

STATE OF MAINE

SPECIAL EDUCATION DUE PROCESS HEARING

Case # 02.100, Bangor School Department v. Parents

July 20, 2002

REPRESENTING THE FAMILY:	Dawn Fernandez
REPRESENTING THE SCHOOL:	Peter D. Lowe. Esq.
HEARING OFFICER:	Peter H. Stewart, Esq.

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

The hearing was requested by the school. The prehearing conference was initially scheduled for April 23 and the hearing set for May 1, 2002. At the request of one of the parties, the prehearing was rescheduled until April 29. At that prehearing, the parties agreed to May 8 as the hearing date. Due to the unavailability of a court reporter, the May 8 hearing was canceled. After extended discussions with the parties, the hearing officer set the hearing date for June 11, the first of the days offered by the family on which the school's witnesses and advocate were available to appear. The hearing was held on June 11. The parties submitted written closing arguments to the hearing officer.

I. Preliminary Statement

The dispute between the parties involves the scheduling of Pupil Evaluation Team (PET) meetings for the student. The student's mother requested and now insists that PET meetings be scheduled during the school's instructional day. She asserts that her work schedule and her commitments at home make it difficult for her to attend PET meetings at times other than during the school's instructional day. The mother asserts that Maine Special Educational Regulation (MSER) 8.4, which states in part that PET meetings "...shall be scheduled at a time and place mutually agreed upon by the parents and the school...", enables her to compel the school to hold the PET meetings for her son during the instructional day.

The school asserts that the language of MSER 8.4 does not give the family the right to determine unilaterally when a PET will be scheduled for a particular student. The school has a general policy as to the scheduling of PET meetings for all eligible student[sic]. This policy provides that such meetings be held outside of the school's instructional day. PET meetings are generally scheduled just before or just after the regular instructional day. The reason for the policy is the school's desire to keep classroom teachers teaching in the classroom. Further, the school states that it has worked hard to accommodate

the needs of this family and has demonstrated both good faith and flexibility in its attempts to schedule PET meetings for the student.

II. Issue

The single issue to be decided at this hearing is whether the Bangor School Department has complied with Maine Special Education Regulation 8.4 with regard to the scheduling of Pupil Evaluation Team meetings for the student.

III. Findings of Fact

1. The student is eligible to receive special education services under the category of Other Health Impaired; he attends the William S. Cohen middle school operated by the Bangor School Department. (Testimony of Shulman, Cookson, mother)

2. Prior to the late winter of 2001-02, the PET meetings for the student had been scheduled and held either before or after the school's instructional day which ran from 7:45 AM to 2:30 PM. (Stipulation at hearing)

3. On February 12, 2002, the mother informed the school by letter that she was "only available (to attend PET meetings) during school hours due to a scheduling conflict." (S - 19)

4. On February 25, 2002, the mother informed the school that, "... I need a morning PET from 7:30 to 9 AM. My days off are March 5th, 15th and the 19th. Due to schedule conflicts I can not do it at other times." (S-27)

5. The mother's work day begins at 7:00 AM and ends at 3:00 PM. On one week, she has Tuesday as a day off; on the next week her day off is Friday. (Testimony of mother)

6. After work, the mother has to care for the student and his brother, a child with special needs. Both of her children have numerous after school appointments with service providers; the mother is responsible for transporting her sons to these appointments. She attends between 10 and 15 such appointments each month. (Testimony of mother, S-36)

7. The Bangor School Department is responsible for providing special education services to approximately 600 - 650 students each year and schedules approximately 1600 and 1700 PET meetings yearly. (Testimony of Shulman)

8. The school has a general policy regarding the scheduling of PET meetings. The policy is that such meetings be scheduled outside of the instructional day in order to minimize the disruption that would occur if teachers were required to leave regularly scheduled classes to attend the PET meetings. (Testimony of Shulman)

9. There are exceptions to the general policy of scheduling PET meetings outside the instructional day. During school year 2001-02, there were fourteen PET meetings scheduled between 8:15 and 2:30. Ten of those meetings were to develop transition IEPs for 8th graders moving to high school in the fall of 2002 and, therefore, required the participation of high school staff. They were all held during a two-day period in April and substitute teachers were hired for those days. The remaining four PET meetings held during the instructional day

happened on occasions when the special and regular education teachers involved had free periods at the same time, thus avoiding any disruption of instructional time and the need for hiring any substitute teachers. (Testimony of Shulman, S-39)

10. The school made a series of attempts to accommodate the mother's scheduling needs. The school agreed to start the PET meeting at 3:15 PM, as requested by the mother, whose work day ended at 3:00 PM (Testimony of Cookson, S-23). The school also offered to start the PET meeting at 7:30AM (S-24), offered to arrange "telephonic participation" for the mother (S-25) and offered a series of shorter meetings scheduled before or after school during the same week. (S-25)

11. When asked why it wouldn't be possible to hold a PET meeting on one of her Friday mornings off, and then, if necessary, continue it on the following Tuesday morning, another day off, the mother responded, "That's too disruptive...why should we have to go two times when we can get it all done in one meeting."

