

State of Maine  
Special Education Due Process Hearing Decision

**Parents v. Bangor School Department, Case No. 01.281**

REPRESENTING THE SCHOOL: Peter Lowe, Esq.,  
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REPRESENTING THE PARENT: David Szewczyk, Esq.,  
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HEARING OFFICER: Carol B. Lenna

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

The case involves a student, a xx year old boy whose date of birth is xx/xx/xxxx. He resides with his parents in Bangor, Maine. The student is eligible for special education services under the category of mental retardation. He currently attends the William Cohen Middle School.

Since entering the public school the student had an educational technician (ed tech) individually assigned to assist him throughout the school day. In September 2001 the student transferred from his neighborhood elementary school to the William Cohen School. His new classroom, a self-contained program for developmentally disabled middle school students, was staffed with a special education teacher and four ed techs that were assigned by the teacher. There was no ed tech assigned solely to the student. The parents objected to this change, claiming the school had made a significant change in the student's program without appropriate notice. In addition, the parents maintained that the school failed to provide the student a free appropriate public education in the least restrictive educational environment. Unable to resolve this dispute the parents requested a due process hearing on November 6, 2001.

The parties met in a pre-hearing conference on December 3, 2001 to exchange documents and witness lists. Documents numbered 1 through 72 were entered into the hearing record. The hearing convened on December 11, 2001 and January 7, 2002. Ten witnesses gave testimony. The hearing record closed on January 17, 2002.

Following is the decision in this matter.

## **I. Preliminary Statement**

The student is eligible for special education services under the category of “mental retardation”. Since beginning public school in kindergarten the student has received special education services. Until the fall of 2001 he had an education technician III (hereinafter referred to as ed tech) individually assigned to him.

At the beginning of the 2001-2002 school year, when he entered sixth grade, the student transferred from his neighborhood elementary school to a public middle school in Bangor. He was placed in a self-contained classroom for developmentally disabled middle school students. The classroom is staffed with a special education teacher and four ed techs. Various therapists work in the classroom as required. None of four ed techs was assigned exclusively to the student.

The PET met in November 2001 for the annual review. The resulting IEP proposed continued placement in the self-contained classroom for a majority of the day, with science, social studies, art, music, gym, lunch, assemblies and recess within the mainstream, with the assistance of an ed tech. Specialized instruction in functional academics, daily living and life skills, community survival and recreation skills, along with speech, occupational and physical therapy are proposed as a direct service in the special education classroom. The parents objected to the IEP.

It is the parents' position that the school changed the student's program in September 2001 without notice by removing the student's individually assigned ed tech. They contend that this has resulted in a decline in his academic and developmental progress in school. They argue that he requires an individually assigned educational technician throughout the school day in order for him to receive a free appropriate public education in the least restrictive educational environment.

It is the school's position that no significant changes were made in the student's program from the spring to the fall of 2001. They contend that the school year began with the same level of service to the student and that the then current IEP was implemented as written. They argue that the proposed IEP, developed in November 2001, is designed to provide the student with a free appropriate public education in the least restrictive educational alternative.

## II. Issues

1. Is the student's proposed IEP reasonably calculated to provide him a free appropriate public education in the least restrictive educational environment?
2. Did the School Department significantly alter the student's program, without written notice or PET involvement, at the beginning of the 2001-2002 school year?
3. Did the School fail to implement the goals and objectives listed in the 2000-2001 IEP?

## III. Findings of Fact

1. The student began receiving special education services in the Bangor schools in September 1994. He attended his neighborhood primary school from kindergarten through third grade, repeating first grade. His IEPs for this period placed him in a regular education classroom with supportive services. An ed tech was assigned to assist him throughout the school day, using a separate curriculum from other students in the class. Speech and language therapy, occupational therapy, physical therapy and adaptive physical education were provided outside the classroom by professional therapists. During this period PET members expressed concern that the regular classroom was not meeting the student's needs. While reports note gains, progress was inconsistent. Some regression of both academic and physical skills from year to year was noted. (Testimony Parent; Exhibits 1-20, 22, 24, 28, 29-30)
2. In September 1999 until June 2001 the student attended a local elementary school for fourth and fifth grades. His IEPs for these years placed him in a special education class for 4 and ½ hours a day with supportive services. Professional staff provided speech and language therapy, physical therapy, occupational therapy and adaptive physical education. An ed tech provided individual assistance in the special and regular education settings. Extended school year services were added to the student's program. PET discussions for both fourth and fifth grades indicate progress was slow with some periods of regression, but that generally the student made gains. (Exhibits 35, 36, 37, 38, 40, 44)
3. The student's triennial evaluations began in March 2001. The school's psychological service provider, Mark Roth, conducted the Psychological Evaluation. On the Stanford-Binet, the student "obtained a Test Composite IQ of 36, which places him at the beginning of the moderate range of intellectual retardation,...a score that is consistent with that of three years ago..., which indicates that [the student] continues to make one year's progress for each calendar year". Scores on the Adaptive Behavior Inventory, as rated by the student's teacher, shows [sic] that the student's adaptive skills "are considerably higher than his measured cognitive level. Scores reflect a great deal of consistency and are in the 'poor' to 'very poor' range when compared to non-

