

State of Maine
Special Education Due Process Hearing Decision

Parents v. Yarmouth, Case No. 01.202

REPRESENTING THE SCHOOL: Donald Kopp, Esq., Drummond Woodsum & MacMahon
REPRESENTING THE PARENT: Richard O'Meara, Esq., Murray Plumb & Murray
HEARING OFFICER: Carol B. Lenna

This hearing was held and the decision written pursuant to 20 USC §1415 et seq., and Title 20-A, MRSA, §7207-B et seq., and accompanying regulations.

This case involves student, whose date of birth is xx/xx/xxxx. He resides with his parents in Yarmouth, Maine. Student is a xx-year-old, ninth grade student who attends Yarmouth High School.

Student was identified as a student with a disability in October 2000. He is eligible for special education services under the category of Other Health Impaired. He is diagnosed with attention deficit disorder – inattentive type. Evaluation scores show discrepancy between his cognitive ability and his achievement in the area of reading comprehension. At the conclusion of the 2000-2001 school year the student was retested in the area of reading comprehension. Based on these test scores, the parents requested a summer reading program and additional services for the coming school year. This request was denied, and the parents filed for a due process hearing on August 2, 2001. The hearing was scheduled for August 31.

By request of the parties the hearing date was extended. A prehearing conference was held on September 5, 2001. The hearing convened on September 12 and was continued on September 26, 2001. The parent introduced 58 pages of exhibits, numbered P.1-P.58; the school introduced 110 pages of documents, numbered S.1-S.37. Five witnesses gave testimony. The record remained open until October 1, 2001 for the submission of closing arguments.

Following is the decision in this matter.

I. Preliminary Statement

The student is a xx year old, ninth-grade student who has just completed middle school. He was identified as a student with a disability in October 2000. He is eligible for special education services under the category of Other Health Impaired. He is diagnosed with attention deficit disorder – inattentive type. Evaluations have found discrepancy between his standard scores on tests of cognitive ability and his achievement in the area of reading comprehension. His IEP for the 2000-2001 school year provided him with 90 minutes of special education instruction each week. He attended regular mainstream classes for the balance of the school week.

At the conclusion of the 2000-2001 school year the student was retested in reading. Based on these test scores, the parents requested extended school year services by way of a summer reading program. This request was denied, but it was agreed that the PET would meet prior to the new school year to revisit the student's IEP. The parents provided private reading instruction for the student over the summer at their expense.

The parents contend that recent assessment shows that the student's scores on reading comprehension tests fell over the past school year. They point to this decline in scores as proof that the school failed to address the student's reading comprehension deficits. They claim procedural violations occurred in the development of the IEP. They seek compensatory education in the form of reimbursement for the privately obtained summer program. In addition, they seek an order directing the school to provide one-to-one reading instruction for the 2001-2002 school year using the Visualization and Verbalization methodology developed by Nanci Bell.

It is the school's position that the student has performed well in school, obtaining A's and B's in all of his classes. They contend that the student's 2000-2001 IEP was developed without procedural violations, and provided him with educational benefit. They maintain that they appropriately denied the request for summer programming, as the student did not meet criteria for extended school year services. In addition, they do not agree that he requires one-to-one remediation services in reading comprehension for the 2001-2002 school year, nor that the Visualization and Verbalization methodology is the only program that will provide him with educational benefit.

II. Issues

1. Did the school commit procedural violations in the development of the 2000-2001 IEP?
2. Was the student's 2000-2001 IEP reasonably calculated to provide him educational benefit in the least restrictive educational environment?
3. Did the Yarmouth School Department violate the student's right to a free appropriate public education by failing to properly implement the 2000-2001 IEP?
4. Is the student entitled to compensatory education services as a result of these violations?

