

**STATE OF MAINE**  
**SPECIAL EDUCATION DUE PROCESS HEARING**

December 21, 2003

Case # 03.123, Parents v. SAD #22

REPRESENTING THE FAMILY:                 Matthew W. Evans, Esq., MBA

REPRESENTING THE SCHOOL:                 Eric R. Herlan, Esq.

HEARING OFFICER:                             Peter H. Stewart, Esq.

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This hearing was held, and this decision was written, pursuant to Title 20-A MRSA 7202 *et seq.* and 20 USC 1415 *et seq.* (IDEA), and the regulations accompanying each.

The student's mother requested this hearing by filing a Dispute Resolution Request form with the Maine Department of Education. That form was signed on October 6, 2003 and was received by the Department on October 8, 2003. The case involves the student (DOB: xx/xx/xxxx) who lives with her mother and father within Maine School Administrative District #22. The student attends xx in SAD #22 and, because she has been diagnosed with Autism Spectrum Disorder, is [sic] receives special education services. A pre-hearing conference was held on November 6, 2003. The hearing required four days of testimony, the last of which was November 25, 2003. During the hearing, the parents presented six witnesses and introduced documents identified as P 1 – 105 into the record, while the school presented 6 witnesses and introduced documents identified as S 1 – 512 into the record. Also in the record is the Dispute Resolution Request form that initiated this proceeding. The parties submitted written closing arguments that were received by the hearing officer on or before December 10, 2003. The record was closed on that date.

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**STATE OF MAINE**

**SPECIAL EDUCATION DUE PROCESS HEARING**

December 22, 2003

Case # 03.123, Parents v. SAD #22

REPRESENTING THE FAMILY: Matthew W. Evans, Esq., MBA

REPRESENTING THE SCHOOL: Eric R. Herlan, Esq.

HEARING OFFICER: Peter H. Stewart, Esq.

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**I. PREMILINARY [sic] STATEMENT**

This case involves a xx-year-old girl, eligible for special education services under a diagnosis of Autism Spectrum Disorder, who is currently in her xx year at school. Prior to entering xx, she had been receiving services under the auspices of the Child Development Services system, the program that delivers IDEA early intervention services to eligible Maine children. In this case, the parents raise both substantive and procedural challenges to the Individualized Education Program developed for their daughter for the current school year.

Substantively, the parent's [sic] argue that their daughter's IEP is not reasonably calculated to provide her with educational benefit because it calls for a reduction in certain services, without supporting data, from the level that was provided to their daughter while she was in the CDS system. Procedurally, the parents assert that the school failed to provide them with a meaningful opportunity to participate in the Pupil Evaluation Team process and failed to provide them in a timely fashion with certain documents related to the PET/IEP process, specifically a Notice of Program Change and an IEP, complete with goals and objectives.

The school's position is that the IEP is reasonably calculated to provide the student with meaningful educational benefit. The school asserts that, in fact, the student is thriving in her first year at school under the IEP designed for her as a result of the process now under challenge. The school rejects the parents' claim that they did not have an opportunity to participate in the PET process, citing their extensive participation in the five PET meetings that were held prior to the hearing. Finally, in response to the parents' argument that the school was untimely in providing the Notice of Program Change and a completed IEP, the school makes alternative arguments. First, the school asserts that it has complied with IDEA timelines. Second, the school argues that any violation that may have occurred was merely technical in nature, and did not result in any educational harm to the student. In either alternative, the school asserts that no violation of the IDEA occurred and that no remedy is justified.

## II. ISSUES

1. Is the Individualized Educational Program that was developed for the student reasonably calculated to provide her with meaningful educational benefit, as required by the IDEA?
2. Were the parents of the student provided a meaningful opportunity to participate in the Pupil Evaluation Team meeting process, as required by the IDEA?
3. Did the school violate the IDEA by failing to provide the parents with a Notice of Program Change form, or a complete IEP, in a timely fashion?

## III. FINDINGS OF FACT

1. The student is a xx-year-old girl diagnosed with Autism Spectrum Disorder who is in her xx year in SAD #22. She has been determined eligible for special education services as a result of her autism and has been receiving such services since her enrollment at school. (Record: Dispute Resolution Request form, (DRR), Parents' Exhibit, (PE) – 75, School's Exhibit (SE) – 90; Testimony: Mother).
2. Prior to entering xx, the student had been receiving a variety of services through Child Development Services, an entity that provides IDEA services to eligible pre-school children in Maine. The services that the student received from CDS program included Occupational Therapy (OT), Physical Therapy (PT), and Speech and Language Therapy (S/L). The parents were comfortable with the kind and amount of services that were provided to the student by CDS. (Record: SE 356-481; Testimony: Mother, Father)
3. Beginning in April of 2003, five separate PET meetings were convened to discuss and develop an IEP for the student for school year 2003-2004. PET meetings were held on 4/11/03.[sic] 5/22/03, 8/19/03, 9/9/03 and 10/2/03. Both parents attended every meeting. (Record: SE 50-61, 73-77, 90-122, 137-143, 212-222; Testimony: Mother, Father, Carrie Thurston, Kristen Shorey)
4. The student's mother and father are educated, informed and articulate people who are committed to their daughter, her development and her education. They were active and informed participants in each of the five PET meetings held prior to this hearing. (See, Record and testimony citations in paragraph 3 above and, additionally, SE 144-180, transcript of 5/22 PET meeting.)
5. The 2003-2004 school year began on 8/26/03. The last PET meeting before the start of school was held on 8/19/03. At this meeting, the amount of