handicapped peers". The student's teacher also completed the Vineland Adaptive Behavior Scales. Results of this assessment show "that [the student]'s skills are fairly even, although a bit stronger in the area of daily living..." Standard scores when reported by age equivalent show that the student's skills are at the one year, eleven month level in communication; 2 years, eight month level in daily living skills and the two-year level in socialization. The evaluator recommends that the student's education program "continue to be developmentally based...", that "new material...be introduced...in a very concrete manner...", and that "his educational program...contain a strong pre-vocational and later vocational component with functional academics inter-relating with the vocational needs". (Exhibit 48)

4. The Adaptive Physical Education assessment was completed by the APE teacher in March 2001. Assessment results using observation and the Ohio State University Scale of Inter-Gross Motor Assessment show that the student has "a 60 second or longer delay in processing directions, low muscle tone and overall low muscle strength and endurance, a dislocating left knee cap, and moderate cognitive delays that affect his gross motor skill performance, balance reactions, coordination, and motor planning". The evaluator recommended that the student "be in a functional life skills program for schooling and physical education". (Exhibit 49)
5. Results of the physical therapy assessment, conducted in April 2001, noted that the student's "gross motor skills are scattered between the 3-4 year old level" with his "skills...impacted the most by his left knee [which is greatly affected by a dislocated patella]". The therapist recommended that the student continue physical therapy one time a week for 30 minutes. (Exhibit 50)
6. The speech and language portion of the triennial evaluation was completed in May 2001. The evaluator noted that "dysfluencies affect [the student's] intelligibility to unknown listeners". Scores on the Peabody Picture Vocabulary Test, a measure of receptive vocabulary, revealed a standard score of 40, with an age equivalent of 2 years, 7 months. Results of the Expressive Vocabulary Test, a measure of expressive vocabulary, revealed a standard score of 40, with an age equivalent of 3 years, 10 months. The student "exhibits an articulation delay which is consistent with his developmental delay. However, his overall intelligibility is compromised by fluency". The evaluator recommended that the student's program "[encourage [him] to observe actions, objects and people within his immediate surroundings and make comments about them, [p]lay games that encourage playful turntaking exchanges, [e]ncourage play between [the student] and peers which is at first adult mediated, [w]ork toward his consistent use of please and thank you, [w]ork toward increasing [his mean length of utterance] to 4.0 words within a year, and to [d]iscuss within the PET a possible neurological evaluation." (Exhibit 53)
7. The PET met on May 8, 2001 to review the results of testing and to discuss future programming. The team discussed the evaluation results, noted gains made and discussed continued programming needs. The PET determined that the then current IEP was still appropriate to meet the needs of the student. The team determined that he would be placed in the self-contained program for

developmentally disabled middle school students at the Cohen School for the 2001-2002 school year. The PET also ordered extended school year services. During the meeting Dr. Shulman, the Director of Special Education, informed the parents that the assignment of ed techs in the district would be different in the coming school year; ed techs would not be individually assigned to students, but rather assigned to individual classrooms and/or teachers. (Exhibit 52, 54; Testimony Shulman, Parent, Platt, Wyman, Johnson)

