

**STATE OF MAINE**

**SPECIAL EDUCATION DUE PROCESS HEARING**

August 3, 2001

Case # 01.135, *Student v. Caribou School Department*

REPRESENTING THE STUDENT AND THE FAMILY : Richard O'Meara, Esq.

REPRESENTING THE SCHOOL: Eric Herlan, 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 U.S.C. §1415 et. seq., and accompanying regulations.

The hearing was requested by student and his parents, on May 21, 2001. The student, whose date of birth is dob, is xx years old and an adult student under the Individuals with Disabilities Education Act. He resides with his mother and father and his siblings, in Caribou, Maine. The student graduated from Caribou High School in June 2001, and until that time was eligible for special education services under the category of Emotional Disability.

The parties held a prehearing conference call on June 22, 2001, to clarify the issues for hearing. Documents and witness lists were exchanged in a timely manner. The student entered 70 pages of documents. The school department entered 338 pages of documents. Ten witnesses testified. Both parties submitted closing, written arguments, with attached case law.

**I. Preliminary Statement**

This case involves a xx year-old male student, who graduated with a general diploma from Caribou High School in June 2001. Prior to that time, student was eligible for special education services under the category of Emotional Disability. Student was fully mainstreamed with the exception of attendance in a supported study hall.

The student requested this hearing. It is his contention that the school department failed to develop and deliver an appropriate set of transition services to student, resulting in student's lack of preparation for his post secondary educational career, and a denial of a free appropriate public education.

The school department denies this contention, and argues that student's high school IEPs and transition plans were appropriate and were implemented.

## II. Prehearing Motions

At the time of prehearing, the school department submitted a motion requesting this hearing officer to impose a strict statute of limitations on student's claim for compensatory education.

In a reply, dated July 5, 2001, this application for a limitation period was denied, as follows:

The Individuals with Disabilities Education Act does not specifically include a statute of limitations on claims made under the Act, and hearing officers and [ ] courts have typically looked to analogous state statutes of limitations. In a New Hampshire case, the First Circuit held that an applicable period would be the six-year statute of limitations for personal injury claims. See *Murphy v. Timberlane Reg. Sch. Dist.*, 2 F.3d 1186 (1<sup>st</sup> Cir. 1994).

Like New Hampshire, Maine has a general, six-year statute of limitations for many civil actions. See 14 M.R.S.A. §752.

The [Caribou School Department] has attempted to distinguish the case at hand from *Murphy*, arguing that there has never been any dispute over student's special education programming until the current hearing request was filed. They further argue that this is a case where the family sat on its rights.

Based on this argument, the school department argues for the application of a more restrictive time period, the two-year statute of limitations, and six-month notice requirement of the Maine Human Rights Act. 5 M.R.S.A. §§4622(1)(C) and 4611. They also raised the possibility of using the two-year limitation period under the Maine Tort Claims Act, with [an] 180-day notice requirement. 14 M.R.S.A. §§110, 8107.

There is, however, no reason to deviate from the First Circuit precedent and apply an alternative limitation period. In this case, the student is presenting a complaint that requires a consideration of a full and complete record, since his action challenges an entire course of conduct by the school department, as the family did in *Murphy*.

Therefore, the school department's application is denied, and the student shall be permitted to advance his claim for compensatory education as a remedy for violations of the school department's transition planning, and resultant IEP development, obligations, going back the full six years allowed by 14 M.R.S.A. §752.

## III. Issues to Be Decided by the Hearing

- **Did the Caribou School Department commit procedural violations in the conduct of its transition planning for student, during the period from the beginning of the 1997-1998 school year, through the 2000-2001 school year?**

- **Did the Caribou School Department fail to provide student with a free appropriate public education by virtue of providing student with IEPs during the 1997-1998 school year that were substantively inappropriate due to their insufficient scope of services and their failure to meet the transition planning and services requirements of the IDEA, 20 U.S.C. §§1401(a)(30), 1414(d)(1)(A)(vii), and its implementing federal and state regulations?**
- **Did the Caribou School Department fail to provide student with a free appropriate public education by virtue of providing student with IEPs during the 1998-1999 school year that were substantively inappropriate due to their insufficient scope of services and their failure to meet the transition planning and services requirements of the IDEA, 20 U.S.C. §§1401(a)(30), 1414(d)(1)(A)(vii), and its implementing federal and state regulations?**
- **Did the Caribou School Department fail to provide student with a free appropriate public education by virtue of providing student with IEPs during the 1999-2000 school year that were substantively inappropriate due to their insufficient scope of services and their failure to meet the transition planning and services requirements of the IDEA, 20 U.S.C. §§1401(a)(30), 1414(d)(1)(A)(vii), and its implementing federal and state regulations?**
- **Did the Caribou School Department fail to provide student with a free appropriate public education by virtue of providing student with IEPs during the 2000-2001 school year that were substantively inappropriate due to their insufficient scope of services and their failure to meet the transition planning and services requirements of the IDEA, 20 U.S.C. §§1401(a)(30), 1414(d)(1)(A)(vii), and its implementing federal and state regulations?**

