

STATE OF MAINE
SPECIAL EDUCATION DUE PROCESS HEARING

November 6, 2000

Case # 00.272, *Parent v. Windham*

REPRESENTING THE FAMILY: The Family represented self.

REPRESENTING THE SCHOOL: Don Kopp, Esq.

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

This hearing was requested by Parent, authorized by his son, an adult student, on October 4, 2000. The case involves , whose date of birth is dob. He resides with his parents in Windham, Maine. Student is currently eligible for special education services under the category of Learning Disabled. He is currently attending his senior year at Windham High School.

The parties held a prehearing teleconference on Tuesday, October 24, 2000. At that time, the parties defined the issues for hearing and discussed witness lists. Both parties exchanged documents in a timely manner.

The hearing was held on Thursday, November 2, 2000, at the Department of Human Services, Portland, Maine. The family submitted documents P1-P22, 75 pages, and the School District submitted documents S1-S19, 50 pages. Seven witnesses testified.

I. Preliminary Statement

This case involves an xx year-old male student, who has a written language-based learning disability. Student entered Windham High School in September 1997, as a freshman. He was identified as eligible for special education services in February 2000, and began receiving services at that time. Student is currently receiving one hour per day of services in the Learning Lab. Every four weeks, student receives three hours per week of services, due to schedule rotation. Student also receives classroom and testing modifications.

The family requested this hearing. It is their contention that student should have been identified as eligible for special education services at an earlier time. They further contend that once student was identified and an IEP developed, that IEP was not fully implemented.

The District contends that student was identified in a timely manner, and that student's IEP has been fully implemented.

II. Issues to be Decided by the Hearing

1. Did the Windham School Department conduct a timely evaluation of student for special education eligibility during the 1997-1998 school year?
2. Did the Windham School Department make a timely identification of student as eligible for special education services?
3. Was the IEP, developed in February 2000, reasonably calculated to enable student to make appropriate academic progress.
4. Did the Windham School Department implement student's IEP during the 1999-2000 school year?
5. Has the Windham School Department implemented student's IEP during September and October 2000?

III. Findings of Fact

1. Student's date of birth is xxx (Due Process Request)
2. Student is currently a senior at Windham High School. Student receives one hour per day, on a four-day rotation, of written language-based services in the school Learning Lab, under an IEP developed on September 28, 2000. (Testimony: Father, L. Powell, C. Dobkowski; Exhibit: S1))
3. As a freshman at Windham High School, during the 1997-1998 school year, there was some indication from student's teachers that student was performing below his capabilities, possibly due to written language-based problems. During August 1998, the father spoke with Ms. Sponsler, student's guidance counselor, about the written language based issues, and indicated to her that student had previously received some occupational therapy (OT) services. He also indicated that student had twice broken his hand. Ms. Sponsler reviewed student's file, spoke with the district nurse about what records she might have and contacted the Raymond School Department, where student had previously attended school. Ms. Sponsler did not locate any documentation about services student had previously received. A fourth grade report card from the Jordan Small School in Raymond, did contain a note that the teacher was referring student for an OT assessment, but there is no evidence that this evaluation was every conducted by Raymond. (Exhibit: S10; Testimony: M. Sponsler, Father)
4. Mr. B. Bowers was student's social studies teacher in 7th grade, and again in 9th grade. According to Mr. Bowers, student had significant writing problems that were indicated by student's messy, and often illegible, handwriting. However, Mr. Bower's indicated that student is an excellent student, one of the best he has had in class. (Testimony: B. Bowers)