occupational therapy (OT) that the student required was discussed at some length. The school's occupational therapist initially recommended 30 minutes/week of direct services and 60 minutes/month of consultative services. The student's mother vigorously expressed her conviction that her daughter needed more OT each week. In response to the mother's concerns, the school's OT changed her recommendation from 30 to 60 minutes/week for the first month of school, to be reduced to 30 minutes/week after the month if the reduction seems [sic] appropriate at that time. The PET also discussed the physical therapy (PT) needs of the student. In response to concerns expressed by the parents, Carrie Thurston, the Director of Special Education for SAD #22, added two hours of PT consultation time for the first month of school, in addition to 60 minutes/week of direct services already proposed by the school. The 8/19/03 IEP called for Speech and Language Services to be provided in 30-minute sessions, three times each week.

This IEP provided for the student to be mainstreamed in the regular classroom just a little less than 50% of the time. For the balance of the school day, the student would be receiving either special education in the resource room or the "pull-out" supportive services, the OT, PT, and S/L therapy mentioned earlier. While in the regular classroom, the student is to be accompanied by special education staff, either the special education teacher or an Educational Technician (Ed Tech) trained by the special education teacher. While the parents expressed disagreement with the level of Speech and Language services provided in this IEP, the student's mother signed a Consent for Placement form at the meeting (Record: SE 89-93, 116-120; Testimony: Carrie Thurston, Kristen Shorey)

6. A fourth PET meeting was held on 9/9/03 to address parental concerns about S/L services. This PET meeting also engaged in a general review of the student's progress and status after her first few weeks at school. Generally, school staff reported that the student was making a good transition into the program set up for her at xx. Kristen Shorey, special education teacher, thought the student was doing "very well" in her class activities and at lunch. Her regular education teacher, Dawn Moore, remarked that the student was participating in the morning activities and seems [sic] "much better able to follow along." The parents requested more S/L direct services for the student; the school continued to support the existing recommendation of 90 minutes/week but offered to add 60 minutes/month of S/L consultation time. The school agreed to the mother's request that this additional consultation time be written into the IEP. A transportation issue was resolved without significant debate. The parents did not dissent to any aspect of the 9/9/03 IEP. (Record: SE 73-80)
7. A fifth PET meeting was held on 10/2/03, as scheduled by the 8/19/03 PET, to review the student's program in general, with particular emphasis on the level of OT services. Again, as at the 9/9/03 PET, both regular and special

education teacher reported that the student was doing very well in xx, was becoming more verbal and more involved in events at school, but still somewhat hesitant to interact with her peers. The mother reported to the PET that her daughter “seems happy and shows a willingness to come to school.” The specialists (S/L, OT, Ed Tech) working with the student described making good progress with her in their respective areas. The amount of OT was discussed. Pursuant to the 8/19/03 IEP, the student received 60 minutes of direct services each week, plus 60 minutes of consult time each month, with the possibility that direct OT services could be reduced to 30 minutes each week depending on the results of the first month. At this meeting, just a little more than a month into the school year, the school’s OT, Jennifer Cammack, recommended reducing direct OT services to 30 minutes/week and consultative OT services to 30 minutes/month. Ms. Cammack explained that the work she was doing with the student was particularly intensive, and that to do it for an hour was too demanding for the student at this time. The parents did not accept this recommendation, expressing their concern that the progress that the student is [sic] currently making under the existing level of OT services will [sic] be slowed by any reduction in those services, and that the student may [sic] even regress. The school and the parents did not reach consensus on this issue. Ms. Thurston then determined that OT direct services would be reduced to 30 minutes/week, while OT consultative services would remain at 60 minutes/month. The parents dissented from the determination of the PET and stated that they “would be filing for due process based on the reduction of OT services and consultative services...” (Record: SE 50-61)

8. Kristen Shorey is the student’s special education teacher. She has a B.S. in Human Development from Wheelock College (1993) with a focus on early childhood. She has had extensive training and experience working with children with Autism Spectrum Disorder. She worked with autistic children at UCP Bangor from 1993 to 1999, where she designed, and supervised the implementation of, home-based programs for autistic children. She studied with Kathleen Quill, an autism specialist and took courses at Rutgers University specifically dealing with educational methodologies appropriate for autistic children. She has been trained in the Discrete Trial method of teaching autistic children that was used by CDS providers with the student, and is used currently by school staff and specialists. She is responsible for training the Ed Techs who work in the xx classroom. Last year, she received an award from the Autism Society of Maine for outstanding service in the field.