#### **IV. Findings of Fact**

1. Student's date of birth is dob. (Exhibit: H4)
2. Student had an early history of seizure activity. (Testimony: Mother)
3. Student was determined to be eligible for special education services during his pre-school years, due to significant deficits in auditory memory and auditory processing and tactile defensiveness. Beginning at age 2, student received speech and language therapy and occupational therapy through Childrens [sic] Developmental Services (CDS). (Testimony: Mother)
4. Student attended a regular education kindergarten and a pre-first program, and began first grade in Belfast. In the middle of first grade, student's family moved to Frenchville, where he received special educational services within the classroom. At this time, the school department in Frenchville completed a speech and language and an occupational therapy evaluation. (Exhibits: S249-252, S253-258; Testimony: Mother)

5. At the beginning of student's second grade year, the family moved to Caribou and student entered the Caribou School District. He received speech and language services but the family was informed that no occupational therapy services were available. Student continued to receive speech and language services through the 1991-1992 school year, his third grade year.(Exhibits: S157-171; Testimony: Mother)
6. The Caribou School Department dismissed student from special education for his fourth grade year (1992 - 1993) but he did continue to receive Chapter One services. (Exhibits: S149; Testimony: Mother)
7. During student's fifth grade year (1993-1994), student exhibited few, if any, academic problems, continued to receive Chapter One assistance, and had a good year at school. (Testimony: Mother)
8. During student's sixth grade year (1994 - 1995), student began to exhibit social problems and some behavioral issues. On October 17, 1994, student was referred by at least one of his teachers for a special education assessment, due to emotional and behavioral issues. (Exhibit: S146; Testimony: Mother)
9. A partial Woodcock Johnson Cognitive and Achievement Battery, as well as emotional and behavioral problems scales, were administered to student in November 1994. The Woodcock Johnson testing showed average to low average intelligence, with no significant discrepancy between ability and achievement. At a PET meeting held on December 5, 1994, student was found to be eligible for special education services under the category of Emotional Disability/Behavioral Impairment. The IEP developed at this meeting, dated December 1994, stated, "[student] needs a small group setting to establish more developmentally appropriate skills in behavior, communication, socialization and academics." It further noted, under Present Level of Performance, that student's grade levels, according to a CTBS administered when student was in grade 5-7, ranged from 3-4 for Total Reading, to 5-8 for Total Math. Student's placement was to be "Behavior" for 40 minutes per week, and student's goals and objectives included completing and passing in assignments, asking questions when having difficulties, refraining from inappropriate behavior when others are inappropriate, participating in group discussions appropriately and developing friendships. Progress towards these goals and objectives was to be measured by grades and teacher observations. Despite the fact that student was now classified as eligible for special education under the category of Emotional Disability/ Behavioral Impairment, no behavior plan was developed for student. (Exhibit: S26-29, S126-129, S131-141, S142-143, S144-145; Testimony: Mother)
10. Student continued to receive the same services, and to have similar goals and objectives, throughout the 1995-1996 and 1996-1997 school years, his seventh and eighth grade years. (Exhibits: S89-123; Testimony: Mother)

11. On April 7, 1997, a brief PET meeting was held in order to develop student's IEP for his high school freshman year (1997-1998). At this 15-minute PET meeting, it was agreed that student would receive resource study hall during ninth grade. Despite the fact that student was xx years old at that time, there was no discussion of transition planning. (Exhibits: S85-88; Testimony: Mother, R. Umphrey, D. Bosse)
12. During spring 1997, a course listing was sent home to the family, so that student could choose his courses for the 1997-1998 school year. After initial choices were made, student was required to get signatures from his current teachers, supporting his course choices. Student initially chose Academic English and Physical Science, but his middle school teachers refused to sign off on those choices, even though the course description for ninth grade Physical Science states that "[a]ll 9th graders are required to take this course." The family was unaware that they could overrule the recommendations of these teachers, and acquiesced to the recommendation that student take Physics and Chemistry in Agriculture and Technical English. At the time, the family was unaware that Physics and Chemistry in Agriculture was not a lab science. (Exhibit: S315; Testimony: Mother)
13. The PET minutes and the IEP dated April 7, 1997, listed resource study hall as student's sole service. This consisted of 3.75 hours per week attendance in a classroom with approximately seven other students, which was staffed by an Educational Technician III. The IEP also included a list of modifications submitted by student's eighth grade teacher, in which she noted that "[h]e is very reserved, so it is helpful if teacher checks in with [him] periodically." (Exhibit: S85-88; Testimony: Denise Bosse)
14. In March 1998, student turned xx years old, and still had no transition plan included as part of his IEP. (Testimony: Mother)
15. On May 14, 1998, a PET meeting was held and an IEP developed for the 1998-1999 school year, student's sophomore year. Student was not invited, nor did he attend, this PET meeting, even though he was xx years old at the time. The IEP that was developed was identical to the prior year's IEP in terms of services and goals and objectives. There was no consideration of present levels of performance. The transition plan, forwarded to the family after the meeting, included vague descriptions of transition services, such as "discuss future career plans with guidance" (Functional Vocational Section), and "is responsible at home for chores" (Employment Section). There was no mention of how student could meet college entrance requirements, or how he might be assisted to improve his social and self-advocacy skills, two areas of weakness for student, and ones that would likely be problematic as he transitioned into post secondary life. (Exhibit: S78- 83; Testimony: Mother, Student)
16. In February 1999, the school department conducted student's triennial evaluation. Woodcock Johnson Cognitive and Achievement Batteries were administered and again no significant discrepancy was found between student's ability and achievement levels. However, although written language had historically been