5. On September 27, 1999, the parents requested a special education testing referral for student. On November 17, 1999, a PET meeting was held to discuss and agree upon the testing plan. This PET meeting had previously been scheduled for late October, but was postponed at the parents' request. At this PET meeting, it was decided that a special education evaluation of student would be completed and another PET meeting scheduled to discuss the results of that evaluation. (Exhibit: P1, S17; Testimony: L. Powell, Father)
6. On December 8, 1999, Cyrilla Dobkowski, Special Education Teacher, conducted a classroom observation of student, during his English class. In her report, she noted, "student was focused during the class except for the short time he was asked to write." She cites Mrs. Mountford, the teacher, as stating that student "rarely passes in written work, but oral discussions show that he is an intelligent young man." Ms. Dobkowski recommended that student be permitted to use a tape recorder to record some written responses, that writing assignments should be broken down into steps and that student should have use of a spell checker/grammar checker. (Exhibit: S14; Testimony: C. Dobkowski)
7. Dr. Arthur DiRocco conducted a psychoeducational evaluation of student on December 10, 1999. Student's scores on the Wechsler Adult Intelligence Scale (WAIS-III) were as follows: Verbal IQ, 130 (98%), Performance IQ, 107 (68%), Full Scale IQ, 121 (92%). In addition to the statistically significant difference between his verbal comprehension score (Verbal IQ) and his perceptual organization skills (Performance IQ), student's scores showed substantial scatter among subtests. Verbal subtests ranged from 7 in Letter Number Sequencing to 19 on Comprehension. Performance subtests ranged from 8 on Coding to 15 on Picture Completion. Dr. DiRocco concludes student has excellent verbal skills, in the very superior range of ability, but that those skills only reach the average range when non-verbal aspects of his intelligence are required. (Exhibit: S13)
8. Ms. Dobkowski conducted an educational evaluation of student on January 20, 2000, using the Woodcock Johnson tests of achievement. Student received the following scores: Broad Reading, 96 (38%), Work Identification, 92 (31%), Passage Comprehension, 100 (50%); Broad Math, 104 (61%), Calculation, 97 (43%), Applied Problems, 111 (78%); Broad Written Language, 81 (10%), Dictation, 73 (3%), Writing Samples, 94 (34%); Broad Knowledge, 113 (81%), with specific knowledge scores between 103 and 118. In her report, Ms. Dobkowski recommends that student receive review of basic writing skills (mechanics), as well as structured writing lessons that include sentence development, organization of writing, sequencing, and paragraph development. (Exhibit: S12)
9. A PET meeting was held on February 9, 2000 to consider the results of the testing. It was determined by the team that student was eligible for special services as a learning disabled student, and that student would attend the Learning Lab for one period daily, four times a week, for assistance with organizational

skills and written language. Student's IEP also included the following modifications: oral testing when arranged; use of tape recorder to record news responses in history; assignments to be checked in Learning Lab; long-range written assignments to be broken down into steps. Goals were written in the areas of written language and organizational skills. (Exhibit: P7)

10. Student attended the Learning Lab during spring 2000. However, according to student's testimony, the services and supports that he received at the Learning Lab were minimal. Student stated that he was not given oral tests, that his teachers did not forward work to the Learning Lab, that he did not receive any help to break down assignments into smaller steps, that he did not receive assistance in organizing his notebook, and that he was not helped to write outlines or rough drafts. Ms. Powell admitted that communication between student's teachers and the Learning Lab was minimal to non-existent and that the Learning Lab teacher had no idea of student's progress, or problems, in his regular education classes. Student's progress was not coded in the IEP form, and therefore it cannot be determined whether student made any progress towards his IEP goals and objectives. (Testimony: Student, L. Powell)
11. During the third quarter of the 1999-2000 school year, student's quarterly grades in history and English were 68 and 54, respectively. According to testimony, both of these classes require a significant amount of writing. Student had previously had history grades in the eighties and English grades in the high seventies. (Exhibit: S3; Testimony: Father, Student)
12. Student's schedule at the beginning of the 2000-2001 school year did not include Learning Lab, as specified on his February 9, 2000 IEP. (Testimony: Student, C. Dobkowski)
13. The parents requested another PET meeting, to address the problems with the implementation of student's IEP. This meeting was held on September 28, 2000. Student's placement remained the same, Learning Lab services were continued, and the goals were essentially the same, although more detailed. Additional modifications were indicated, including: after each test and exam, student will follow up with the teacher for oral testing; if student does not show up for testing, parents will be contacted; 50% extra time for tests and quizzes will be given; extension on written assignments will not exceed one week; teachers will email the case manager with a list of assignments that are due; student will review his grade sheet with his learning lab teacher; do not penalize for spelling on "on demand" work in class; long-range written assignments will be broken down into steps; an Alpha Smart will be provided. (Exhibit: P2; Testimony: Father)
14. Student was given an Alpha Smart, to assist him in taking notes in class. However, according to the father and the student, the Alpha Smart is not currently programmed correctly and student is therefore unable to print out his notes on the computer in his home. Ms. Powell agreed that there were problems with the

