

STATE OF MAINE
SPECIAL EDUCATION DUE PROCESS HEARING

September 21, 2001

Case # 01.200, *Parents v. SAD #75*

REPRESENTING THE FAMILY: The family was pro se.

REPRESENTING THE SCHOOL DEPARTMENT: The school department was pro se.

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.

The hearing was requested by the parents on July 30, 2001. The case involves the student, whose date of birth is xx/xx/xxxx. Student resides with his parents at Topsham, Maine. The Student is eligible for special education services under the category of Speech and Language Impaired. He is currently attending third grade at the Williams-Cone School.

The parties convened a prehearing conference call on March 28, 2001. At that time, the parties defined the issues for hearing and discussed witness lists and documents. All documents were submitted in a timely manner.

The hearing was held on September 11, 2001, at the SAD #75 administrative offices in Topsham, Maine. The school department submitted documents S1-4 and the family submitted documents P1-4, for a total of 32 pages. Six witnesses testified.

I. Preliminary Statement

This case involves an xx-year-old male student, who is eligible for special education services under the category of Speech and Language Impairment. He currently attends the Williams-Cone Elementary School and receives direct instructional services and speech and language services.

The family requested this hearing following the school department's denial of payment for an independent developmental vision evaluation conducted on student. The school department denies financial responsibility for this evaluation.

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II. Issues to be Decided by the Hearing

Is SAD #75 required to bear the cost of a privately obtained vision evaluation of student, under MSER §6.2(A)(B)?

Is SAD #75 required to bear the cost of student's future vision evaluations and the services recommended therein, under MSER §6.1(A)?

III. Findings of Fact

1. Student's date of birth is xx/xx/xxxx (Exhibit: H-1)
2. Student currently attends third grade at the Williams-Cone Elementary School. (Exhibit: H-3)
3. Student is eligible for special education services under the category of Speech and Language Impaired. (Exhibit: S-1)
4. On May 10, 2001, a PET meeting was held, in order to develop new goals and objectives for student. The meeting was attended by student's mother, Carla Colucci, Consulting Resource Teacher ('CRT') and student's special education teacher, Julie Kish, student's second grade classroom teacher, Bobbie Jordan, Principal of the Williams-Cone Elementary School, Jan Austin, Speech Therapist ('ST'), Diane Lamere-Wallace, Occupational Therapist ('OT'), Amy Wallace, Guidance Counselor and Joni Sloan, Educational Technician.

The PET reviewed student's scores on a recent Woodcock Johnson III Test of Achievement, performed on April 9, 2001. Student's scores on that test were as follows: Basic Reading Skills, 86, Academic Skills, 81, Academic Application, 90, Letter-Word Identification, 84, Spelling, 82, Passage Comprehension, 82, Word Attach [sic], 94, Calculation, 96, Applied Problems, 96, Writing Samples, 110. It was noted in the PET minutes that "when anxious, [student] has significant difficulty with retrieval, organization and production of language." They recommended that his daily work, teacher observation and his work portfolio would best measure student's performance.

During the course of the meeting, the student's mother expressed concern about student's poor reading skills and vestibular-vision issues. She requested that student be screened for possible developmental vision issues.

The PET continued student's eligibility for special education services under the category of Speech and Language Impaired, and developed an IEP that included the following services: Continuation of direct speech and language therapy, 60

minutes per week; reading services with the CRT, four times a week for 30 minutes; continuation of Social Skills Group; written Language with the CRT three times per week for 30 minutes; and math will take place in the regular classroom; In addition, the school's OT was directed to screen student relating to visual development

New goals were developed in the areas of expressive vocabulary, fluency, oral motor strengthening, reading, written language and math. Accommodations include a small group setting for reading and written language, additional test time, and use of alternative methodologies to demonstrate knowledge, and oral presentations of tests and quizzes. There was PET consensus on these determinations. (Exhibit: S-1; Testimony: C. Colucci, D. Lamere-Wallace)

5. On May 24, 2001, Diane Lamere-Wallace, OT, with the participation of Ms. Colucci and Ms. Kish, conducted the visual screening on student. On an undated checklist completed at this screening, the screeners noted problems with tracking, ie. his eyes "skipped" when crossing the midline, and he exhibited some jerky eye movements. In a memo sent to student's parents and dated May 21, 2001, Ms. Lamere-Wallace restated these observations, and suggested that student's mother discuss these problems with student's pediatrician and have student seen by a developmental optometrist, if warranted. (Exhibits: P-3; Testimony: D. Lamere-Wallace)
6. On June 19, 2001, an optometric vision evaluation of student was conducted by Blaine A. Littlefield, O.D. In a report dated July 19, 2001, Dr. Littlefield noted that while student's eye health and visual acuity are normal, he exhibits deficiencies in the eye movement control, focusing ability and eye teaming ability. His recommendations included: (1) monocular activities designed to equalize the focusing, tracking and pointing of each eye; (2) binocular work to improve eye-teaming efficiency. He also states that "[d]evelopmental lenses to reduce the visual stress of close work and to bring the focusing and pointing of they[sic] eyes into balance may be needed."
7. In early June, student's mother requested that the school department pay the cost of the vision evaluation conducted by Dr. Littlefield. Dr. Moore declined payment, stating that under relevant state regulations, the school department is not financially responsible for medical evaluations. (Testimony: Father, Dr. Moore)
8. A PET meeting is in the process of being scheduled, for late September. At this meeting, the PET will consider the report and recommendations presented by Dr. Littlefield. (Testimony: Dr. Moore)

IV. Conclusions

Is SAD #75 required to bear the cost of a privately obtained vision evaluation of student, under MSER §6.2(A)(B)?

