

**BEFORE THE PUBLIC EDUCATION DEPARTMENT
DPH No. 1213-35**

**HEARING OFFICER'S
ABSTRACT**

Four-year-old Student suffering from Autism was bumped on head while waiting for the bus to take him home because his teacher's aide pulled the gate away from the fence. Bus driver took Student to his parents and said he had bumped his head. The Student's parents discovered a bump and a mark on the Student's back later that evening, which the Student's mother felt resulted from discipline of her child. Investigation of the incident was begun by the LEA's police, but the investigation report was not completed prior to the IEP meeting. The meeting was requested by the Student's father, to address his safety concerns. The report, finding no wrongdoing by the LEA staff, was later disclosed to the Student's parents at some time before the due process hearing, and was requested by the Student's parents at some time at or before the IEP meeting, yet Petitioners presented no evidence as to the dates of the requests or disclosure. At the meeting, the IEP team began again the process of an IEP, although another IEP had been completed a month before. The Student's parents became frustrated that goals and objectives were discussed, rather than safety, particularly regarding their request to discuss the personnel issue of the Student's teacher's aide. The IEP team did not foreclose discussing safety concerns at the IEP meeting, but refused to discuss personnel issues regarding the request to fire the teacher's aide. The Student's parents left the meeting before it was completed. An IEP resulted, which included, among other things, a requirement that the Student have a home-based PECs system, yet to implement that portion of the IEP the Student's parents had to choose the icons for the PECs system to be prepared, which they failed to do.

The Hearing Officer found no procedural or substantive violations of due process, except for failure to implement the PECs system, yet, due to the equitable injunctive nature of the requested remedy, it was denied because of the Student's parents' unclean hands. Among other things, it was found and concluded that a highly qualified teacher is not an issue to be raised in a due process hearing as a matter of law, that there was no evidence of dates for requests of records so to deny due process, that safety of the Student is an appropriate issue to address at a due process hearing, that specific personnel issues are not appropriate issues to be addressed in a due process hearing, that the IEP team was properly composed, that the Student's placement was appropriate, that he received services in the least restrictive environment, that the Student's head bump and back mark did not result from discipline, that there was no need for a FBA/BIP, that the Student's safety because of the head bump at school did not deny the Student some and meaningful educational benefit, and that certain issues presented at the due process hearing were not administratively exhausted before the IEP team prior to the due process hearing.