Alpha Smart and stated that a resolution was being worked out. (Testimony: Student, Father, L. Powell)

15. By all accounts, student's current Learning Lab placement is significantly more productive than last year's. Communication between school and parents has increased, and student is receiving much more support than last year. Student's current case manager is Ms. Dobkowski. Student is working on vocabulary in the Learning Lab, since a change in his English class resulted in his falling behind. He is also working on his notebooks and, according to Mr. Bowers, he has made great improvement in this area. Ms. Dobkowski has communicated student's modifications and needs to all of his regular education teachers. (Testimony: C. Dobkowski, B. Bowers, Student)

IV. Conclusions

- **Did the Windham School Department conduct a timely evaluation of student for special education eligibility during the 1997-1998 school year?**

The father testified that student's ninth grade guidance counselor was aware of student's needs in the area of written language. However, the father did not testify that either he or his wife directly requested an OT or special education evaluation. Likewise, there is no documentary evidence that includes either a formal or informal written request for an evaluation. Likewise, no teacher suggested that student might need special education services. Based on the available evidence, it is my finding that the Windham School Department did not fail to conduct a timely evaluation of student during his ninth grade year, the 1997-1998 school year.

- **Did the Windham School Department make a timely identification of student as eligible for special education services?**

Maine Special Education regulations require that a school district
"ensure that evaluations are completed, an eligibility determination completed and an offer of services in accordance with an IEP is made to parents within 45 school days of the agency's receipt of parental consent to an initial evaluation."
MSER §9.19

The regulations further state that if an evaluation is needed, the school department shall provide the parent with a consent for initial evaluation form no later than fifteen days after the referral of the student for an evaluation. MSER §9.19. Furthermore, the regulations require that

"All referrals to the Pupil Evaluation Team shall be acted upon in a timely manner and a Pupil Evaluation Team shall convene within 15 school days of the receipt of the referral to review existing evaluation data and determine the need for additional evaluations." MSER §7.7

In this case, the parents requested a special education evaluation on September 27, 1999. It is unclear if the consent to evaluate form was signed at this time. However, an initial PET meeting, to develop a testing plan, was held on November 17, 1999, and therefore the latest that the consent to evaluate form could have been signed would have been November 17, 1999.

Testing was completed on January 24, 2000 and the PET that found student eligible for special education services and developed an IEP for him was held on February 9, 2000. Although I am not in possession of the school department's calendar for the 1999-2000 school year, a rough calculation indicates that even if the parents did not sign the consent to evaluate until November 17, 1999, the February 9, 2000 PET meeting and IEP development appears to be in violation of the 45-day rule in MSER §9.19, by a week at most. Although this procedural violation was de minimis, I would caution the school department to keep these timelines in mind when responding to special education referrals.

- **Was the IEP developed in February 2000, reasonably calculated to enable student to make appropriate academic progress.**

The family admits that the February 9, 2000 IEP was a good one, with appropriate goals, services and modifications. There was no testimony suggesting that the IEP, *if implemented*, would not enable student to make academic progress. I therefore find that the February 9, 2000 IEP was reasonably calculated to provide educational benefit. The goals and objectives appropriately address student's educational needs and the proposed services appear adequate to assist student in meeting those goals and objectives.