III. Findings of Fact

1. The student contracted viral meningitis at age 11 months, with subsequent delay in speech and language acquisition. (Ex. S.31, S.32; Testimony Parent)
2. The student has performed well in school. He obtained all A's in 5th and 6th grade. In 1999-2000, while in 7th grade, he obtained A's and B's. (Ex: S.2-S.4; Testimony: Parent, Golding)
3. Privately obtained neuropsychological testing was conducted in March 2000 by Julia Domino, Ph.D. Testing using the Wechsler Intelligence Scale for Children-Third Edition (WISC-III) yielded a Full Scale score of 109, with a significant discrepancy between the Verbal and Performance scores. Results on the Children's Memory Scale (CMS) showed a "pattern of memory and learning [that] was opposite to that seen on the WISC-III; his visual recall was better developed than his verbal memory. Further, his verbal recall was significantly lower than his level of intellectual functioning". Composite scores obtained on the Wechsler Individual Achievement Test (WIAT) show the student achieved standard scores in the average to above average range in all areas tested, with a Total Composite score of 106. Sub-test scores on this test showed below average results in Reading Comprehension and Listening Comprehension. (Ex: S.30; Testimony: Domino)
4. As a result of this testing Dr. Domino concluded in her report that the student exhibited "a pattern of cognitive deficit...suggestive of cerebral dysfunction of the right hemisphere." Additionally, she wrote that the student's "performance on language-based academic tasks was significantly influenced by impaired attention and impulsivity..." She made the following recommendations:
 - A. The PET will need to review the evaluation data to determine...[identification] classifications [of] other health impaired based on an attention deficit disorder-inattentive type...and learning disabled based on the discrepancy between ability and achievement in reading and listening comprehension.
 - B. [The student] would benefit from...evaluation to determine his suitability for psycho-stimulant medication...
 - C. [The student] will benefit from developing ways to reduce stress and anxiety...
 - D. [The student] will benefit from resource room assistance to (a) check his work for errors..., (b)assist in comprehending reading material, (c) provide structure and organization of his work, (d) develop memory strategies..., (e) monitor and assist with organization of long term projects...and, (f) increase his ability to identify relevant information while studying and preparing for exams.
 - E. [The student]'s excellent concept formation and higher reasoning skills suggest that he will learn best by first acquiring a general concept and later adding details...
 - F. [The student] will need to learn to discern relevant from irrelevant detail and extract basic concepts from his reading and lectures...

- G. [The student] is easily overwhelmed at times by complexity, he will need to learn strategies for breaking down large projects and assignments into smaller units of work...
- H. [The student]'s teachers should identify a pattern of error in [his] work and provide feedback...
- I. [The student] will benefit from receiving a copy of the teacher's lecture notes to ensure his comprehension of class material...
- J. He will benefit from the use of a computer and word processor...
- K. [The student]'s memory and learning will be increased by using verbal and visual cues...
- L. [The student] should learn to organize and prioritize his work and assignments. His progress may be monitored by resource room staff...He would benefit from assistance organizing a notebook and day planner to keep a track of assignments, papers, and directions.
- M. [The student] should be allowed the use of a calculator...in his math and science classes...
- N. Due to problems of restlessness, [he] should be allowed to take breaks...

(Ex. S.30)

5. Using the results of this evaluation, the parents referred the student to the PET on May 31, 2000. (Ex. S.22; Testimony Parent)
6. The PET met on June 13, 2000 to consider this referral. The PET reviewed Dr. Domino's evaluation, the parent's concerns and teacher observations. The team agreed that the school would administer behavior rating scales, complete classroom observations, and administer other reading tests. (Ex. S.20; Testimony: Golding, Jones)
7. On September 20, and 22, and October 4 and 13, 2000 the school's examiner, Stephanie Gautreau, tested the student using the Gray Oral Reading Test - Form B (GORT-3). Scores for Rate and Accuracy were 16 and 18 respectively. Score for Comprehension was 4. The examiner concluded that the student's overall reading quotient "is described as average" with a "significant difference between his ability to decode accurately and quickly and his comprehension ability". He "read passages with great speed and with few errors". He "read so fast that it may have impacted his ability to retain the information". He "displayed solid decoding abilities". In her summary and recommendations the examiner noted that the student's "level of anxiety should be monitored." She made several educational recommendations aimed at improving his reading comprehension including: a) give the student an opportunity to summarize the material he is reading, b) teach visualization strategies, c) engage in pre-reading activities, and d) engage in post-reading activities. (Ex: S. 27)
8. On October 13, 17, and 18, 2000 the school conducted a speech and language evaluation. The student performed in the average range on all tests given. The examiner, Priscilla Vandermast, concluded that the student's overall language skills were in the average range with some subtle difficulties with precise word

