

STATE OF MAINE
SPECIAL EDUCATION DUE PROCESS HEARING

July 10, 2000

Case #00.161, Parent v. Union #29

REPRESENTING THE PARTIES: Both parties were pro se.

HEARING OFFICER: Lynne A. Williams, Ph.D., J.D.

This hearing was held and the decision written pursuant to Title 20-A, MRSA, 7202 et. seq., and 20 USC §§1415 et. seq., and accompanying regulations.

The Grandparents requested this hearing, on June 2, 2000. The case involves Student. He resides with his grandparents. Student is eligible for special education services under the category of Emotional Disability and, until the end of the 1999-2000 school year, attended 10th grade at Poland Springs Academy, under a Corrective Action Plan, dated March 14, 2000. This Plan resulted from Complaint #00.005.

The parties attended a pre-hearing conference on June 16, 2000, and clarified the issues for hearing. Witness lists and evidentiary documents were submitted at that time.

A hearing was held on June 28, 2000, at Androscoggin County Superior Court, Auburn, Maine. The Grandparent entered 12 pages of documents into the record; the School District entered 41 documents (97 pages) into the record. Three witnesses testified. No final written arguments were submitted.

I. Preliminary Statement

This case involves a xx year old, male Student who is eligible for special education services under the category of Emotional Disability. During the 1998-1999 school year, Student attended 9th grade at Westbrook High School, as a regular education student. In September 1999, Poland Regional High School opened, and Student began his 10th grade year there. Student received a ten-day suspension on November 22, 1999, following a significant behavioral incident. On December 23, 1999, Grandmother enrolled Student in Poland Springs Academy, and filed a complaint against the District. A Corrective Action Plan, dated March 10, 2000, ordered the District to reimburse the Grandmother for tuition costs to date, as well as the cost of tuition for the remainder of the 1999-2000 school year. Poland Springs Academy is not a specialized education school, although it does provide individualized instruction to meet the students' academic needs.

Student will be entering 11th grade in September 2000, and this hearing was brought to determine the most appropriate program and placement for the 2000-2001 school year.

II. Summary of Complaint Investigation

Student attended 9th grade at Westbrook High School and began attending Poland Regional High School ('PRHS') in September 1999. Student was not identified as a special education student at that time.

In November 1999, Student was suspended from PRHS, and in December 1999, Student began attending Poland Springs Academy ('PSA'). The Grandmother filed a complaint on January 10, 2000 alleging failure to identify and failure to provide FAPE, and a Complaint Investigation Report was distributed on March 14, 2000. The Corrective Action Plan awarded tuition reimbursement for PSA through the end of the 1999-2000 school year. The District was also ordered to hold a PET meeting by the end of the school year, in order to develop an IEP addressing all areas of disability and a plan to support Student's return to public school in September 2000.

The factual findings and Corrective Action Plan developed by the complaint investigator are not in dispute in this hearing, and the Complaint Investigation Report was submitted as Exhibit 35.

III. Issues

- **Does Student continue to be eligible for special education services as a Student with a disability?**
- **Is the current IEP, developed at a February 16, 2000 PET meeting, reasonably calculated to meet Student's academic and behavioral needs, and allow him to make appropriate academic progress?**

IV. Findings of Fact

1. Student's date of birth is dob. (Exhibit: Due Process Request)
2. Student attended 9th grade at Westbrook High School during the 1998-1999 school year, and began attending Poland Regional High School ('PRHS') in September 1999. Student was not identified as a special education student at that time. (Exhibit: S35)
3. In November 1999 Student was suspended from PRHS, and in December 1999 Student began attending Poland Springs Academy ('PSA'). (Exhibit: S35)
4. Student's Grandmother filed a complaint on January 10, 2000. The issues addressed in the complaint investigation were failure to identify and failure to provide FAPE, and a Complaint Investigation Report was distributed on March 14, 2000. The Corrective Action Plan awarded tuition reimbursement for Student's attendance at PSA, through the end of the 1999-2000 school year. The

District has met their obligation to reimburse the family for this tuition. (Exhibits: S35; Testimony: L. Spencer)