The vision evaluation completed in June 2001, was conducted by a licensed optometrist, and falls under the category of a medical evaluation under MSER §6.2(A)(B). While districts are not responsible to pay for, or provide, medical services/treatments, including services provided by an optometrist, an evaluation conducted by an optometrist *may* be the district's responsibility under certain conditions. MSER §6.2(B) states that

“Medical evaluations that the [PET] or administrative unit have determined to be necessary for the purpose of identifying a disability are an allowable supportive service....”

Therefore, the issue of the district's responsibility for the privately obtained vision evaluation turns on whether student's vision was an area of suspected disability. Student has been, and continues to be, eligible for special education services under the category of speech and language impairment. Until the May 10, 2001 PET meeting, there was no indication that student had a visual impairment. Even the concerns expressed by student's mother at that time were not of a visual acuity deficit, but rather of a vestibular-vision nature. The mother requested a developmental vision screen[sic], and soon after the PET meeting that screen was completed by the school's OT, who then suggested a pediatric consult and a developmental optometric evaluation, if warranted.

There is no evidence that the subsequent developmental vision evaluation was “necessary for the purpose of identifying a disability....” MSER §6.2(B) While this evaluation will be considered at the upcoming PET meeting and may, or may not, result in IEP changes, it is not an evaluation that falls under the responsibility of the school department. As a medical evaluation, it is more akin to a physician's examination conducted for the purpose of identifying ADHD. The evaluation produces information to be considered and utilized by the PET, but falls outside the realm of the school district's financial responsibility.

Is SAD #75 required to bear the cost of student's future vision evaluations and the services recommended therein, under MSER §6.1(A)?

Under the Individuals with Disabilities Education Act ('IDEA') and the Maine Special Education Regulations ('MSER'), children with disabilities are entitled to a free appropriate public education ('FAPE'). 20 USC §1400(d), MSER §1.3 (1999). Federal and state law mandate that all children with disabilities are able to access FAPE, including special education and related services that

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meet their unique needs. 20 USC §1400 et.seq., MSER §6.1. The terms “related services” and “supportive services”¹ include transportation and other services that may be required to allow a child to benefit from special education. 20USC §1401(17), MSER §2.28.

The vision therapy as currently being delivered by Dr. Littlefield falls within the medical services exclusion as expressed in MSER §6.2(a) (“Services or treatment performed by psychiatrists, physicians, optometrists...are not an allowable special education or supportive service.”) However, the fact that the school department is not financially responsible for student’s July 2001 developmental vision evaluation, nor for Dr. Littlefield’s services, does not imply that the district is not responsible for the provision of appropriate in-school services designed to address student’s vision-related deficits, such as his tracking and accommodation deficits. Dr. Moore, Director of Special Education, has agreed to have the PET consider Dr. Littlefield’s evaluation and recommendations at a late September PET meeting. At that time, the PET may decide to change student’s IEP in order to address his vision-related deficits. If they decide to provide services to student within the school setting, the school department will be responsible for funding those services, provided it is not necessary that such services be provided by a physician. *Cedar Rapids Community Sch. Dist. V. Garret F.*, (8th Cir. 1997)

However, it is premature for this hearing officer to address the question of responsibility for services that are still theoretical in nature. It is the responsibility of the PET to consider the Littlefield evaluation, as well as any feedback that Dr. Littlefield might present about student’s progress in his vision therapy sessions, and to utilize that information to address the extent to which student’s IEP may need to be modified in order to provide FAPE to student.

V. Order

Since there have been no violations of state or federal law or regulations, no order has been prepared.

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

Date

Family’s Index of Documents

P-1 Maine Special Education Regulations, §§3, 4.1, dated November 1, 1999

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P-2 PET Minutes, dated May 10, 2001

¹The Maine Special Education Regulations use the term “Supportive Services” rather than “Related Services” (MSER §2.28), but the definition is the same as that in the IDEA and the federal regulations.

- P-3 Vision Screening Checklist, undated, with May 21, 2001 attached memo from Diane Lamere-Wallace to Mother
- P-4 Optometric Vision Report prepared by Blaine A. Littlefield, O.D., dated July 19, 2001

Witness for the Family

Father

School Department's Index of Documents

- S-1 PET Minutes, dated May 10, 2001
- S-2 Notice of Proposed Change of Program, dated May 10, 2001
- S-3 IEP, dated May 10, 2001
- S-4 Report, Woodcock Johnson 111 Tests of Achievement, dated April 9, 2001

School Department's Witness List

Barbara Jordan, Principal, Williams-Cone Elementary School

Carla Colucci, Special Educator, Williams-Cone Elementary School

Julie Kish, Classroom Teacher, Williams-Cone Elementary School

Diane Lamere-Wallace, Occupational Therapist, Williams-Cone Elementary School

Dr. Patrick Moore, Director of Special Education, Williams-Cone Elementary School