knowledge and malapropisms. The examiner recommended that the student have frequent opportunities for verbalizing his understanding of concepts, and instructional techniques that integrate comprehension, word learning and reading to enhance vocabulary development. (Ex: S.28)

9. On September 15, 2000 the school conducted a reading evaluation using the Test of Reading Comprehension – Third Edition (TORC-3). Scores earned on this test gave the student a Reading Comprehension Quotient of 73, placing him at the 4th percentile. The examiner, Suzanne Jones, observed that some of the student's responses appeared impulsively offered, so she extended the standardized limits (ceiling) of errors. His Reading Comprehension Quotient rose to an 87, a score in the low average range, which in her opinion was closer to his real skill level. She noted in the report that the student's "performances were impacted by inconsistencies in self-monitoring [and] by the intrusion of anxiety". She made a number of educational recommendations, including specific strategies teachers should consider to improve the student's reading comprehension difficulties: a.) relate new information to existing knowledge, b.) teach self-regulation strategies, c.) support task-specific strategies, and d.) highlight information/organizational structures. (Ex: S.29; Testimony: Jones)
10. Observations of the student in his science and reading classes were performed on September 20 and 22, 2000. In the reading class the observer noted that the student did not exhibit any behaviors that were significantly different from that of his peers. He appeared organized, on task and relaxed. In science class a test was given. The observer noted that the student appeared to exhibit a level of anxiety much greater than his peers, although he appeared to have good command over the subject matter. His written response on the test was at, or above, the level of most of his peers. (Ex: S.26)
11. On October 24, 2000 the PET convened to review all evaluation data and consider the question of the student's eligibility for special education services. All individuals who had performed testing and the parents were in attendance in addition to other school personnel. It was determined that the student met eligibility criteria under the category of Other Health Impaired. He was also found to have a learning disability in the area of reading comprehension using the test results of the WISC-III administered by Dr. Domino, and the TORC-3 administered by Ms. Jones. The parents shared a comprehensive overview of their concerns with team members. The PET agreed to reconvene to develop the IEP. (Ex: S.17; Testimony: Parent, Golding, Jones, Domino)
12. The PET reconvened on November 14, 2000. The school presented a draft IEP. The parents raised items of concern related to the student's program. Through discussion at the meeting the IEP was changed significantly. The completed IEP document, received by the parents in late November 2000, provided for 90 minutes of direct special education instruction each week. There were two goals, which addressed the student's organizational difficulties and his reading comprehension difficulties. The PET agreed to retest the student's reading comprehension in June 2001. (Ex: S.11, S.16, P.22, P.23, P.26; Testimony Golding, Robison, Parent)

