

Special Education Due Process

Hearing Decision  
"Parent v. EUT"

CASE NO. #00.114  
COUNSEL FOR PARENT: Judith Plano  
COUNSEL FOR SCHOOL: Christopher G. Jernigan  
HEARING OFFICER: Stephen G. Ulman

THIS HEARING WAS HELD AND THE DECISION WRITTEN PURSUANT TO TITLE 20-A @ 7207, et. seq., 20 USC, @ 1415 et. seq., AND IMPLEMENTING REGULATIONS.

On April 11, 2000, the Department of Education received a request for a Due Process Hearing from Parents.

The pre-hearing conference was conducted on May 2, 2000 by telephone. MSAD #77 was dismissed as a party in the hearing. All documents were entered into the record and numbered. The Hearing convened on May 8, 9, June 20, 2000 at Machias and by conference call on June 26, 2000.

On May 10, 2000 the Hearing Officer ordered "*stay put*" as the 5/26 – 6/10/99 IEP and issued an interim order to allow participation in graduation without a diploma.

Seven witnesses gave testimony for the parents and five witnesses testified on behalf of the school. The hearing officer called two witnesses. On June 22, 2000 the Hearing Officer ordered EUT to revisit the current IEP and comply with MSER at 5.13B in light of testimony given. On June 27, 2000 the parents requested simultaneous closings, which was denied and the order found in MSER at 13.12 pg. 87, lines 23 and 24 was followed. The record was held open until July 7, 2000 to allow for written closing statements by the parents and July 8, 2000 to allow for written closing statements by the EUT.

## **I. Preliminary Statement**

The student was at the time of hearing a xx year-old student at Washington Academy. Washington Academy is a private high school in Machias, Maine.

The student is autistic and in need of, and receiving, special education services to allow him to benefit from his education. He was scheduled for June 2000 graduation from Washington Academy with a regular diploma. The student lives with his parents in the Unorganized Territories and his special education needs at Washington Academy were provided through the Special Education Department of MSAD #77.

The parents brought forward two basic questions:

- 1<sup>st</sup> Did the school commit procedural violations which denied Free and Appropriate Public Education (FAPE)?
- 2<sup>nd</sup> Did the student receive FAPE?

## **II. Issue for Hearing**

### **Issue # 1**

- Whether EUT provided FAPE  
PROCEDURAL VIOLATIONS THAT DENY FAPE
  - inadequate IEP's
  - not measurable goals
  - fail to provide a transition plan

### **Issue #2**

- FAILURE TO PROVIDE ADEQUATE PROGRAMMING FOR LAST FOUR YEARS
  - fail to provide a program that allowed the student to receive ed benefit from program
  - did not address OT and PT issues
  - did not get adequate speech services

### III. Finding of Fact and Stipulations

#### Stipulations

- The Due Process Hearing will be open to the public, but not to witnesses.
- That witness lists and exhibits will be allowed with four-calendar day notice.
- All exhibits admitted without objection.
- The written Transition Plan (TP) which is attached to the Individualized Educational Plan (IEP) remains unchanged from 1997 to the present.
- All work experiences were developed by the parents and/or agencies other than the school.

#### Facts – Issue #1

- The IEP dated 5/7/96 lists 6 measurable Annual Educational Goals. J-12
- The IEP dated 9/23/96 lists 9 measurable Annual Educational Goals. J-13
- The IEP dated 9/10/97 lists 8 measurable Annual Educational Goals. J-14
- The IEP dated 6/17/98 lists 7 measurable Annual Educational Goals. J-15
- The IEP dated 6/16/99 lists several measurable Annual Educational Goals. J-16
- The PET began discussions of the TP at the Sept. 23, 1996 PET, when the student's mother brought the subject to the PET. SW-1, J-1
- The undated exhibit P-1 is the TP included with the April 1997 Individualized Educational Program (IEP). PW-1
- The PET, which discussed the TP goals was held 4/30/97 and TP was on the agenda but was not discussed until the next meeting which was held May 20, 1997. SW-1, J-3, J-2
- At the 6/11/1997 PET the group discussed some of the goals of the TP. SW-1, J-4
- The first TP was done 9/23/96. SW-1, J-13
- The fully developed TP was first included as part of the 9/10/97 IEP. SW-1, J-14
- Some changes were made in goals of the TP at the 9/10/97 and 6/17/1998 IEP's. SW-1, J-14 pg. 4, J-15 pg. 8,13,14
- The student's TP was used as an outline for changes to the IEP goals. SW-1, J-14
- The TP was reviewed by the school administrator following the 6/10/99 PET and included as written because there were items not yet completed. SW-1

