

STATE OF MAINE

SPECIAL EDUCATION DUE PROCESS HEARING

Parent v. Sullivan (Schoodic CSD), Case #02.164

JULY 31, 2002

REPRESENTING THE FAMILY: The family appeared pro se.

REPRESENTING THE SCHOOL: Eric R. Herlan, Esq.

HEARING OFFICER: Peter H. Stewart, Esq.

I. Preliminary Statement

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

This case has its roots in a complaint filed by the father, pursuant to 20-A MRSA 7206, in March of 2002. The Department of Education appointed a complaint investigator who, after interviewing witnesses and reviewing relevant documentary evidence, issued her report on April 18, 2002. Maine law provides that such reports may be appealed by requesting a due process hearing within 30 days from receipt of the report. The father filed a timely appeal, which has led to this due process hearing. A pre-hearing conference was held on June 24, 2002, and the hearing was held on July 2, 2002. While the father had a variety of concerns about the Complaint Investigation Report, he challenged primarily the compensatory education aspect of the remedy ordered by the complaint investigator. The parties made oral closing statements at the close of the evidence and were offered the opportunity to submit additional written post hearing statements. The hearing officer received a submission from the school on July 10, after which the record in this matter was closed.

II. Issue

The issue in this matter is whether the compensatory education services ordered by the complaint investigator, and found in paragraph 3 of the "Corrective Action Plan" (CAP) section of the Report, provide an adequate remedy to the student.

III. Findings of Fact

1. At the time this matter arose, the student (DOB: xx/xx/xxxx) was in the seventh grade and had been enrolled in this school system for most of his educational career, with a relatively short enrollment in a Florida school system. (Testimony of father; P-17, p.4; S-121)

2. Prior to school year 2001-2002, the student was educated in regular education classes, supplemented by certain services provided pursuant to a

Section 504 accommodation plan. The 504 plan was developed jointly by the school and the father. (Testimony of father; P-17, p. 4; S-116, 123 to 126)

3. In grades 4 and 5, the student received final grades of A's and B' [sic] for all subjects. In grade 6, the student received final grades ranging from A to C-. (Testimony of father; P-17, p.4; S-12, 121)

4. In the 1st quarter of seventh grade, the student received 2 A's, 1 B, 3 Cs, 2 D's and 1 F; in the 2nd quarter, 2 A's, 1 B, 2 C's, 3 D's and 1 F; in the 3rd quarter, 3 A's, 1 B, 3 C's, 1 D and 2 F's; in the 4th quarter, 4 A's, 3 B's, 3 C's, no D's and 1 F. (Testimony of Tracy, S-159)

5. Toward the end of the student's sixth grade year, on March 29, 2001, the father submitted to the school a referral for special education services for the student and, on April 27, 2001, gave written consent to the school to conduct an individual evaluation of the student. The evaluation was conducted on June 13, 2001. (P-17, p.4; S-98)

6. A Pupil Evaluation Team (PET) meeting convened on December 17, 2001, to review the student's situation and determine whether he was eligible for special education services. At that time, the student had completed, and had received grades for, the first quarter of his seventh grade year. This PET concluded that the student was not eligible to receive special education services as a result of a Specific Learning Disability. A copy of the minutes of the 12/17/01 PET was mailed to the parent of [sic] 2/25/02. (S-93,94; Testimony of Spaulding and father)

7. The father filed a complaint with the Department of Education on March 12, 2002, challenging the failure of the school to identify the student as eligible for special education services. The Department appointed a complaint investigator who issued her report on April 18, 2002. The report ordered the school to convene a PET meeting, find the student eligible for special education services under the category of Other Health Impaired, and develop an IEP for him. The report also ordered the school to provide "two days per week (one and a half hours per day after school) of compensatory education for the instruction time lost since December 17, 2001." (P-17, pps.1 to 8)

8. The PET met on May 1, 2002 and developed an IEP for the student. The IEP called for certain accommodations/modifications. The only direct services the IEP provided for the student were, "20 minutes per day in Resource Room for homework support" from 5/01/02 until 4/30/03. The father gave written consent to this placement and has not challenged the IEP. (S-43 to 51, 52).

