflects that respondent never filed a due process complaint notice that met the required level of sufficiency. Respondent's letters to petitioners dated June 29, 2007 and August 2, 2007 do not comport with federal and State regulations relating to the content of a due process complaint notice (34 C.F.R. § 300.508[b]; 8 NYCRR 200.5[i][1]). I remind respondent that a school district is required to file a due process complaint notice when initiating a due process hearing (34 C.F.R. § 300.508[c]; 8 NYCRR 200.5[i][2]; 8 NYCRR. [j][3]). In addition, respondent's letter dated June 29, 2007 does not comport with federal and State regulations relating to the content of prior written notice (34 C.F.R. § 300.503[b]; 8 NYCRR 200.5[a][3]). Although, under the circumstances in this case, these procedural irregularities do not rise to the level of a denial of a free appropriate public education (FAPE) (20 U.S.C. § 1415[f][3][E][ii]; 34 C.F.R. § 300.513[a][2]; 8 NYCRR 200.5[j][4][ii]), I caution respondent to comply with the requirements of 8 NYCRR 200.5 in the future.

Lastly, the hearing record shows that a resolution session was not held because respondent believed it was not allowable under the Commissioner's regulations. While a resolution session is not required when a school district commences an impartial hearing, it is permissible to hold one (34 C.F.R. § 300.510[a][1]; Resolution Process and Resolution Meeting, 71 Fed. Reg. 46700 [Aug. 14, 2006]; see Application of a Child with a Disability, Appeal No. 06-075).

I have considered the parties' remaining contentions and find that I need not reach them in light of my determinations.

THE APPEAL IS DISMISSED.

**Dated: Albany, New York
December 21, 2007**

**PAUL F. KELLY
STATE REVIEW OFFICER**

² The impartial hearing officer did not enter into the hearing record a transcript or written summary of the prehearing conference as required by the Commissioner's regulations (see 8 NYCRR 200.5[j][3][xi]). I remind the impartial hearing officer to comply with 8 NYCRR 200.5(j)(3)(xi).