12. The principal of the William S. Cohen Middle School stated that in fifteen years of scheduling PET meetings he could not recall another instance in which the school and parents of a special education student could not find a "mutually agreeable time" to have a PET meeting. (Testimony of Cookson)

IV. Discussion

The question presented here for decision is whether the actions of the school regarding the scheduling of the PET meetings for the student violate Maine Special Education Regulation 8.4, which states, in relevant part, that:

Meetings of the Pupil Evaluation Team shall be scheduled at a time and place mutually agreed upon by the parents and the school to ensure that one or both parents of a student with a disability are present. If the parent is unable to attend a meeting, schools may use a conference call or individual telephone call to ensure parental participation.

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P.E.T. meeting may be conducted without a parent in attendance if the school in [sic] unable to convince the parents that they should attend..

This regulation clearly anticipates that a school and the parents of a child eligible for special education services in Maine cooperate, somehow jointly participate, in the setting of the time and place for a PET meeting. In most cases, that is what happens. Unfortunately, that has not happened here and this hearing officer must decide whether the school's failure to schedule the PET during the school's instructional day, as demanded by the parent, violates MSER 8.4. Under the facts as presented at the hearing, I conclude that no violation has occurred. MSER 8.4 does not give parents the right to set, unilaterally, the time and place of a PET meeting.

This conclusion is supported by both factual and legal considerations. On the facts, I note that the parent was the party seeking the change in the time

of the PET meetings. In earlier years, and earlier in the 2001-2002 school year, the school scheduled PET meetings for this student just before or after instructional time, in accordance with the policy of the Bangor School Department. The mother attended those PET meetings until February, 2002, when she first informed the school that she could only attend PET meetings scheduled during instructional time on her days off from work. The mother explained that her insistence on meeting only on such times was caused by the difficulties she had in getting released from work and in getting help after school with her children. However, she testified that she scheduled and attended from 10 to 15 other after school appointments each month for the student or his brother.

The mother also offered no reasonable explanation for her refusal to accept any of the options offered by the school. The school offered to start the meetings earlier in the morning, so there would be more time prior to the instructional day and agreed with her request to start them later in the afternoon to make it possible for her to get from work. The school also suggested a series of meetings, scheduled close together, to accommodate the mother's request for a longer meeting. The school offered to arrange "telephonic participation" in the PET meeting. The mother rejected all these attempts to accommodate her scheduling difficulties, and persisted in her demand that the meetings be scheduled during instructional time. Particularly troubling is the reason the parent advanced for rejecting the suggestion that the meeting be scheduled before or after school instructional time on a Friday day off, and continued if necessary before or after school instructional time on the following Tuesday, also a day off for the mother: "Why should we have to go two times when we can get it all done in one sitting." First, it is impossible to know before a meeting how long it will take; it might have been "all done in one sitting". Secondly, if the PET did require several hours to complete its work, it couldn't be done in "one sitting" without keeping the teachers and other members of the PET out of their respective classrooms and offices during the instructional day. Both parties have real concerns here, extra trips and inconvenience for the parents balanced with an uninterrupted instructional day at school. On this issue, however, I find that the school's concerns outweigh the parents.

I also conclude that the school made real attempts to accommodate the parent's needs regarding the scheduling of the PET meetings for the student. The school was reasonable in two ways. The concern the school advanced for seeking to minimize interruptions of the school's instructional day is a legitimate one, particularly in light of the large number of PET the school must conduct each year. And the school's attempts to find a solution for the parent's problems were also reasonable. The school has met any requirement that MSER 8.4 may impose upon it to act reasonably to reach a "mutual agreement" with parents as to a time and place for a PET meeting, and has displayed both good faith and flexibility in doing so.

The conclusion that there is no violation here is also supported by the language of the regulation itself. MSER 8.4 does not contain any requirement that the parent attend the PET meeting at all. In the first paragraph, the regulation recognizes that a school has the authority to schedule a PET meeting at a time or place that makes it impossible for the parent to attend and provides a remedy for that situation: "If the parent is unable to attend a meeting, schools may use a conference call or individual telephone call to ensure parental participation." Here, the school offered the parent the option of participating telephonically in a PET, though that option was never exercised. Additionally, in the last paragraph, MSER 8.4 expressly recognizes that a school may not only schedule, but also conduct, a PET meeting without a parent present at all. In that instance, a school is merely required to keep "a record of its efforts to

arrange a mutually agreed upon time and place...." Both these provisions undermine the parent's argument that MSER 8.4 gives them the authority to compel the school to schedule a PET meeting at a particular time or place.

V. Decision

For the reasons which are set forth above, I conclude that the Bangor School Department did not violate the provisions of Maine Special Education Regulation 8.4, nor any applicable provision of federal special education regulations of which I am aware, in regard to the scheduling of Pupil Evaluation Team meetings for the student.

VI. Order

Because there is no violation here, no order will be issued in this matter. However, I am certain that it is clear to the parties that for so long as the student remains in this school system and is eligible for special education services, the parties remain under all the obligations and responsibilities imposed upon each by federal and state special education law and regulations.

Peter H. Stewart, Esq.
Hearing Officer

Date

WITNESS LIST

FOR THE SCHOOL:

DR. MURRAY SHULMAN, Director of Pupil Services, Bangor School Department

RICHARD COOKSON, Principal, William S. Cohen School

FOR THE FAMILY:

Mother

RICHIICE STEVENS, PET Coordinator, Bangor School Department

EVIDENCE

FOR THE SCHOOL:

Exhibits S-1 through S-39

FOR THE FAMILY:

Exhibits P-1 through P-21