5. On December 22, 1999, Dr. Donald Stover conducted a psychological evaluation of Student. His evaluation included interviews with Student and Grandparents, a telephone interview with the PRHS Dean of Students, completion of the Achenbach checklist, the WISC III and various projective tests. Dr. Stover concluded that Student's intellectual capacity is well within the average range. However, Student did have a very low score on the perceptual speed scale (80) and an extremely low score on the coding subtest (3, as opposed to all the other subtests, which ranged from 11 to 15). Dr. Stover concluded that there is some evidence of a specific learning disability that would negatively impact Student's performance on complex written tasks. He further offers a diagnosis of Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder and Dysthymic Disorder. (Exhibits: S31, S35)
6. On February 2 and 9, 2000, a Test of Written Language (TOWL) was administered to Student by Pat Menzel, the PRHS speech and language clinician. Ms. Menzel concluded that Student needed to work on some of the physical mechanics of writing, as well as other written language skills, including punctuation and capitalization, transition words and conjunctions. (Exhibit: S37)
7. On February 9, 2000, Victoria Reynolds, the PRHS School Psychological Services Provider, conducted a classroom observation of Student at PRHS. Her observation report noted a 32% level of noncompliance with teacher requests, some selective ignoring of teacher directions and some difficulty starting work unless given further teacher requests. Student also exhibited willingness to help a fellow student, and he was successful in this intervention. (Exhibit: S36)
8. A PET meeting was held on February 16, 2000, and was attended by Ms. Menzel, David Burke, who was Student's regular education teacher at PRHS, the Special Education Director, the Grandmother and Fran White, LCSW, the PSA Social Worker. The team reviewed the Stover, Menzel and Reynolds evaluations, and concluded that Student qualified for special education under the category of Emotional Disability. Mr. Spencer supported this diagnosis based on Student's "history of hypersensitivity, feeling overwhelmed, and inability to form positive relationships with peers and adults." Ms. White stated that from the short time she has known Student, "it would be hard for her to distinguish between and identification of Emotional Disability and Other Health Impairment (based on the ADD diagnosis by Dr. Stover). (Exhibit: S38)
9. The PET drafted an IEP with goals and objectives in the areas of following rules, beginning assignments with minimal redirection, anger management, and writing mechanics. Student's placement would be four instructional blocks (out of eight) in a special education classroom (English, Social Studies, Math and Science); two

instructional blocks in the regular classroom with inclusive special education support, and 40 to 80 minutes per week of social work services. (Exhibit: S38)

10. The PET also developed a Behavior Intervention Plan for Student, which included positive behavioral interventions, such as “open passes” following periods of appropriate behavior, and clearly defined consequences for inappropriate behavior, such as violations of the Student Honor Code and other major offenses. (Exhibit: S38; Testimony: L. Spencer)
11. On May 24, 2000, Dr. Stover wrote a follow-up letter to his December evaluation of Student. In this letter he stated “[w]hile [Student] is clearly happier and more settled at present, the previous diagnoses and recommendations are still appropriate.” Dr. Stover further notes that he is not in a position to evaluate either PSA or the IEP that the PET has developed, but does state that the family should be “cautious about making a change that ...[Student] would see as depriving him of a successful school experience.” (Exhibit: P2)
12. Student completed 10th grade, the 1999-2000 school year, at PSA, under the tuition award granted by the March 14, 2000 Corrective Action Plan. Student received three credits for the period from January through June 2000, and received an A in reading and writing, B+/A in U.S. History, B+ in Career Experiential and A in Video/Photo/Computer. (Exhibit: P6; Testimony: Grandmother, Student)
13. A June 13, 2000 letter from Roberta Howard, President of PSA, notes that Student’s anger has decreased and his comfort level at school has increased, while his academic achievement has been excellent. She attributes this success in large part to PSA’s individualization of Students’ programs. (Exhibit: P4)
14. Student testified that he felt that he did not necessarily need a small school or small classroom to do well academically. When questioned, Student stated that he did not want to return to PRHS, had no intention of doing so, and believed that if he did return, he would be in trouble almost immediately, because “everyone would be out to get me.” The Grandmother echoed this sentiment in her testimony. (Testimony: Student, Grandmother)
15. The Grandmother also testified that she felt that Student was no longer a special education Student, and in need of specialized services, as shown by his success at PSA. (Testimony: Grandmother)

VI. Discussion and Conclusions

Undoubtedly, Student had a very rough start at PRHS, due in great part to the District’s failure to identify him as a Student in need of special education and to provide those special services in a timely manner. However, that issue was addressed in the Complaint Investigation and the March 2000 Corrective Action Plan. The purpose of this hearing is

to look forward, and not back, and therefore we must review Student's current needs and the plan that the District has put forward.