13. The student received special education services two or three days a week, depending on the block schedule, for a total of 90 minutes each week. Authentic text, or reading materials used in the regular curriculum, and assignments given by his regular class teachers, were used by Ms Robison, his special education teacher, to address IEP goals. Social studies, science, novels and occasionally math were the subjects of the instruction. Instructional strategies included such techniques as webbing, story maps, predicting, and graphic organizers. (Testimony: Robison)
14. On June 5, 2001 Dr. Domino tested the student re-administering the Reading and Listening Comprehension subtest of the WIAT. The student achieved standard scores of 84 on the reading portion and 93 on the listening portion. This represented a decrease on the reading comprehension subtest, and an increase on the listening comprehension subtest. On June 20, 2001, Dr. Domino gave the TORC-3. The student's score on the TORC was 97. This represented an increase from his score of 73 in September 2000. (Ex: 23, 24; Testimony: Domino, Jones)
15. On June 19, 2001, Ms. Gautreau retested the student using the GORT-3. The student's Overall Reading Quotient was again within the average range, although the standard scores fell when compared to previous testing. There continued to be a discrepancy between his ability to decode and his ability to comprehend. However, the tester noted in the report that although the student "reached a ceiling after the fifth story was given, therefore not allowing him to earn points on subsequent comprehension questions, he was able to answer forty to sixty percent of the questions in the next five stories he read. This is unlike his performance in the fall". (Ex: S.25)
16. On June 22, 2001 the PET met to review follow-up testing, and to consider the parent's request for a summer reading program. The PET determined that the student did not meet the legal standard necessary to be eligible for extended school year services. The minutes show that the parents did not challenge that determination. Instead, they requested the school provide a summer program in reading comprehension instruction as compensation for the student's poor performance on follow-up testing. (Ex: S.14; Testimony: Parent, Golding)
17. On September 6, 2001, the PET met to plan for the student's transition to 9th grade. After a lengthy discussion, in which both the parents and school personnel debated the student's progress and his needs for the coming school year, the IEP was revised. The IEP for the 2001-2002 school year increases direct instruction to 90 minutes every other day, and adds social work services 30 minutes each week. In addition, the IEP lists homework support for one hour per day from October 8, 2001 to November 5, 2001, to assess the student's organizational and content problems with homework completion. Goals address reading comprehension and organizational deficits as in the previous IEP. A new goal was added to assist the student to learn strategies to manage anxiety that may interfere with school progress. (Ex: S.36, 37; Testimony: Golding)

18. The student ended the 2000-2001 school year with 5 A's and 4 B's in his regular education subjects. Teacher reports of his work in the first month of the 2001-2002 school year show that he currently holds A's and B's in all classes. These grades are based on the same expectations in the regular education curriculum as expected of non special education eligible students. He is described as a bright, motivated, socially popular student who participates frequently and appropriately in his classes. (Ex: S.1; Testimony: Golding, Robison)

IV. Conclusions

Late in the 2000-2001 school year the parents had the student's reading comprehension retested by Dr. Domino using two subtests of the WIAT, the Reading Comprehension subtest and the Listening Comprehension subtest. The student achieved a lower score on the Reading Comprehension subtest. Based on this result, the parents concluded that the student's "IEP has not been fulfilled for reading comprehension for this academic year" and insisted that the PET meet to provide "intensive tutoring in reading comprehension throughout the summer and into the next school year to increase his reading comprehension to grade level". [Emphasis in original] When this request was denied, the parents provided the summer tutoring at their cost. They then proceeded to due process to recapture that expense based on their claim that the school failed to develop an IEP for their son that was procedurally correct and substantively appropriate.

Did the school commit procedural violations in the development of the student's 2000-2001 IEP?

Regulations require that an IEP be developed for each student in accordance with the procedures laid out at 34 CFR 300.346, and 347. Generally,

The IEP requirements under Part B of the IDEA emphasize the importance of three core concepts: (1) the involvement and progress of each child with a disability in the general curriculum including addressing the unique needs that arise out of the child's disability; (2) the involvement of parents and students, together with regular and special education personnel, in making individual decisions to support each student's (child's) educational success, and (3) the preparation of students with disabilities for employment and other post-school activities.

34 CFR Part 300. Appendix A. Federal Register Vol.64, No. 48. Page 12469

The student contracted viral meningitis as an infant. In March 2000 the parents obtained a neuropsychological evaluation of the student, not because there were indicators of school failure, but because they, having conducted extensive research into the implications of the student's medical history, were alert to possible indicators

of educational problems. The findings of this evaluation led them to refer the student to the PET toward the end of his 7th grade year. The student's teachers had observed no educational concerns. The student was performing well in the classroom, participating actively and making A's and B's in all subjects.