8. The district offered Janet Platt, the ed tech then assigned to the student, a position as one of the four ed techs in the Cohen program to fill a vacancy. She declined. (Testimony Platt, Shulman)
9. The student transferred to the Cohen Middle School in September 2001, and began attending the self-contained classroom for developmentally disabled middle school students. The classroom was staffed with a special education teacher and 4 ed techs. The student received direct occupational therapy 30 minutes per week, direct physical therapy 30 minutes per week, and direct speech and language therapy 90 minutes per week. The therapists worked with him within the class setting, and directed the teacher and ed techs in carryover techniques between therapy sessions. In addition, the student received adaptive physical education and assisted regular physical education 30 minutes two times a week. The student participated in the mainstream for homeroom, art, music, lunch and recess with the assistance of an ed tech. In the mainstream the student had one ed tech assigned to him for each activity, but not necessarily the same ed tech from activity to activity. Generally, the ed tech was responsible for one other student from the classroom during these activities. (Testimony Wyman, Dyer, Johnson)
10. The student showed regression in both cognitive and physical skills during the beginning months of the new school year. Staff who have worked with the student over multiple years, including his previous ed tech, reported that transitions tended to be difficult for the student and that he showed a pattern of regression in the early part of a new school year. All agreed that the transition to middle school had been particularly difficult. Quarterly review notes for the November 2001 marking period stated that the student had made "limited progress" on 24 of 35 objectives worked on that period. All educational and professional staff testified that the student had begun to show progress within the past few weeks, and had recouped some skills. (Testimony Dyer, Wyman, Johnson, Platt; Exhibit 43, 68)
11. The PET convened on November 7 and 28, 2001 to review the student's program and update the IEP. After lengthy discussions of the student's current program, and the staff and parent's concerns, the team completed the IEP. The goals and objectives in the IEP were agreed upon. The frequency and duration of special education and supportive services was agreed upon. Continued placement in the Cohen School self-contained program was agreed upon. There continued to be disagreement around the ed tech. The parents were clear that they wanted a single, dedicated, ed tech to be assigned to the student throughout the day. The school agreed to assign an individual ed tech to support the student in mainstream science and social studies classes, but not all

- day. Unable to reach consensus on this issue, the parents proceeded with the due process hearing<sup>1</sup>. (Exhibits 58, 64, 67, 68; Testimony Shulman)
12. The proposed IEP, dated November 2001-November 2002, continues the student's placement in the self-contained special education class at the Cohen School. While in the class he will receive instruction in reading and phonological awareness, communication, functional math, community survival, functional living, and self-care. In addition, the student will receive 60 minutes per week of direct speech and language therapy, plus 60 minutes of speech consultation to the special and regular education teachers; 30 minutes per week of direct occupational therapy, plus 15 minutes of consultation to the special education teacher; 30 minutes per week of direct physical therapy; 45 minutes per week of adapted physical education; and 30 minutes of consultation to mainstream teachers from a clinical psychologist. In addition the student will be in the mainstream for Unified Arts, regular physical education, homeroom, lunch and science and social studies. An educational technician will be available to assist him in all settings throughout the school day. (Exhibit 67)
  13. On November 21, 2001, the school referred the student for an Assistive Technology Evaluation in order to address the student's limited oral and written communication and possible recommendations for technology/adaptive supports for his communication. (Exhibits 61, 62)
  14. The student's parents and his special education staff shared information in a home/school notebook. Notes from September 20, 2001 through November 26, 2001 show an almost daily exchange, which included a give and take of educational ideas, self-help needs, and administrative tasks. These exchanges were cordial, with a cooperative tone. (Exhibit 64)

#### IV. Conclusions

The Individuals with Disabilities Education Act (IDEA), its Maine counterpart, and their concomitant regulations, govern the provision of equal education opportunities to all students with disabilities. These laws require that local schools provide students identified as disabled with a "free appropriate public education in the least restrictive educational alternative" which is described in the student's "individualized education program" (IEP).

The IEP is the basis for educational programming and placement of the student with a disability. 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 the school shall make good faith efforts to achieve. [Maine Special Education Regulations, Chapter 101, §10.1] The Pupil Evaluation Team (PET), which includes the parent as an integral part, is the body responsible for the development of an IEP appropriate to the student. [Id. §8.1] In developing

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<sup>1</sup>On November 29 the school sent a letter to the parents offering an evaluation and observation by a licensed psychologist in an attempt to resolve the growing program disagreement regarding the assignment of an individual ed tech to remain as the constant support in the student's educational program. The parents declined.

or revising that IEP the PET shall consider the strengths of the student, the concerns of the parent and the results of the most recent evaluations, including teacher observations. [Id. §10.3; §9.5, §9.6] Each student's IEP is to be developed in accordance with the principle of least restrictive educational alternative. To the maximum extent appropriate students shall be educated with students who are not disabled. Removal to special classes shall occur only when the nature and severity of the student's disability is such that education in the regular classroom with supplementary aids and services cannot be achieved satisfactorily. The student shall be placed in the school the student would normally attend unless the IEP requires a different placement. [Id. §11.1, §11.2]