- The TP was constantly updated and this may be seen in the IEP's. SW-1, J-12 – 16
- The TP was made part of the 9/10/97 IEP, but the discussion was not recorded in the PET minutes. SW-1, J-5, J-14
- The TP goals were very broad and able to encompass changes in objectives over time. Sw-1, J-1
- The student's mother and father and several teachers spent two days, April 1-2, 1999 in Orono with MSAD #77 staff attending a transition workshop. PW-1
- Transition meetings were held at Washington County Children's Program on 2/11/97 and 3/25/97 to work on a TP for the student. The purpose was to develop goals to be taken back to the PET. SW-1, S-7, S-8
- The student's mother attended several other transition workshops. PW-1
- The student worked at the concession stand during basketball games to learn to make change. SW-1
- The student worked at NAPA Auto Parts as part of his TP. SW-1, SW-12, SW-13, J-15 pg. 3
- The student has also worked at other sites such as a cafeteria and a redemption center. SW-1
- The 6/10/99 IEP was written by the school administrator following the PET. SW-1
- The parental Pupil Evaluation Team (PET) notice and the PET meeting minutes of April 1997 both make reference to the Transition Planning (TP). PW-1, P7, J2
- The quarterly IEP progress updates were given to the parents by the school. PW-1
- There is no funding for placement after public school. PW-1, PW-6, SW-2, J-11
- The student had a Vocational Assessment done Oct. 18, 1999 to see if the TP was on track. SW-2, S-20
- The Harry Anderson Vocational Assessment of October 18, 1999 identified advantages of the student graduating with his class. SW-2, S-20 pg. 3
- The student has had several successful transition experiences. Sw-2, S-23, SW-2
- The TP is used daily by the Resource Room teacher. SW-5
- Prior to the May 1999 PET, several school personnel met in the guidance room. RW-1
- There was a non-decision making meeting of school personnel held between the 5/26/99 and 6/6/99 PET in which school personnel reviewed WA graduation policies. SW-1, SW-3, SW-5

## **Facts – Issue II**

- The student has benefited from his education. SW-4, SW-3, SW-2, SW-5
- The student has made gains every year. SW-1
- The student has made progress in all goal areas on his 1999-2000 IEP. SW-1, J-17
- The student operates at a higher social level than his full scale IQ of 43. SW-2, S-22
- The school implemented technology to support the student's learning. PW-2
- The school purchased assertive technology called The Dragon Naturally Speaking for the student. PW-3
- The student has used assertive technology in keyboarding, history, math, coin value chart, dragon naturally speaking, and has had unlimited access to computer in resource room and computer lab. SW-5
- The student marched at graduation with his class and received a gold cord, which signifies an 85 or better grade average. PW-1
- The student made slow, but steady gains in occupational therapy (OT) services. PW-2
- The student benefited from his OT services. PW-2
- The school implemented the recommendations of the OT, but not exactly as written. PW-2
- The parents attended and participated in the May/June 1999 PET. PW-4
- The IEP of 5/26/99 and 6/10/99 called for 90 min/week of speech therapy delivered by a speech therapist. PW-1
- A speech therapy aide delivered one half of that service. PW-1, J-16
- Speech therapist sees the student 40 min./week and educational technician sees the student for 40 min in AM. SW-4, SW-5
- The speech therapist made up time missed with the student by extending therapy time. SW-4
- The projected date of graduation has been 6/5/2000 since the 5/96 PET. PW-5 & J-12, J-13, J-14, J-15, J-16
- The student has received adaptive physical education, speech, occupational, physical therapy, as well as other educational services such as summer school (ESY) in the past three years. SW-1
- All IEP's from 1996 to present list no need for adaptations to state and local graduation requirements. SW-1, J-14 – 16
- The student has met all graduation requirements through his IEP, or at Washington Academy with modification. SW-1, SW-2
- There has been no modification in number of credits the student needs for graduation, however, there have been adaptation by the PET in how the credits are earned. SW-1, J-11 pg. 2

- The student has peaked at W.A. SW-5
- The student has passed the first 3 quarters of this year and is on task for successfully completing the 4<sup>th</sup> quarter. SW-5, S-24 pg. 2
- The student has completed all IEP requirements for graduation from W.A. SW-5, J-16
- The student has enough earned credits at W.A. to graduate. PW-1
- The student made improvement in PT and eye tracking during 1997-98. SW-1, J-6, pg. 2
- In 1996 the student had broad knowledge of 8-10 and by 1999 broad knowledge had increased to 9-5. SW-1, J-8 pg. 3
- The student has completed a course in Life Skills. SW-1, J-16 pg. 9
- The individual educational technician working with the student changed in the area of speech and language, however, services were not interrupted. SW-1, SW-4