The school convened a PET in a timely fashion to consider this referral. The PET ordered additional evaluation data as required by regulation. (See Maine Special Education Regulations, §9) The PET reconvened to review this material, determine eligibility and develop an IEP. Evaluators personally presented the team with their assessment findings, and participated in discussion with special and regular educators on the implications of these test findings. Regular education teachers who had first-hand knowledge of the student participated in discussions of the student's performance in the general curriculum. And, finally, the parents had the opportunity to be personally and actively involved in every PET meeting at which their son's program was discussed.

The resulting IEP¹ listed the frequency and duration of services the student was to receive, the personnel responsible for providing those services and the goals that were expected to be achieved. The program allowed for the student's involvement and progress in the general curriculum and addressed his reading and organizational deficits. The parents received a copy of this written program within two weeks of its development.

Parents find fault with the fact that the school came to the PET meeting on November 14, 2000 (the meeting in which the IEP was developed) with a draft IEP, and that the final IEP bore little resemblance to that draft. This is precisely what the IEP meeting is about. "Public agencies must ensure that, if agency personnel bring drafts of some or all of the IEP content to the IEP meeting, there is a full discussion with the child's parents, before the child's IEP is finalized". 34 CFR Part 300. Appendix A, Q.32. Minutes of the IEP meeting and the actual comparison of the draft with the final document makes it clear that the school listened and responded to the parents' concerns that the draft IEP did not recommend sufficient intervention to address the student's deficits. The frequency and duration of services was increased based on that concern. The focus of the IEP was changed from "consultation 20 minutes a week" to "direct instruction 90 minutes a week". A goal to address organization was added, and the reading goal was rewritten.

The parents raised objection to the fact that the actual document was not written at the meeting. It is not universally the practice of PET teams to produce IEP documents in final form at the meeting, nor does procedure dictate that they do so. "[I]mposition...of such a requirement would serve only to prolong PET meetings without concomitant benefit to the student or service to the objectives of the IDEA" *Verhoeven v Brunswick Sch. Comm.*, Docket No. 98-400-P-DMC. Unpublished (D. Me. 1999) Regulations require that there be a thorough and complete discussion of

¹ The student's IEP was recently revised. The parents only challenge in this hearing the IEP that was written on November 14, 2000.

the student's needs and that discussion be reflected in the final IEP. If the final IEP failed to capture the discussion from the parents' perspective, they had at least 6 months to notify the district of that fact. There is no evidence that the parents put the district on notice that they found the IEP deficient until early June 2001.

The parents claim that the PET process was flawed because Ms. Stephanie Gautreau did not attend the IEP meeting. They assert that this compromised the procedural integrity of the completed document, since she, as an evaluator, was not in attendance at a critical juncture of the IEP development and had made a specific recommendation about using "visualization strategies" that failed to appear in the completed IEP. Ms. Gautreau² was one of four evaluators in the referral process. There is no requirement that every person who performed an evaluation be present at every, or any, IEP meeting. Regulations require only that "[t]he public agency shall ensure that the IEP team for each child with a disability includes...an individual who can interpret the instructional implications of evaluation results..." 34 CFR §300.344(a)(5). Both Ms. Jones, a Masters level psychological services provider, and Ms. Golding, a Masters level reading specialist and special education administrator, attended the meeting in which the IEP was developed. Both are qualified to "interpret the instructional implications of evaluation results". In addition, Ms. Gautreau, Ms. Jones, Dr. Domino and Ms. Vandermast all attended the October 2000 meeting and discussed their evaluation findings at length. Each of the four provided a complete report of her test findings, observations and educational recommendations. Minutes of the meeting make it clear that there was an open and lengthy discussion of the student's assessments and the instructional implications of that information.