- **Did the Windham School Department implement student's IEP during the 1999-2000 school year?**

The evidence, particularly the testimony, indicates that the school department failed to implement the February 9, 2000 IEP. The list of the services and modifications student did *not* receive is lengthy. Student stated that he was not given oral tests, that his teachers did not forward work to the Learning Lab, that he did not receive any help to break down assignments into smaller steps, that he did not receive assistance in organizing his notebook, and that he was not helped to write outlines or rough drafts. Ms. Powell, in fact, admitted that communication between student's teachers and the Learning Lab was minimal to non-existent and that the Learning Lab teacher had no idea of student's progress, or problems, in his regular education classes. It appears that student received nothing more than study hall while at the Learning Lab, and it likewise appears that few, if any, of the required modifications were implemented.

Student's grades in history and English, for the third quarter of the 1999-2000 school year, were significantly lower than he had ever received before. Both Ms. Dobkowski and student testified that these are the classes that require the most writing. It is, however, difficult to determine whether student made any progress towards his IEP goals,

since student's progress was not coded in either April or June, as specified on the IEP form.

As testimony strongly suggests, the Windham School Department failed to implement student's February 9, 2000 IEP during the period from February through June 2000. In addition, the Windham School Department committed procedural violations of IDEA by failing to report on short-term progress towards goals and objectives. Consequently, student is entitled to remedial services to address his failure to receive a free appropriate public education (FAPE) during the period in question.

Granted, the February 9, 2000 IEP was appropriate. However, this IEP was not implemented, and compensatory education is an equitable remedy that is dependent on an inappropriate education, and not necessarily on an inappropriate IEP. See *Ridgewood Bd. of Educ. v. N.E.30 IDELR 41* (3rd Cir. 1999), *M.C. v. Central Regional School District*, 81 F.3d 389 (3rd Cir. 1996). Student received an inappropriate education during the period from February 2000 through the end of the 1999-2000 school year, and is therefore entitled to appropriate compensatory educational services.

- **Has the Windham School Department implemented student's IEP during September and October 2000?**

The family agrees that the IEP developed at the September 28, 2000 PET meeting is a good one, better in fact than the one developed in February 2000. However, the important factor is that it appears that the new IEP is being implemented. Ms. Dobkowski testified to increased communication between the family and the school, particularly regarding student's progress in the Learning Lab. Ms. Dobkowski has developed a vocabulary curriculum that she works on with student. She has likewise communicated with all of student's regular education teachers about the required modifications.

Mr. Bowers, who is currently student's psychology teacher, noted that student has made exceptional progress in the organization and appearance of his notebook. All in all, it appears that the staff is proactively assisting student, as opposed to waiting for him to ask for help.

However, student still appears to have significant organizational needs along with his written language needs. Given that he is only in the Language Lab four hours a week (and only three hours a week every four weeks because of class rotation), and when in the Lab he is working on vocabulary, it is unclear when he is being assisted to improve his organizational skills. Student's evaluations and the PET meeting minutes make note of his problems with organizational skills and this need must be addressed. Whether that takes the form of scheduled work with the guidance counselor or other staff, or whether his Learning Lab time is increased, the school must call a PET to revise student's IEP, giving him some dedicated time to work on organizational skills, such as time management and long term assignment planning.

V. Decision

By failing to implement his IEP, the Windham School Department failed to provide student with a free appropriate public education during the period from February 2000 through June 2000. Student is therefore entitled to compensatory education in the form and amount to be determined by the PET. In addition, student's current IEP inadequately addresses his needs in the area of organizational skills, and shall be revised to increase services in this area. Lastly, the Windham School Department shall be vigilant in completing quarterly coding of student's progress towards goals and objectives.