9. Since at least April, 2002, the school has operated "Gear Up", an after school program offering individualized instruction and assistance to students Monday through Thursday, for one and a half hours per day. While the program is open to all students and attendance varies from day to day, five students per day is about normal. There is at least one regular education teacher at each Gear Up session; each teacher is paid a stipend. The instruction is individualized not only because of the small number of participants, but because the Gear Up teachers also teach the same children during the school day and, therefore, know what problems they are having. The student's regular education Language Arts teacher was also one of his Gear Up teachers. (Testimony of Spaulding, Hayes, Tracy)

10. As a result of the compensatory education order contained in paragraph 3 of the complaint investigation report, the school offered the student the Gear

Up program two days per week, for a total of three hours each week. The student could have attended Gear Up as many as four days per week, for a total of six hours each week. The school's special education director interpreted the complaint investigation order to require that compensatory education be offered to the student for "the rest of his time at Mt. View..." which is expected to be through the 2002-2003 school year. (Testimony of Spaulding)

11. At the PET meeting held on May 1, 2002, the team discussed the compensatory education issue. The school offered the Gear Up program two days per week and thought that the father had agreed to it. The father, however, requested a due process hearing by filing a Dispute Resolution Request Form dated May 12, 2002 with the Department of Education. (Testimony of Spaulding, father)

IV. Discussion

In the report under appeal, the complaint investigator concluded that the 12/17/01 PET incorrectly found that the student was not eligible for special education services. She ordered the school to convene a PET, declare the student eligible to receive special education services and provide compensatory education in the amount of two one and a half hour sessions each week to make up for "the instruction time lost since December 17, 2001." The question that must be resolved here is whether that remedy adequately compensates the student, under the facts and circumstances of this case. For reasons which are discussed below, I conclude that the remedy ordered by the complaint investigator amounts to adequate compensatory education for the student.

There are two basic aspects in which compensatory education services can be inadequate: the services can be of the wrong kind or they can be provided in the wrong amount. The situation here involves a school's failure to identify a student as eligible for special education in a timely manner, then a period of time during which no services were provided, and finally the implementation of an appropriate IEP. In such a situation, the key to resolving questions about the adequacy of the "kind" or "amount" of compensatory education services is found in the IEP eventually developed for the student.

In this case, the IEP developed for the student by the PET which met on May 1, 2002, called for modifications in the classroom and in testing procedures, as well as providing a single direct service to the student. That service was "20 minutes per day in Resource Room for home work support". The 20 minutes was broken into two periods, 5 to 10 minutes in the morning and 5 to 10 minutes in the afternoon, of consultation time with one of several teachers identified in the IEP. The student was supposed to show, in the afternoon, that he understood what his homework was for the evening. In the morning, he was supposed to check in at the Ressource[sic] Room and show that that he had completed the previous day's homework. In addition, the IEP proposed 10 minutes of basketball with his special education teacher twice a week as a reward for getting his work done regularly. That is the extent of the direct service the student was entitled to pursuant to his IEP developed by the May 1 PET. In my view, the direct service contained in the May 1 IEP describes and limits both the kind and amount of services the student lost as a result of the failure of the December 17, 2001 PET to identify him as eligible for special educational services. Therefore, the direct service contained in the IEP may be used as the standard to determine the adequacy of the compensatory education remedy ordered by the complaint investigator, both as to "kind and "amount" of instruction time lost.