In the event that a district proposes that the IEP be terminated or significantly altered, parents shall receive prior written notice of the district's intent. Changes that significantly alter an IEP include the addition of new services, a significant change in the amount or frequency of services provided, the termination of previously provided services or a change in the educational goals and or objectives in the IEP. [Id. §10.4; §12.3]

**Is the student's proposed IEP reasonably calculated to provide him a free appropriate public education in the least restrictive educational environment?**

Special Education requires that students with disabilities be provided a free appropriate public education. In 1985 the Supreme Court sought to define the law's intent of "free appropriate public education". In the first of many such decisions the Court 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". *Board of Education v. Rowley*, 458 U.S. 176, 102 S. Ct. (1982)

The Supreme Court's test inquires first, whether a school district has complied with IDEA's procedures, and second, whether the individualized educational program developed through those procedures is reasonably calculated to enable the child to receive meaningful educational benefits. The record in this case reveals no violation of the procedural requirements in the development of the student's 2001-2002 IEP. The parents received timely notice of the time and location of all meetings convened to discuss the student's program. The student's IEP was crafted at PET meetings that included the requisite personnel with the knowledge and expertise to make program decisions. The parents had ample opportunity to be involved in those decisions. Indeed, many parental suggestions were offered and adopted by the PET. Parents received notice of their procedural safeguards, including their right to question decisions made by the district.

The second consideration in determining the appropriateness of a student's IEP is whether the IEP is reasonably calculated to enable the child to receive meaningful education benefit. An IEP is not a contract, but a plan. It is impossible to predict if

a student will receive benefit from any given IEP, so it must be ascertained whether the IEP is likely to, or “reasonably calculated to”, enable the child to benefit from the program described in that program. This IEP appears to meet that test.

The intensity and frequency of special education and supportive services described in this IEP reflect the findings and recommendations of recent evaluations that used valid and reliable assessment tools. The goals and objectives are directly tied to the student’s needs as defined by these evaluations, and observations of professional staff and the parents. Qualified, appropriately certified staff are engaged to implement the IEP. The IEP places the student in an age-appropriate program, and provides him meaningful access to his non-disabled peers. The IEP is responsive to the concerns of the parent and incorporates specific suggestions recommended by them<sup>2</sup>. It is reasonable to assume that the student will benefit from this program.

It is the parents’ contention that the IEP will not confer educational benefit because of its failure to specify that an ed tech be individually assigned to the student. The proposed IEP does provide for individual ed tech support for the student throughout the school day, but does not depend on the assignment of one person to this student, but rather different ed techs who will have responsibility for different aspects of the student’ program. The parents argue that this is not sufficient. They point to the student’s poor performance during the first part of the 2001-2002 school year to bolster this argument, maintaining that in the marking period from September to November 2001, when the student no longer had an individually assigned ed tech, he made limited progress in many of his objectives. While it is true that the student showed limited progress, and indeed some regression, during this period, it cannot be concluded that this result was limited to the change in the assignment of ed tech support.

Evidence supports the school’s position that the student’s limited progress was as much the result of new staff with limited knowledge of the student’s individual learning style, his pattern of regression in a new school year and his transition to a new school routine. Staff who have worked with the student over several consecutive years, including Ms. Platt who served as his ed tech for six years, testified that the student struggles with transitions, always showing regression in the beginning of a new school year. A review of past IEP documents and discussions from PET meetings support this conclusion. He begins the year slowly and recoups skills as he becomes comfortable with new routines and expectations. Opinions were consistent that his transition to middle school had been particularly difficult. Had Ms. Platt made the move to Cohen School with the student, his transition would likely have been easier (and the school did offer that opportunity). But, his poor

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<sup>2</sup> The IEP includes social studies and science in a regular 6<sup>th</sup> grade classroom at the parent’s request. School staff expressed concerns about the student’s ability to gain any meaningful benefit from these classes, but have agreed to include them as part of the student’s program. The student will attend these classes with an ed tech. Meetings with professional staff have begun to plan for this integration.



progress in the early part of sixth grade cannot be attributed only to the absence of an individually assigned ed tech.