- **Does Student continue to be eligible for special education services as a Student with a disability?**

Although Student has been successful at PSA, which is not technically a special education school, it is a very supportive setting with an individualized academic program. If Student were to return to PSRH as a regular education student, his likelihood of failure would be high. Therefore, the question we must ask is twofold: does Student continue to have a disability and does Student need specialized education and supportive services in order to succeed in the academic environment. MSER §9.8 (1999)

A review of Dr. Stover's December evaluation, and his comments in his May letter, indicate that Student still has significant emotional needs. He very clearly states, "the previous diagnoses and recommendations are still appropriate."

Given Student's continuing emotional disability, his success at PSA is the very factor that would indicate a continuing need for services, were he to return to PRHS. PSA is a very small, supportive educational environment, with an individualized academic program. If Student were to have any chance of success at PRHS, he will need a program that duplicates his PSA program as much as possible. A small, individualized academic program, with significant mental health and other support services, can only be provided to Student within the context of special education.

Therefore, Student meets the criteria of eligibility for special education, under the category of Emotional Disability.

- **Is the current IEP, developed at a February 16, 2000 PET meeting, reasonably calculated to meet Student's academic and behavioral needs, and allow him to make appropriate academic progress?**

Although Student does have academic needs, particularly in the area of written language, various evaluations and assessments, as well as Student's own educational history, indicate that Student's emotional and behavioral needs must be met if he is to succeed in the academic environment. As the regulations state, an IEP must include present levels of performance, measurable annual goals and short-term objectives, and the specific special education and supportive services, and supplemental aids and services to be provided to Student, thus permitting him

"to advance appropriately toward attaining the annual goals; ...to be involved and progress in the general curriculum...[and] to be educated and participate with other students with disabilities and students without disabilities."

MSER §10.2(C)

An IEP must also include “positive behavioral interventions, strategies and supports” to address the behavior of a Student whose “behavior impedes his or her learning or that of others.” MSER §10.3(D)

As we have noted, Student’s current placement at PSA provides a small environment and an individualized academic program. Student himself testified that it was not the small environment, per se, which was necessary for his academic success, and he felt that he could succeed in a setting with average class sizes. However, in order to make Student’s transition back to the public high school a successful one, it behooves the district to develop an IEP with a program which duplicates, as nearly as possible, the setting and program with which Student has exhibited success.

The IEP which the PET developed on February 16, 2000, includes the following elements: present levels of performance, goals and objectives in written language, in the areas of following rules, beginning assignments with minimal redirection, anger management, and writing mechanics. Student’s placement would be four instructional blocks (out of eight) in a special education classroom (English, Social Studies, Math and Science); two instructional blocks in the regular classroom with inclusive special education support, and 40 to 80 minutes per week of social work services. This educational setting is restrictive, but past performance, as well as success in the small and very individualized environment at PSA, shows a need for this type of environment, at least at this time.

The IEP also includes a Behavioral Intervention Plan (‘BIP’) that provides methods of positive behavioral intervention and specific consequences for inappropriate behavior.

I find that the IEP as developed by the PET is comprehensive and detailed, and addresses the academic and behavioral needs of Student. It likewise recognizes, and provides services to address, Student’s emotional needs.

In closing, I must note that it is apparent that it is not the IEP per se which the Student and Grandmother are objecting to, but rather the whole idea of returning to PSRH. Clearly, Student strongly wishes to remain at PSA. However, despite the fact that Student appears to have been academically and behaviorally successful at PSA, and certainly was very happy there, the District must be given a chance to provide a free and appropriate public education to Student in a District school. I conclude that the IEP developed by the PET on February 16, 2000 is reasonably calculated to do just that.

VII. Order

There is no order in this case.