student's weakest skill area, no written language component was administered at this time, which Mr. Umphrey termed "a mistake." Student also received an inexplicable drop in his score on the subtest of visual-auditory memory, from 103 in 1995 to 62 in 1999, but there was no follow-up testing to try to determine the reason for the large drop. (Exhibit: S72-76; Testimony: R. Umphrey)

17. A PET meeting was held on May 28, 1999, when student was xx years old, to develop an IEP for student's final year at Caribou High School. Student was invited to, and did, attend this meeting. At this time, he informed the team that he would like to go to college and pursue a career in law enforcement, although when she completed the IEP form, Ms. Bosse incorrectly stated that student "wants to go to a technical college after graduation." The parents questioned whether student's science coursework would meet the requirements for college entrance. At the mother's insistence, it was agreed that student would take Biology II, his first lab science, during the upcoming year. No one from the guidance office was present at this meeting, and except for the brief discussion about lab science, there was no discussion of transition planning for student. Nor was there any discussion of the recent Woodcock Johnson testing, or discussion regarding the large drop in student's Visual-Auditory score. (Exhibit: S61, P62-66; S97, A76; Testimony: Mother)
18. About a month after the May 1999 meeting, the family was mailed a transition plan for student, although the contents of this plan had not been discussed at the May 1999 meeting. The plan fails to address in any way student's desire to attend a college law enforcement program, and only includes a statement that student should receive a driver's license and should take the "APTICOM," a vocational battery, for future program planning. The Instructional section of the plan states that student will be in regular classes with a supportive study hall. (Exhibit: S65; Testimony: Mother)
19. On May 24, 2000, a PET meeting was held in order to develop an IEP for the 2000-2001 school year, student's senior year. Student was neither invited to, nor did he attend, this meeting; nor was there a special education administrator present at the meeting, although Mr. Umphrey stated that Ms. Bougie, a guidance counselor, served as the administrator at the meeting. Ms. Bougie admitted at the hearing that she has received little training regarding IDEA transition planning, and is not a special educator. There was no substantive discussion of transition planning at this meeting – no discussion of preparation for college admittance, career plans, or any explanation or discussion of student's results on the "Choices Career Aptitude Survey" which he had been administered on May 16, 2000. The Transition Plan, subsequently received by the family, is similar to its predecessors in its vagueness, lack of actual services that relate to transition goals, and lack of family input. (Exhibits: S53-58, P21-33; Testimony: R. Umphrey, J. Bougie, Student, Mother)
20. On August 5, 2000, student met with Judy Bougie for a Senior Planning interview. At this meeting, student's senior year course schedule was reviewed, as well as his future plans. Student informed Ms. Bougie that he had plans to attend a four year college in a law enforcement program, and she made a notation to this effect

on the form completed at that meeting. However, even knowing student's future plans, Ms. Bougie failed to inform student that his failure to take a second lab course (he had not registered for one for his senior year), and his four years of Technical English, as opposed to Academic English, might be a bar to admission to a four-year college program. Ms. Bougie did suggest to student that he meet with her for assistance in completing college applications, but student failed to do so. (Exhibit: S4; Testimony: J. Bougie)