The parents argue that the student needs an ed tech, assigned one-to-one all day, who can move through the school day with him to manage the consistency and coordination of his program, as well as the carryover and communication among professionals working with him. They argue he cannot make adequate gains without this support. The school makes an equally compelling argument that the student will benefit from different support personnel working with him. They argue that the student will be better served if he can begin to generalize learning from one staff member to another and not depend so heavily on one individual as part of his teaching team. Decisions of methodology and educational philosophy are not a right conferred to the student by IDEA. See *Rowley*, at 204. (Courts lack the “specialized knowledge and experience necessary to resolve persistent and difficult questions of educational policy” Quoting *San Antonio School District v. Rodriguez*, 411 U. S. 1, 42) See also *Lachman v. Illinois*, 852 F.2d 290, 297. (Parents, no matter how well motivated, do not have a right under the [IDEA] to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child.) *Roland M v Concord*, 910F2d, 983. (Courts should be loathe to become embroiled in captious disputes as to the precise efficacy of different instructional programs.) In the absence of any compelling evidence for one approach over another, there is no reason to overturn the school’s decision to assign ed techs to special education teachers who will in turn use them to meet the goals of individual student IEPs.

The student will have direct support from an educational technician who will assist in the implementation of the goals and objectives in his IEP. He will have an ed tech in mainstream activities and within the special education classroom as his program dictates. The ed tech will not always be the same person, nor will the ed tech always be individually assigned to him. This is not as the parents would wish it, but there is sufficient evidence to reason that the school has proposed an IEP from which the student will benefit.

The IDEA does not promise perfect solutions... The Act... emphasizes an appropriate, rather than an ideal, education: it requires an 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 (1<sup>st</sup> Cir. 1993)

**Did the School Department significantly change the student's program at the beginning of the 2001-2002 school year, without notice or PET involvement?**

The parents argue that the school significantly changed the student's program when he went to Cohen school without an individually assigned ed tech, and that no prior written notice accompanied that change. On May 8, 2001 the PET met to discuss program plans for the student's transfer to middle school for the 2001-2002 school year. The PET concluded that the student would transfer to the Cohen Middle School to attend the self-contained program for sixth, seventh and eighth grade students with significant developmental delays<sup>3</sup>. They also concluded that the current IEP would remain in effect until November 2001.

As part of the discussion at that meeting, Dr. Shulman notified the parents that the district was changing the way ed techs were being assigned; ed techs would no longer be assigned by individual student, but assigned to classrooms or teachers, who would then make assignments based on student need. There is some disagreement whether this information was shared during the meeting or after it, as it did not become part of the meeting minutes, but several PET participants testified that they remember the discussion as part of the meeting. Regardless of when the discussion occurred, there is no dispute that the information was given within the context of the discussion about the student's upcoming transfer. The parents concede that they knew in May 2001 of the district's move away from individually assigning educational technicians, and that this policy change would be in effect at the Cohen school in September 2001. They were aware that Janet Platt, his previous ed tech, would not be moving to Cohen school with him<sup>4</sup>.

The student began the new school year for the first time without an ed tech individually assigned to shadow him throughout the school day as had been the case in previous school years. While that was a significant event in this student's (and his parents') life, it does not rise to the level of a change that "significantly alters" the IEP as defined in regulations. There was no change in "the amount or frequency of services" provided to him, nor was there a "termination of a previously provided service"

The student's IEP stated that he would receive 4 and ½ hours per day of direct instruction from a special education teacher; 90 minutes per week of direct therapy from the speech and language therapist; 30 minutes, two times a week, of direct special physical education from an adaptive physical education teacher; 30 minutes per week of direct physical therapy from a physical therapist; 30 minutes per week of

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<sup>3</sup> The parents maintained that their son has been transferred to a school across town away from his neighborhood school and peers. While mentioned several times, this issue was not raised at hearing. No evidence was offered to argue that the Cohen placement was inappropriate or that the other middle school offered a program better suited to the student's needs. Evidence does show that the parents visited both middle schools and chose the Cohen option.

<sup>4</sup> Janet Platt testified that during the meeting she was offered one of the vacant ed tech positions in the Cohen program. She declined the offer. She provided extended school year services for the student, and informed the parents of her decision toward the end of the summer.

direct occupational therapy from an occupational therapist; and direct instruction 6 hours per day, five days per week, from an educational technician. Evidence makes clear that this is essentially the program that the student received and there was no significant change in the amount of direct instructional service.