#### **IV. Conclusion**

##### **Issue #1**

- **Whether EUT provided FAPE  
PROCEDURAL VIOLATIONS THAT DENY FAPE  
-inadequate IEP's  
-not measurable goals  
-fail to provide a transition plan**

Issue one claims in part that Free Appropriate Public Education (FAPE) has been denied because of procedural violations, specifically that the IEP's were inadequate and did not include measurable goals and objectives.

The preponderance of the evidence indicates that PET meetings were held (J-1 through J-11) and IEP created (J-12 through J-16) in accordance with Maine Special Education Regulations at 8.1 through 8.11 and 10.1 through 10.10. That is not to say that the school did not make errors of substance and omission, however, any such errors did not approach a level which would deny the student FAPE. To deny FAPE the student would need to have been denied education benefit. That issue is addressed in the second issue for hearing. Much testimony was given regarding the student's TP. It was stipulated that the written plan remained unchanged from 1997 to the present. MSER at 5.13 page 26 line 19 calls for annual updating of the student's TP. The preponderance of the evidence indicates that transitional planning was continually visited by the parents, school personnel and outside agencies, if not during PET meetings.

**Page 7**  
**#00.114**

The parents attended several days of workshops in Orono, the resource room teacher reports consulting the written plan with regularity, and the parents and

several non-school agencies developed and implemented numerous successful summer work experiences.

This Hearing Officer concludes that a preponderance of the evidence indicates that transitional planning was ongoing and appropriate to meet the student's needs. This was the result of the parents, agencies, and individual school personnel working, both independently and collaboratively, to meet these needs. Although the written TP became somewhat out of date and by state regulation should have been updated annually, the failure by the school to do so did not deny the student FAPE, because the necessary transitional planning was accomplished by parents, school personnel, and others.

Creditable testimony was given which described PET meetings, particularly the 5/26/99, 6/10/99 meetings as argumentative and hostile. This particular meeting was reported to have lasted 6 hours over the two days without consensus. When PET meetings fail to reach consensus MSER 8.11 pg. 42 lines 12-22 describes a process where the school develops the program and the parents may challenge the program through due process. Following the 6/10/99 PET, which did not reach consensus, the school developed an IEP in compliance with MSER. The school administration reported that she considered all parts of the IEP, including the TP, and made changes as she found appropriate. The parents may then challenge the IEP through Due Process as they have done. This process is in keeping with MSER and, therefore, not a procedural violation.

## **Issue #2**

- **FAILURE TO PROVIDE ADEQUATE PROGRAMMING FOR LAST FOUR YEARS**
  - fail to provide a program that allowed the student to receive educational benefit from program
  - did not address OT and PT issues
  - did not get adequate speech services

A preponderance of the evidence demonstrates that the student did in fact receive educational benefit from his PET directed programming.

With a few notable exceptions the process worked as intended. The PET established goals, the student's special educational needs were identified, services such as OT, PT, speech therapy, and resource room were provided to

**Page 8**  
**#00.114**

address these needs, progress measured and graduation credits awarded. The process was not without flaws, however, the standard in Maine is educational benefit and when measured against that standard the vast majority of the students teachers, when asked under oath, clearly felt education benefit had been received.

It is a natural and appropriate for parents and in fact all of us to want to maximize the potential of every student, but that is a much higher standard than the educational benefit standard to which the student is entitled by law.

The educational process strives to make grading an objective process. Some teachers measure progress against long established class standards, or published learning results, others grade on the curve and compare students performance against a peer group. Special education teachers are often required to assign grades in a far more subjective way. Absent a long history of students working on a class standard, or published learning results, and absent a large group of students simultaneously working on the same goals, special education teachers are forced to be far more subjective in their student assessments.

In this student's case, the preponderance of the evidence suggests that school personnel did follow this subjective process, and collectively agree that the necessary graduation credits had been earned and with a 85 or better grade average. This grade average was demonstrated by the gold cord the student received and wore at graduation.

## **V. Order**

**Issue # 1** Although there were procedural violations by the school, a preponderance of the evidence indicated they did not rise to a level which denied FAPE.

**Issues # 2 A preponderance of the evidence demonstrated that the student did benefit from his education and earn** the necessary credits to graduate with his class. Washington Academy will send by registered mail the student's signed diploma.