21. During student's senior year, the 2000-2001 school year, student was enrolled in a three credit Law Enforcement class. This was a hands-on course, designed to expose those students interested in a career in law enforcement to the realities of law enforcement work. The course was considered by its instructor, Stephen Michaud, to be mainly academic, and included report writing, participation in mock trials and debates and crime scene investigations. The academic nature of the class differed from that of many of the other vocational courses offered at Caribou High School. Student received an 89 in the class and, according to Mr. Michaud, he might have received an even higher grade if he had participated more, student's biggest problem being his poor social skills and reluctance to speak out in class. Mr. Michaud wrote a positive letter of recommendation in support of student's application for admission to the Law Enforcement Program at the University of Maine at Presque Isle (UMPI). (Testimony: S. Michaud)
22. In February 2001, with the assistance of his family, student completed and submitted an application for admission to the law enforcement program at UMPI. (Testimony: Mother)
23. In March 2001, student received a letter from Brian Manter, Director of Admission at UMPI, informing him that "on the basis of his previous academic record," he was being denied admission. The letter suggested that student "gain additional academic preparation by enrolling in non-degree coursework, and pass those courses with a C or better, prior to reapplying for admission." (Exhibit: P54)
24. Student's mother called Mr. Manter, after receiving the above letter and Mr. Manter intimated to her that it was student's failure to take two lab sciences and Academic English that was a prime contributor to the rejection of his application to UMPI. Mr. Manter further reiterated his suggestion that student enroll in the non-degree courses during the fall semester. In a subsequent letter, Lorelei Locke, UMPI Director of Advising, invited student to register for non-degree coursework during the fall 2001 semester, and noted that students taking non-degree courses were ineligible for financial aid. (Exhibit: P55; Testimony: Mother)
25. On May 17, 2001, the family sent a letter to Mr. Umphrey, expressing their dissatisfaction with the services student had received, and requesting relief, and on May 21, 2001, the student and family filed for due process. Mediation was declined by the school department. (Exhibits: S2, H4-7)

26. After student had been denied admission to UMPI, and after the due process request had been filed, Mr. Umphrey telephoned Mr. Manter and requested that he prepare a letter detailing the reasons for student's failure to be admitted to UMPI. In a letter dated June 7, 2001, and addressed "To Whom it May Concern," Mr. Manter references the admission standards included in the UMPI catalogue, and noted that it would be an exception to the rule to admit a student who had taken only Technical English courses in high school. (Exhibit: S1)
27. As suggested by Mr. Manter and Ms. Locke, student has registered for the UMPI non-degree student testing, to be held in August 2001, and will then register for and attend three appropriate non-degree courses during the fall 2001 semester. The cost of these courses is approximately \$1068, plus additional expenses for fees, books and travel expenditures. (Testimony: Father)
28. In early June 2001, student graduated from Caribou High School. (Testimony: Mother)
29. On June 11 and June 12, 2001, Francoise Paradis, Ed.D., conducted a psychological evaluation of student, at the request of the family. Student received the following scores on the Wechsler Adult Intelligence Scale III (WAIS III): Verbal IQ - 95, Performance IQ - 84, Full Scale IQ - 90. Verbal Comprehension, Perceptual Organization and Working Memory subtest scores were all in the mid-90's. However, student's Processing Speed score was 71. On the Wechsler Individual Achievement Test (WIAT), student scored 87 in Reading, 94 in Mathematics, 98 in Language and 78 in Written Expression. On the WIAT subtests, his scores ranged from 84 to 108, with the exception of the Written Language subtest score, which was 76. Dr. Paradis concludes that while student's verbal intelligence is within the average range, his hands-on intelligence is in the low average range "primarily because of significant weaknesses in processing speed, and deficits in sensory integration that were not remediated [sic] over time." She further noted that on the WIAT, student's low score in Written Expression was again explained by his deficits in sensory integration. Dr. Paradis recommended an occupational therapy (OT) evaluation, to assess his sensory motor deficits; a speech and language (S and L) evaluation, to determine whether therapy could improve his articulation problems; modifications and accommodations in his college classes, including the provision of class notes; tutorial services in English; editorial assistance with his papers and reports; extra time on exams; and grading based on content rather than technical writing. (Exhibit: P1-8; Testimony: F. Paradis)
30. Dr. Paradis also administered a Minnesota Multiphasic Inventory (MMPI) to student, who scored within the normal range in all areas except for social introversion. Dr. Paradis' assessment of student's demeanor and nature is that he lacks any sort of assertiveness and it would be very difficult for him to ask for what he might need within the school setting. She notes that the record indicates that he would just take whatever was given to him, rather than advocate for what he needed. (Exhibit: P1-8; Testimony: F. Paradis)