The school did not change the *amount or frequency* of the student's services. The student received direct instruction from his teacher, or an educational technician throughout the school day. It was not always the same person, nor does it appear that it was always individual instruction. But, regulations do not define "direct instruction" as individual instruction. It is instruction provided by a properly certified special education teacher or educational technician supervised by that teacher. Ms. Wyman made a convincing argument that the student was engaged in instructional activity guided by the student's IEP goals and objectives throughout the school day. He had direct instruction as required to fulfill the services described in his IEP.

The school did not *terminate a service* previously provided to the student. The IEP states that the student will receive direct instruction from an educational technician six hours per day. "Direct instruction" is defined as a service that is provided by qualified staff. Educational Technicians are defined in regulation as "qualified staff". Special education and supportive services must be provided by qualified staff. The record shows that the services described in the student's program were provided by properly certified and qualified staff, including the ed techs. The student did not have an individual ed tech with him 6 hours per day. Of that there is no dispute. He did, however, have direct instruction throughout the school day provided by either his teacher, one of his therapists or one of the four ed techs in the classroom. He was always accompanied by one of the ed techs whenever he participated in activities in the mainstream.

There was no plan to "significantly alter" the student's program, therefore the school was not required to provide "prior written notice" to the parent of the change in ed tech assignment. The parents were fully informed as early as May 2001 of the district's amendment of personnel policy regarding the assignment of ed techs. This did occur at a PET meeting, and while the parents feel there was not a full discussion of the impact of this policy as a programmatic factor, they were on notice that there would be no single ed tech individually assigned to the student for the coming school year. The parents made no move to question or intervene based on that knowledge until the student's annual review<sup>5</sup>.

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<sup>5</sup> Even if the school had been found to have violated the "Prior Written Notice" safeguard as a procedural flaw, it must have "seriously hampered the parents' opportunity to participate" before rising to the level of compensation sought by the parents. *See Roland M* at 994. Procedural safeguards are the bedrock of the parents' right to question. Whether they receive notice in writing or verbally, the parents have to act on the information they challenge. They did not do so.

**Did the School fail to implement the goals and objectives listed in the 2000-2001 IEP?**

There was no evidence presented that the school failed to implement the goals and objectives in the IEP. It is clear that the student did not thrive in the early months of the 2001-2002 school year. Staff testified that he was not talking, not engaged in classroom activities and appeared to have lost a number of skills previously mastered. As a result the student made only limited progress toward meeting many of the objectives listed in his IEP. But, the findings do no support that the school failed to provide instruction toward the achievement of those goals. There was no evidence to suggest that the school did not implement the services listed on the face sheet of the IEP.

The student's progress has been inconsistent throughout his school career, but progress has occurred. Recent testing shows that the student has maintained developmental growth commensurate with his cognitive abilities and has "continued to make...progress". A review of consecutive IEP documents shows that the student was considered to be "making progress" or "making limited progress" on most objectives.

At the heart of this dispute is a deep philosophical disagreement about the degree to which students with disabilities should be educated in the mainstream. The parents have a preference for a 'total inclusion' model and have advocated for this throughout the student's school career. Congress clearly has a preference for the mainstream and went to some trouble to assure that disabled students had access to the same educational opportunity as non-disabled students. Service continuums start with the most inclusive setting, the regular classroom. Movement out of the regular classroom may be done only when the student's needs are such that they cannot be met within the classroom.

But the IDEA only requires mainstreaming to the "maximum extent appropriate." 20 U.S.C. §1412(5). This language is far from absolute and invites a balancing approach. "The mainstreaming requirement was developed in response to school districts which were reluctant to integrate mentally impaired children and their non-disabled peers. It was not developed to promote integration with non-disabled peers at the expense of other IDEA educational requirements." *Murphysboro*, 41 F.3d at 1168. The IDEA's twin goals, tailoring each child's placement to her special needs and maximizing integration with non-disabled students, are frequently difficult to reconcile, and the statute itself provides little guidance. It does recognize that there are circumstances where regular education is not appropriate. See 20 U.S.C. § 1412(5)(B). The vexing issue is when, and to what degree, segregating a student in special education is permissible.

*Beth B v. Lake Bluff*, 35 IDLR 150. (N.D. Ill., 2001)

There will be no easy answer in this debate. The school and parents will undoubtedly continue the dialogue in their joint efforts to find the right balance between meeting the student's need to have an appropriate special education program and his right to be educated in the least restrictive environment.

#### **V. Order**

**The 2001-2002 IEP is found to be appropriate to meet the needs of the student. The school shall proceed to implement it as written. No further order is given with this decision.**

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Carol B. Lenna  
Hearing Officer