The parents argue that the language of the IEP is vague and subjective and incapable of objective measurement, and therefore fails to meet the procedural threshold required in regulations. Evidence does not support this claim. The actual quality of the IEP language may lack precision, but that does not render it procedurally flawed. The requisite content of the IEP is described at 34 CFR 300.347. The student's IEP contains each of the elements required to be present in an IEP. There is a statement of the student's strengths and the parent's concerns. There is a statement of how the child's disability affects his involvement and progress in the general curriculum, and the program modifications and accommodations required in order for him to benefit from the general curriculum. The IEP describes the special education service to be provided, the amount and frequency of the service, the person responsible for providing the service and the location in which the service will occur. A statement of the student's present level of educational performance is given in each area of need. The IEP contains annual

² The parents assign particular significance to the fact that one of five recommendations made by Ms. Gautreau mentioned the inclusion of "visualization strategies" to help the student's reading comprehension. They have interpreted this to mean that the Lindamood-Bell visualization and verbalizing methodology should have been incorporated into the student's IEP, and the failure of the PET to do so is a violation of procedure. Ms. Gautreau also recommended that the PET consider strategies to address the student's "anxious behaviors". To exclude one or both those recommendations was not a violation of IDEA.

goals and objectives, and a measurement strategy to determine progress toward meeting those goals.

The regulations do not require, as the parents argue, that the language of an IEP be precise or that goals and objectives be “objectively” measurable, only that they be measurable. “[T]here is no legal authority requiring a particular level of specificity in the statement of annual goals” *O’Toole by O’Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233*, 28 IDELR 177:197, 188 (10th Cir. 1998) Likewise, the failure of the IEP to contain “benchmarks” does not render it procedurally flawed. An IEP must contain “[a] statement of measurable annual goals, including benchmarks or short-term objectives”. (see 300.347(a)(ii)(2))

IEP teams may continue to develop short-term instructional objectives that generally break the skills described in the annual goal down into discrete components...[A]s an *alternative* IEP teams may develop benchmarks...

34 CFR Part 300, Appendix A, Q.1. [Emphasis added.]

Lastly, the parents claim that the IEP does not adequately describe the student’s services in that it failed to specify the type and nature of direct instruction. The IEP contains a “statement of the special education and related services...to be provided to the student and a statement of the program modifications...that will be provided for the child to advance...toward attaining the annual goal [and] to be involved and progress in the general curriculum...” 300.347(a)(3)(i)(ii) The student’s IEP states that the student will receive direct instruction from a special education teacher, 90 minutes per week, in the special education classroom. In addition, the IEP lists six specific program modifications that will be provided for the student in the general curriculum. Regulations do not require specific instructional techniques nor methodologies be listed in the IEP.

There is no evidence that the parents were not full participants in the development of the student’s IEP, that the personnel required to attend the IEP meeting failed to attend, or that the content of the document was inadequate. The parent’s disagreement with the language of the IEP does not render it procedurally flawed.

Was the student’s 2000-2001 IEP reasonably calculated to provide him educational benefit in the least restrictive educational environment?

Since the inception of the Individuals with Disabilities Education Act (formerly the Education for All Handicapped Children Act) schools have endeavored to meet the law’s mandate to provide a “free appropriate public education” to students with disabilities. Schools and parents have struggled to define what the law intended by “appropriate” and have often disagreed. In 1982 the Supreme Court considered this issue and determined that a program is found to be appropriate if the school has

“complied with the procedures set forth in the Act”, and has in place an individualized educational program developed through the Act’s procedures which is “reasonably calculated to enable the child to receive educational benefits”.

Insofar as a State is required to provide a handicapped child with a “free appropriate public education”, we hold that it satisfies this requirement by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State’s educational standards, must approximate the grade level used in the State’s regular education, and must comport with the child’s IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act, and if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.

Board of Education v. Rowley, 3 IDELR 553:656, 667, 669 (S. Ct.1982)

Evidence makes clear that the IEP was formulated in “accordance with the requirements of the Act”. Whether or not the parents now agree with the actual content of the document, it was developed in the manner required in regulation and the parents were actively involved in that process.