31. Per Dr. Paradis' recommendation, a Speech and Language evaluation of student was completed by Velda Buckingham, with a report dated June 27, 2001. Ms. Buckingham administered the Test of Auditory Perceptual Skills (TAPS), and student scored significantly below his chronological age on all subtests, getting a 4-3 Language Age (LA) on Auditory Word Memory, 7-6 on Auditory Sentence Memory, 8-7 on Auditory Number Memory - Forward, 10-4 on Auditory Number Memory - Reversed, and 11-5 on Auditory Processing. Student was xx years, xx months old at the time of the testing. Although, as Mr. Umphrey pointed out, the TAPS is not normed for tests takers over the age of 12, student's scores are at least suggestive that his language ages in these areas are significantly below his chronological age. Prior to this time, on April 11, 2001, the school department conducted a speech and language evaluation of student. This evaluation included an oral/motor and voice articulation observation, reporting of a hearing screening and the administration of the Screening Test for Auditory Processing Disorders (SCAN). The observations were normal, and all of student's scores on the SCAN were within average range, except for his score of 8 on the Competing Words Subtest, which was low average. (Exhibit: P68-70, S50; Testimony: R. Umphrey)
32. As recommended, an OT evaluation was completed by Timothy L. Cyr, OTR/L. In his report, dated June 29, 2001, Mr. Cyr found deficits similar to those found by Dr. Paradis, and supported her recommendations. He did not, however, make any recommendation for OT services. (Exhibit: P56-67)
33. In her testimony, the mother noted that most, if not all, of the costs of the recently completed IEEs, by Dr. Paradis, Mr. Cyr and Ms. Buckingham, would likely be covered by the family's insurance. (Testimony: Mother)

## V. Conclusions

The Supreme Court has instructed us that the first question to be addressed when considering the appropriateness of an IEP, and consequently the placement and program offered to a student, is whether the school has "complied with the procedures set forth in the Act," *Bd. of Educ. v. Rowley*, 458 U.S. 176, 206 (1982), including the requirement that transition planning be conducted. The IDEA requires that a student's IEP must include, "beginning at age 16 (or younger, if determined appropriate by the IEP team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages." 20 U.S.C. §1414(d)(1)(A)(vii)(II); 34 C.F.R. §300.347 (b)(2); M.S.E.R. §5.13 (1999).

The Caribou School Department failed to meet the procedural requirements of the IDEA, and Maine Special Education Regulations, on a number of fronts. No consideration was given to whether it would have been appropriate to begin student's transition planning prior to his 16th birthday. Considering how the placement of student on a non-academic track began even prior to the beginning of his high school freshman year, it would have

been appropriate to at least consider whether such tracking meshed with student's college and career goals and whether those goals were realistic.

Nor was transition planning begun prior to student's 16th birthday, as required by the IDEA and accompanying federal and state regulations. The first transition plan which the family received was dated June 1998, three months after student's xx birthday, and this plan was not developed or even discussed at the May 1998 PET meeting. The first time the parents and student saw it was weeks after the PET meeting. Nor was there any PET discussion of any of student's future transition plans, nor did there appear to be any PET member, with the exception of Mr. Umphrey, who was trained in, and knowledgeable about, the IDEA requirements regarding transition planning.

By not encouraging full, or at least some, PET discussion of the needs of the student regarding transition planning, the school department failed to meet its duty to involve the family meaningfully in the transition planning process. Likewise, they failed to involve student in his own planning. Student was sporadically invited to attend PET meetings, and did attend those to which he had been invited. The Choices career survey was twice administered to him, per IDEA requirements, but the meaning of his scores was never explained to him, nor was there any discussion of the results at a PET meeting. Student received no advice or assistance to insure that his coursework was appropriate for his future plans. Student had often been identified as a boy who was socially introverted and a loner (by his mother), hesitant to ask questions (by his middle school teacher, who recommended that teachers frequently check in with him), and reluctant to involve himself in class discussions or speak out in class (by Mr. Michaud). Yet, this student had been basically set adrift, and expected to determine his own needs, assess his own college and career plans, choose his own courses and, from age fourteen on, just when the school's responsibility regarding transition planning begins, be his own advocate.

In its closing memorandum, the school department relies on the recently decided *Bell v. Education in the Unorganized Territories*, Civ. No. 00-160-B-S. (D. Me. March 27, 2001) The department argues that the question at hand is not whether the school followed all procedural requirements regarding transition planning, but whether the resulting transition plans were reasonably calculated to confer on student some benefit in his transition from high school to adulthood, clearly employing the language used to assess the appropriateness of IEPs. However, while there may have been procedural flaws in the transition planning for the student in *Bell*, consisting in the fact that the *Bell* student's transition plan remained unchanged for two years, the transition plans, and accompanying services, provided to that student were comprehensive, or in the language of federal law, "a coordinated set of activities for a student, designed within an outcome-oriented process...." 34 C.F.R. §300.29. In *Bell*, the student's transition plans included current performance levels, goals, objectives, and the programs and services to be provided to enable student to meet those goals and objections. The district court found that although there were procedural flaws, the student received educational benefit, since "the necessary transition planning was accomplished by parents, school personnel, and others." *Bell*, slip op. at 14-15.