First, the May 1 IEP describes the "kind" of special education service which the student did not receive, and for which he must therefore be compensated, as morning and afternoon visits to the Resource Room where the student would receive "home work support". That support consisted largely of providing someone in the Resource Room whom the student could visit in the afternoon to show he had his homework assignments for the day, and visit again in the morning to show that he had completed his homework. The question is whether the "Gear Up" program provides an equivalent "kind" of service to the student. I conclude that it does. Gear Up is clearly well suited to serve students who need help with organizing and completing homework assignments. It meets after school when the student can not only identify his homework assignments, but can also work on them with a teacher there to help if needed. While the Gear Up program does not offer the morning check in contained in the IEP, the student has the opportunity during each session to complete at least some of his homework. Indeed, there are ways in which the Gear Up program provides the student with more in the way of support with homework than does the IEP. The IEP provides merely regular check-in opportunities for the student. Gear Up offers a certified teacher, sometimes - as in the case of his Language Arts teacher - his regular education teacher, who is able to work with the student in a small group to provide nearly one-on-one help with whatever problem the student may encounter with either homework or daily class work.

The next question is whether the Gear Up program offers the student at least an equivalent "amount" of educational service to that provided in the IEP. Again, I conclude that it does. The IEP requires that the student receive "20 minutes per day" of direct educational services. Twenty minutes per day amounts to 100 minutes in direct service per five day school week. The complaint investigator ordered that compensatory education be provided twice a week, for one and a half hours each day. Gear Up meets for 90 minutes after the school day on four days each week. If the student attends even two Gear Up sessions each week, he will receive 180 minutes of direct service, or nearly double the amount of direct service he currently receives weekly pursuant to his IEP. Therefore, on a weekly basis, the Gear Up program passes muster in terms of the amount of compensatory education provided to the student.

The final question is whether the school is offering the Gear Up program over a sufficient number of weeks to compensate the student for the "instruction time lost" as a result of the school's belated identification of him as eligible for special education services. I find that the period of time in which the student lost "instruction time" was from December 17, 2001 to April 30, 2002. . This is a period of approximately 20 weeks, less vacation time. It is not necessary to determine the exact number of weeks involved because the Gear Up program will be available to the student through the end of the 2002-2003 school year. There are approximately 35 weeks of academic instruction per school year. The Gear Up program has already been available to the student from May 1 until the end of 2001-2002 school year, about 7 weeks. Combining these two academic years, Gear Up will be available to the student a total of approximately 42 weeks, or more than twice the number of weeks during which the student suffered "lost instruction time." Not only is the school offering the student, on a weekly basis, nearly twice the amount of instruction time he lost each week, the school is offering that instruction for more than twice the number of weeks over which the loss occurred. The compensatory education services provided by the school therefore far exceed the "amount" of services that would be required to adequately compensate the student for the instructional time lost, as demonstrated by the facts of this case.

V. Decision

Because of the school's interpretation of the compensatory education order contained in the report of the complaint investigator, and the school's express commitment to make the Gear Up program available to the student throughout the coming school year, 2002-2003, I have reviewed paragraph 3 of the corrective action plan in the report as if it contained such a directive. For the reasons discussed above, I find that the compensatory education order in the report, as implemented by the school, adequately compensates the student for the instructional time lost as a result of the school's failure to identify him as eligible for special education services on December 17, 2001. Consequently, I find no violation.

VI. Order

Because no violation has occurred here, no order need be issued. The school, of course, remains obligated to comply with the terms of the Corrective Action Plan, including paragraph 3 of the CAP as described in Section V above.

Peter H. Stewart, Esq.
Hearing Officer

Date

DOCUMENTARY EVIDENCE

FOR THE FAMILY:

Exhibits P-1 through P-32

FOR THE SCHOOL:

Exhibits S-1 through S-176

WITNESS LIST

FOR THE FAMILY:

Father

Friend of the family

FOR THE SCHOOL:

Ralph Spaulding, Director of Special Education, School Union
96/Schoodic CSD (Mt. View School)

Amon Hayes, Jr., Teacher, Special Education, Mt. View School

Stacie Tracy, Teacher, Language Arts, Mt. View School

William Dove, Principal, Mt. View School