That the student is able to “achieve passing marks and advance from grade to grade” is not under dispute. The parents do not contest that the student is achieving in his regular classrooms, but reject *the* Rowley standard to determine the merit of the IEP, arguing that his passing marks are a result of his hard work and the parents’ assistance. The parents argue that a decline of the student’s score on the Reading Comprehension subtest of the WIAT, and the Comprehension score on the GORT-3 is incontrovertible evidence that the student regressed during the school year. They argue that this regression proves that the IEP was not appropriate and supports their claim that the district failed to provide the student a free appropriate public education. It is their contention that the student’s IEP must employ an individualized remediation of his reading comprehension deficits, using a particular approach, in order of him to succeed. I do not agree.

There was significant testimony from both the district’s and the parents’ evaluators regarding test results and comparison of test scores from 2000 to 2001. The score on the WIAT reading comprehension subtest showed a decline from 2000 to 2001; the score on the WIAT listening comprehension subtest showed an increase; the score on the comprehension portion of the GORT-3 showed a decline; and the score on the TORC-3 showed an increase. The evaluators disagreed about the relative importance to assign these test scores³. The parents see the scores as positive proof that the student regressed because of the school’s failure to provide

³ Even Dr. Domino was careful not to rush to judgment as to why some test scores declined and others increased.

educational benefit. The school expressed caution in drawing such sweeping conclusions based on test scores, especially without considering other pertinent information about the student's overall performance in the educational setting. School's witness, Ms. Jones made a convincing argument that the student presents an inconsistent evaluation profile, and that over-reliance on the results of one test score should be avoided. Just as "[n]o single evaluation, diagnostic procedure or source of data shall be used as the sole criterion to determine a student's need for special education" schools must look beyond standardized scores to determine program effectiveness. MSER §9.2

The student has shown average to above average performance on standardized achievement tests. Teachers were consistent in their reports that the student was able to maintain A's and B's in his class work during the past year. Classroom observations reported that, although the student's level of anxiety seemed higher than other students during test taking, the student was successful in his classes. Teacher's reported that his assigned grades represented mastery of grade level work as compared to his peer group. He is continuing to maintain this scholastic average. Moreover, the school has not ignored the parents' concerns. The current IEP, revised in September 2001 increased special education services, added additional classroom modifications and rewrote the goals and objectives to reflect his transition into high school and the increased workload that represents.

Parents point to the success of the program provided by the Learning Achievement Center (LAC) over the summer, using the Visualization and Verbalization program, to buttress their argument that this program provided benefit while the school's program failed. But, other than an anecdotal report by the teacher, no information was presented that the student made particular gains using that program. There is no way to conclude that the parents' preferred method will achieve greater success over the techniques chosen by the school⁴. School's witnesses Robison and Golding were convincing in their explanation that using "authentic text" to address reading comprehension deficits provides more meaningful intervention for a school student, especially as he continues through high school.

Finally, the parents argue that the focus of the student's special education program should be intensive reading instruction so that his reading comprehension is commensurate with his verbal cognitive ability. However, the courts have made clear that "educational benefit" is not synonymous with "maximum" benefit.

The IDEA does not promise perfect solutions to the vexing problems posed by the existence of ...disabilities in children and adolescents. The Act sets more modest goals: it emphasizes an appropriate, rather than an ideal, education: it requires an

⁴ The only actual numerical data given by the LAC was improvement of reading speed, an acknowledged strength of the student, on the Newspaper Reading task with 87-100% accuracy. No indication of reading level of that task was given.

adequate, rather than an optimal, IEP. Appropriateness and adequacy are terms of moderation. It follows that, although an IEP must afford some educational benefit to the handicapped child, the benefit conferred need not reach the highest attainable level or even the level needed to maximize the child's potential. See Rowley, 458 U.S. at 198, 102 S. Ct. at 3046-47; Roland M., 910 F.2d at 992.

Lenn v. Portland School Comm., 998 F.2d 1083 (1st Cir. 1993)

Did the Yarmouth School Department violate the student's right to a free appropriate public education by failing to properly implement the 2000-2001 IEP?

The IEP is the basis for educational programming and placement of the student with a disability and must be linked to the general education curriculum. It is not a guarantee of a student's educational progress or a contractual arrangement but does provide a statement of educational goals and objectives, which all school personnel shall make good faith efforts to achieve.