Likewise, the facts in this case can be distinguished from those in *Sch. Admin. Dist. No. 1*, 25 IDELR 1256 (Me. SEA 1997). In that case, the guidance counselor had worked on an ongoing basis with the student, and provided her information regarding post secondary school entrance requirements, had periodically reviewed student's course schedule in light of her future plans and had administered career inventories to student and discussed the results with her.

Congress has instructed us that school districts must "promote educational resources for children with disabilities through....educational experiences that prepare them for later educational challenges and employment." H.R. Rep. No. 105-95 at 82 (1997); S. Rep. No. 105-17 at 4 (1997). Since this is a results-oriented mandate, it is true that a school may meet these Congressional goals while technically committing procedural violations. However, in the presence of procedural errors, IEPs must be strictly scrutinized to determine whether those

"procedural inadequacies compromised the pupil's right to a an appropriate education, seriously hampered the parents' opportunity to participate in the formulation process, or caused a deprivation of education benefits"

*Roland M. v. Concord School Committee*, 910 F.2d 983, 994 (1st Cir. 1990)

We must look then at whether the school department's procedural errors resulted in any, or all, of these crucial impacts. The department failed to inform parents about the role of transition planning, and about the requirement that transition planning be an "outcome oriented process" requiring a "coordinated set of activities" designed to assist student in reaching his post secondary goals. Nor did the department inform the parents about their ultimate authority over the selection of student's classes. Transition planning was never discussed at student's PET meetings, and the transition plans were developed outside of the PET process and forwarded to the family at a later time. It is very difficult at this time for the school department to convincingly argue that the family bore the responsibility for not choosing appropriate coursework, or for not objecting to transition plans at an earlier time, when they were effectively shut out of the transition planning process, with their opportunity to participate in the transition planning "effectively hampered."

The school department argues that these procedural violations still may be overcome, if the student received benefit from his IEPs and consequently from the transition planning process. Student did not, however, receive such benefit, unless one considers as the sole criteria for educational benefit the fact that student graduated from Caribou High School with a general diploma. Transition planning, particularly for a student who intends to go on to college, must be much more than graduation. There was no evidence to suggest that student would be unable to handle college work, and his most recent cognitive evaluation, by Dr. Paradis, places student in the low end of the average range on cognitive ability. In her testimony, Dr. Paradis concurred that she believed that student would be able to successfully handle college level academic work. Mr. Michaud, student's law enforcement teacher at Caribou High School, believed in student's capability enough to write him a letter recommending his admission to UMPI.

It is true that in his senior year student did participate in the three-credit law enforcement course, a course in which he received one of his higher grades, an 89. This course exposed student to the realities of a career in law enforcement, and enabled him to make an informed decision about pursuing this career choice. Developing and making a course like this available to students interested in a related career is one part of a successful transition planning process. However, it is only one part. The other part is giving the student the knowledge, tools and skills necessary to make that career choice a reality. This is what the school department failed to do.

It was the duty of the PET to ensure that student's IEPs included outcome-oriented transition plans, offering appropriate services to meet the goals and objectives laid out in the plans. Since the IEPs for the four school years in question, 1997-1998, 1998-1999, 1999-2000 and 2000-2001, failed to include appropriate transition plans, and there was no de facto delivery of transition services to student outside of the PET process, the four IEPs are deemed substantively inappropriate under the IDEA and its implementing federal and state regulations.

It is true that the IDEA does not require school departments to guarantee a specific outcome, whether that outcome is a high SAT score, a good job or admission to a specific, or for that matter any, college. M.S.E.R. §10.1 (1999); See *Fort Bend Indep. Sch. Dist.*, 34 IDELR 111 (Tx. SEA 2000) However, what they are required to do is to identify and provide those services that would prepare the student to have a realistic chance at achieving their goal or to provide sufficient guidance to assist the student in modifying his/her goal. The Caribou School Department did not meet this mandate.

## **VI. Decision**

Taking into account the student's current educational status and needs and based on the deficiencies in student's high school IEPs, due to the school department's failure to engage in outcome-based transition planning as required by the IDEA, it is an appropriate remedy to award some level of compensatory educational services, and reimbursement for independent educational evaluations, as requested by the student. See *Pihl v. Massachusetts Dept. of Educ.*, 9 F.3d 184, 188, 189 (1st Cir. 1993).

## **VII. Order**

1. The Caribou School Department is ordered to pay the tuition for student to attend three non-degree classes at UMPI during the fall 2001 semester. Such tuition will cease at the end of the fall 2001 semester, whether or not student is subsequently admitted into a degree program at UMPI.
2. The Caribou School Department is ordered to either provide one-hour per week of tutorial services in English, or to reimburse the parents for the reasonable expenses of such services, upon submission of receipts. Such services will be delivered

throughout the fall 2001 UMPI semester, not to continue after the completion of the fall semester.