VI. Order

1. A PET shall be held within ten school days of receipt of this decision. The PET shall quantify the award of compensatory educational services to student, determining the most efficacious means of providing those services, be it additional tutoring during the school day, extended school year services, and/or after school services. The amount of services shall be the total number of hours that student was assigned to the Learning Lab during the period between February 9, 2000 and the end of the 1999-2000 school year, as well as any additional Learning Lab time missed due to the failure of student's initial 2000-2001 schedule to include Learning Lab. The design of the compensatory educational services shall take into consideration student's goals and objectives, and be formulated so as to take into account the most appropriate ways of assisting student to meet those goals and objectives.
2. In addition, the PET shall revise student's IEP to reflect an additional one hour per week of services in the area of organizational skills.
3. Quarterly coding of student's progress towards goals and objectives shall be completed, beginning in November 2000.
4. Within one week of receipt of this decision, the District shall reprogram student's Alpha Smart so he is able to print out notes on his home computer. If this cannot be accomplished, the District shall provide student with a new Alpha Smart, that allows printing of notes.

Proof of compliance with this order shall be submitted to the hearing officer as well as to the Due Process Coordinator. Proof of compliance shall include a copy of the new IEP, including the details about the compensatory education to be provided, as well as the additional services in the area of organizational skills development.

Lynne A. Williams, Ph.D., J.D.
Hearing Officer

Date

Family's Index of Documents

- P1 Initial Referral to PET (September 27, 1999) and November 17, 1999 PET Minutes and IEP (6 pages)
- P2 Written Notice of Proposed Change and September 28, 2000 PET Minutes and IEP (11 pages)
- P3 Classroom Observation, dated December 8, 1999 (two page)
- P4 MEA Results, undated (two pages)
- P5 Report Card for student's sister, undated (one page)
- P6 Education Evaluation, dated January 24, 2000 (2 pages)
- P7 February 9, 2000 PET Minutes and IEP (6 pages)
- P8 Letter from Sue Gendron to Father dated September 20, 2000 (2 pages)
- P9 Letter from Deb McAfee to Father dated September 27, 2000 (4 pages)
- P10 February 9, 2000 PET Minutes and IEP (11 pages)
- P11 Letter from Marjorie Sponsler to Father dated September 15, 2000 (2 pages)
- P12 Vocabulary Test, undated (one page)
- P13 Letter from Sue Gendron to Father dated September 20, 2000 (2 pages)
- P14 English Test, undated (one page)
- P15 Written Language Skill List, undated (one page)
- P16 Report Cards for 4th, 9th, 10th and 11th grades (5 pages)
- P17 Psychoeducational Report done by Arthur DiRocco, dated December 15, 1999 (5 pages)
- P18 Letter from Cyrilla Dobkowski, dated September 14, 2000 (one page)
- P19 Research Paper and Evaluation (8 pages)

Family's Witnesses

Student

Father

Mother

Marjorie Sponsler, Guidance Counselor

B. Bowers, Social Studies and Psychology Teacher

School's Index of Documents

- S1 September 29, 2000 IEP (8 pages)
- S2 February 9, 2000 IEP (6 pages)
- S3 Eleventh Grade Report Card (one page)
- S4 Tenth Grade Report Card (one page)
- S5 Ninth Grade Report Card (one page)
- S6 Eighth Grade Report Card (one page)
- S7 Seventh Grade Report Card (one page)
- S8 Sixth Grade Report Card (one page)
- S9 Fifth Grade Report Card (one page)
- S10 Fourth Grade Report Card (one page)
- S11 Third Grade Report Card (one page)
- S12 Woodcock Johnson Achievement Testing, done by Cyrilla Dobkowski, dated January 24, 2000 (2 pages)
- S13 Psychoeducational Report, done by Arthur DiRocco, dated December 15, 1999 (5 pages)
- S14 Classroom Observation, done by Cyrilla Dobkowski, dated December 8, 1999 (2 pages)

- S15 September 28, 2000 PET Minutes (2 pages)
- S16 February 9, 2000 PET Minutes (4 pages)
- S17 November 17, 1999 PET Minutes (2 pages)
- S18 October 10, 2000 DOE letter to Dr. Williams regarding hearing, including Dispute Resolution Request Form (6 pages)
- S19 October 18, 2000 Memo from Catherine Parker to Linda Powell regarding Student's U.S. History grades last year (one page)