Maine Special Education Regulations, §10.1 (1999)

The student was identified as eligible for special education services in October 2000. His IEP was written and implementation began in November. The IEP called for "direct instruction" in a "special educational classroom" for "90 minutes per week". The parents allege that the school failed to implement the IEP because their son did not receive one-to-one instruction in a reading comprehension program for 90 minutes each week. The IEP did not describe such a program.

"Direct instruction" is defined as "instruction provided by an appropriately certified special education professional or an appropriately supervised educational technician consistent with a student's Individual Educational Program". MSER §5.5A "The ratio of students to each full-time equivalent certified...teacher providing direct instructional services shall not exceed a total of 35 students... No more than eight (8) students may be served at any one time." Id. §5.5C Direct instruction does not equate to individual or tutorial instruction. The evidence bears out the school's position that the student received direct instructional services for 90 minutes each week in the learning center (resource room) with a properly certified special education teacher and educational technician, in accordance with his IEP.

Ninety minutes per week of one-on-one teacher time was never described in the IEP, nor discussed at the PET meetings. Subsequent meetings between the parents and the special education teacher could not have supported that notion. At

no time before the June 2000 PET did the parent indicate that they were unclear of the intent and make-up of the special education program.

The parents characterize the student's time in special education as "left to work on his own on mainstream assignments without direct instruction or remediation from qualified staff". Evidence does not support this contention. A review of the IEP, the recommendations of the parents' evaluator, Dr. Domino, and the testimony of the special education teacher, Ms. Robison, taken together show that the instruction provided in the learning center was not only consistent with the IEP, but incorporated strategies and interventions recommended by Dr. Domino and others. In addition, the instructional techniques employed during the 2000-2001 school year were based on sound educational practice and were designed to address the student's identified needs.

The parent argues that the IEP called for 90 minutes each week of individual instruction to provide remediation for the student's reading comprehension deficits. The IEP meeting minutes and testimony of others attending the meeting do not support that assertion. School personnel were clear that the IEP was designed with the intention to use the student's general curriculum assignments to integrate reading comprehension techniques such as those recommended by Dr. Domino in her March 2000 report, and Ms. Gautreau and Ms. Jones in their September 2000 reports.

The major focus of the parents' argument was that the IEP failed to include the Visualization and Verbalization techniques found in the program offered by the Lindamood-Bell Corporation. School witnesses testified that this particular program was not offered through the district, but that "visualization" techniques were incorporated into the student's instruction. There was no evidence to dispute this claim. The parent asserted that the student made significant gains using this program at the Learning Achievement Center over the summer. There is no way to judge that claim. The narrative provided by the LAC gave an anecdotal summary of the program, with no data upon which to evaluate any progress made by the student in the area of "visualization".

Is the student entitled to compensatory education services as a result of these violations?

Upon receiving test results of the student's reading comprehension scores on the WIAT, the parents immediately requested the school convene a PET meeting in order to secure summer services for the student. The discussion at the PET focused on the regulatory language requiring a district to provide extended year services to a student. There was no evidence presented at the PET that the student met the criteria for such services, and no evidence was presented at the hearing to dispute the PET decision that he failed to meet criteria. See MSER §5.9 The parent proceeded to unilaterally place the student at the Learning Achievement Center for

the summer. The parents then filed for hearing, arguing that they were entitled to reimbursement from the school for having provided this instruction at their expense.

Courts have held that compensatory education is an available remedy under the IDEA. However, such awards must be predicated on a violation of the student's procedural protections. The parents failed to make a convincing case that the school violated procedure in the development of the student's IEP, or failed to design and implement an IEP that was reasonably calculated to provide the student educational benefit. The claim is denied.

V. Order

The school is found to have developed an IEP for the student according to procedures required by regulations, and to have provided the student a free appropriate public education. He is found to have received educational benefit. Request for compensatory education is denied. No order is given with this decision.

Carol B. Lenna
Hearing Officer

October 11, 2001