3. The Caribou School Department is ordered to reimburse the family for the cost of the June 2001 independent educational evaluations, including the psychological evaluation completed by Dr. Francoise Paradis, the OT evaluation completed by Timothy Cyr and the Speech and Language evaluation completed by Velda Buckingham. Such reimbursement shall cover the cost of the evaluations less any costs borne by the family's insurance company, unless insurance payment of such costs will count against a lifetime cap in insurance benefits to the family.
4. The Caribou School Department is ordered to bear the incidental costs of student's attendance at the fall UMPI non-degree semester, including the costs of fees, books and supplies, upon submission of receipts, and mileage costs at the prevailing state mileage rate.
5. 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 paid tuition bill, a copy of IEE reimbursement checks given to the family, a copy of expense reimbursement checks given to the family, and a tutorial log covering the period of the fall UMPI semester.

---

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

---

Date

### **Family's Index of Documents**

P1-8	Psychological Evaluation done by Francoise E. Paradis, Ed.D., dated June 18, 2001
P9	Student Transcript, dated March 29, 2001
P10-11	SAT Student Score Report, dated October 26, 2000
P12-17	IEP Documents Provided to Family, undated
P18	Fourth Quarter Progress Report (1999-2000), dated June 14, 2000
P19-20	Period Attendance Report (1999-2000), dated June 9, 2000

- P21-33 Career Aptitude Survey Results, dated May 16, 2000
- P34 Third Quarter Grade Report (1999-2000), dated April 7, 2000
- P35 First Quarter Progress Report (1999-2000), dated November 5, 1999
- P36-37 Attendance Detail for August 18, 1999 through June 18, 1999
- P38-39 PSAT/NMSQT Score Report, dated 1999
- P40 Attendance Detail for August 12, 1997 through June 17, 1998
- P41 Class Schedule as of September 4, 1997, with handwritten note
- P42 Student Academic Record, dated June 13, 1997
- P43 Report Card, Fourth Quarter, 1996-1997
- P44 Report Card, Third Quarter, 1996-1997
- P45-46 IEP (Grade 9), dated April 7, 1997
- P47 MEA Test Results (Grade 8), dated October 1996
- P48 Grade 7 Chapter One Progress Report, First Quarter, dated November 1, 1995
- P49-50 CTBS/4 Test Results, dated April 8, 1993
- P51-52 MEA Test Results, dated February 1993
- P53 Letter from UMPI Admissions Administrative Assistant Althea Simeone to Student, dated February 23, 2001
- P54 Letter from UMPI Director of Admissions Brian Manter to Student, dated March 14, 2001
- P55 Letter from UMPI Director of Advising Lorelei Locke to Student, dated April 23, 2001
- P56-67 Occupational Therapy Evaluation Summary of Timothy L. Cyr, OTR/L, dated June 29, 2001
- P68-70 Speech/Language Pathology Evaluation Report of Velda Buckingham, M.A., CC/SLP, dated June 27, 2001

## **Family's Witnesses**

Student

Mother

Father

Francoise Paradis, Ed.D., Psychological Examiner

Stephen Michaud, Law Enforcement Teacher at Caribou High School

## **School Department's Index of Documents**

A1	Student Transcript
A2	Attention deficit scales
S1	Letter from the Director of Admissions at the University of Maine, dated June 7, 2001
S2	Letter from Parents to Mr. Umphrey, dated May 17, 2001
S3	Letter from Parents to Mr. Benner, dated May 6, 2001
S4	Senior planning sheet, dated August 25, 2000
S5-9	Guidance activities and guidance materials
S10-14	Vocational aptitude assessment, dated May 23, 2000
S15-23	Choices Career Aptitude survey, dated April 27, 2001
S24	Student Transcript
S25-26	Student progress reports
S27-35	Student grades
S36-41	CTBS testing reports
S42-46	Middle school grades
S47-48	PET minutes, dated May 22, 2001
S49	Notice of PET, dated April 26, 2001

S50-51 Speech and language report, dated April 11, 2001

S52 Notice of change of program, dated May 24, 2000

S53 PET minutes, dated May 24, 2000

S54-58 IEP for 2000-2001 school year (senior year)

S59 Caribou School Department guiding principals

S60 Parental notice of PET meeting, dated May 4, 2000

S61 PET minutes, dated May 28, 1999

S62-67 IEP for 1999-2000 school year (junior year)

S68 Notice of proposed change, Dated May 28, 1999

S70 Notice to parents regarding student rights

S71 Notice of PET meeting, dated May 6, 1999

S72-76 Cognitive and Educational Evaluation, dated May 6, 1999

S77 Permission for evaluation, dated February 3, 1999

S78 Notice of change in IEP, dated May 14, 1998

S79 PET minutes, dated May 14, 1998

S80-83 IEP for 1998-99 school year, dated May 14, 1998 (sophomore year)

S84 Notice of PET meeting, dated April 14, 1998

S85 PET minutes, dated April 7, 1997

S86-88 IEP for 1997-98 school year, dated April 7, 1997 (freshman year)

S89 PET minutes, dated May 14, 1996

S90-91 IEP for 1996-97 school year, dated May 14, 1996 (8th grade)

S92 PET minutes, dated September 12, 1995

S93 Notice of PET meeting, dated August 31, 1995



S94-120 Psychoeducational Report, dated July 14, 1995

S121 PET minutes, dated May 22, 1995

S122 IEP for 1995-96 school year, dated May 22, 1995 (7th grade)

S124 Notice of PET meeting, dated April 28, 1996

S125 Notice of PET meeting, dated Spril [sic] 27, 1995

S126 Permission for placement, dated December 5, 1994

S127 PET minutes, dated December 5, 1994

S128 IEP for December 1994 – December 1995 year, dated December 1994

S130 Notice of PET meeting, dated November 22, 1994

S131 Compuscore for Woodcock Johnson, dated November 9, 1994

S142 Emotional and behavior problems scales, dated November 1, 1994

S144 Psychoeducational report, dated October 26, 1994

S146 Special education referral, dated October 17 [1994?]

S147 Permission for testing, dated October 26, 1994

S148 PET minutes, dated April 8, 1993

S149 Dismissal from special education notice, dated April 8, 1993

S150 Notice of PET meeting, dated April 8, 1993

S151 Speech report, dated January 29, 1993

S152 Speech report, dated November 20, 1992

S153 PET minutes, dated May 28, 1992

S154 IEP for 1992-1993 school year, dated May 28, 1992

S156 Notice of PET meeting, dated May 4, 1992

S157 Year end report, dated May 28, 1992

- S158            Speech report, dated January 31, 1992
- S159            Speech report, dated November 15, 1991
- S160            Year end report, dated June 4, 1991
- S161            Notice of PET meeting, dated May 13, 1991
- S162            PET minutes, dated June 4, 1991
- S163-164       IEP for 1991-1992 school year, dated June 4, 1991
- S165            Speech report, dated April 3, 1991
- S166            Speech report, dated January 25, 1991
- S167            Speech report, dated November 16, 1990
- S168            Notice of PET meeting, dated September 12, 1990
- S169            PET minutes, dated September 19, 1990
- S170            Permission for placement in special education program, dated September  
19, 1990
- S171            Parental rights
- S172-176       IEP for 1990-1991 school year, dated June 4, 1990 (MSAD #33 School  
Department)
- S177-182       Handwritten notes from previous school department
- S183-245       Student records from previous school departments
- S246-248       Evaluation report from Children's Hospital, dated August 11, 1987
- S249-252       Speech report, June 20, 1987
- S253-258       Psychological evaluation, April 1987
- S259-279       Other reports from earlier periods of time

**School Department's Witnesses**

Richard Umphrey, Director of Special Services

Martha McIntosh, Ph.D., School Psychologist

Denise Bosse, Special Education Teacher

Judy Bougie, Guidance Counselor

Kirsten Albair, English Teacher

### **Hearing Officer's Documents**

- H1-2 Letter of Appointment, dated May 23, 2001
- H3-5 Docket Sheets
- H6-12 Dispute Resolution Request Form, Date May 21, 2001
- H13-20 Program Review Report, Caribou School Department, dated June 4, 1998
- H21 Letter confirming use of office space, dated May 23, 2001
- H22 Letter from Eric Herlan, Esq., requesting rescheduled prehearing and hearing dates, dated May 25, 2001
- H23 Cover Letter from Eric Herlan, Esq., enclosed with documents, dated June 19, 2001
- H24-26 Prehearing Summary submitted by the Caribou School Department, dated June 20, 2001
- H27-29 Prehearing Summary and preliminary document index, submitted by student, dated June 21, 2001
- H30-32 Letter from Eric Herlan, Esq., requesting shortened limitation period for the student's complaint, dated June 21, 2001
- H33 Cover letter from Eric Herlan, Esq., submitting additional documents, dated June 21, 2001
- H34 Cover letter from Richard O'Meara, Esq., submitting documents, dated June 21, 2001
- H35 Cover letter from Richard O'Meara, submitting additional documents and a revised index, dated June 26, 2001

- H36-42 Student's response to the school department's request for a shortened limitation period, dated June 27, 2001
- H43-49 Cover letter from Richard O'Meara and amended document index, with additional documents, dated July 5, 2001
- H50-59 School department's document index and list of witnesses
- H60-97 Final closing argument submitted by the Caribou School Department, dated July 19, 2001
- H98-123 Student's final closing argument, dated July 20, 2001
- H124 Cover letter from the office of Richard O'Meara, submitting copies of caselaw, dated July 23, 2001