She described a typical day for the student. In the morning, the student arrives at school on a special education bus and is met by the Ed Tech assigned to her; the two go together to the regular xx classroom for the morning routine; the student signs in, with Ed Tech assistance if needed, [sic] She then joins regular classmates, still accompanied by her Ed Tech. There are times during the

morning when the student's behavior indicates she needs a change from what is going on in the regular classroom. At these times, her Ed Tech takes her to a different room for a "sensory break" which consists of swinging on a swing, or jumping up and down, or bouncing on a trampoline or other activity; this kind of activity helps the student calm and refocus herself. Her Ed Tech has been trained in the "sensory break" by Ms. Shorey and has had considerable experience applying this method. After about 15 minutes of this one on one activity with her Ed Tech, they both return to the regular classroom and pick up with the activities going there. The regular classroom has about 18 children in it, with two teachers and two Ed Techs. There is also one student intern there during for [sic] morning classes. The student seems to be doing well there, has learned the routines of the regular classroom, and is beginning to use language (that is, words) more often to communicate her needs, instead of yelling, moaning, pinching or pulling. Another "sensory break" follows, about 10 to 15 minutes long, and then she goes back to the regular classroom for "center time", working as [sic] a particular workstation as appropriate.

Then the student and Ed Tech go to the special education room, which is just across the hall from the regular education classroom, for "drill time", working on discrete trial exercises interspersed with interventions such as "sensory breaks" as needed. When doing the discrete trial exercises, the student is one on one with Ms. Shorey or one of the Ed Techs she has trained over the years [sic] lunch [sic] follows, with Ms. Shorey as the only adult at a table with the student and about nine other children, some from regular education and some special education. The student enjoys lunch and enjoys being with her friends in that setting. An Ed Tech joins the group and helps Ms. Shorey get the children back to the special education classroom to prepare for recess and, after that, to the mainstream classroom for a short quiet time followed by a quick story with the entire class. The student then goes with her Ed TEch [sic] back to the special education classroom for the afternoon activities including more discrete trial work, again either with Ms. Shorey or one of the Ed Techs she has trained. The student receives her various therapies and supportive services during the afternoon, again with sensory breaks and other interventions as appropriate.

Special education staff and/or specialists always accompany the student during the school day, whether she is in the regular classroom, in the special education classroom, or receiving "pull-out" therapies from the various specialists. The discrete trial work is one-on-one. The sensory diet breaks are one-on-one. The specialists and teaching staff have daily communication with each other about the student. This is possible because the PT is in the school every day [sic], the OT is there 24 hours/week [sic], and the S/L therapist is in school four times/week.

The student is making significant progress under this program. She is happy to go to school, is happy in school, and has learned the routines of her day

there. She enjoys being with her friends. She is making good progress in her therapies, and is beginning to transfer the skills she has learned from her specialists, and in the discrete trial work, into the mainstream classroom. She is making particularly good progress in communication skills, and is beginning to use words to communicate her needs, more often and more appropriately as time goes by. Overall, the student is doing “fabulously”, according to Ms. Shorey. (Testimony: Kristen Shorey, Jennifer Cammack, the mother, Allison Berube, and Timothy Rogers)

- 9, Allison Berube is a full-time physical therapist for the school and currently is providing the student with 60 minutes/week of PT, and two hours/month of PT consultation, as ordered by the IEP. She has a B.S. in Physical Education, a M.S. in Physical Therapy and has been working as a physical therapist for 12 years. She is licensed as a physical therapist in Maine. She has considerable experience working with children with Autism Spectrum Disorder, including a 15-week internship with such children during college and, after her graduation, five years experience in New York schools where she worked with many autistic children. She was also one of the physical therapists who worked with the student while the student was receiving services from [sic] CDS system before entering xx.

As the full-time PT for the school, Ms. Berube sees the student at school in the course of her daily duties with other students. She has observed other members of the school staff, from both regular and special education, interact appropriately with the student. The student appears happy in school. Ms. Berube has seen her “happy, skipping, laughing” after her mainstream classes and describes the student’s progress as “incredible in the last two months”, particularly in the development of her ability to express herself. Given this progress, Ms. Berube does not recommend changing the amount of PT for the student.

Ms. Berube has provided in-service training on sensory break techniques to Ed Techs and other special education staff at the school. Ms. Berube drafted the PT goals and objectives for the April 2003 PET meeting. These goals and objectives were based upon her experience as a physical therapist for the student during the CDS years, and upon a review of all CDS files regarding the student. After working with the student this fall, Ms. Berube has observed the student make real and meaningful progress so far this year, and believes that the PT goals and objectives in the IEP are still appropriate. (Record: Testimony: Allison Berube)

10. Jennifer Cammack is a part-time occupational therapist for the school and is currently providing the student with 60 minutes/week of OT, and 60 minutes/month of consultative OT services, as ordered in the IEP.

She has a BS in Occupational Therapy and is licensed as an OT in Maine. She works 24 hours/week with the school and has been under contract with the school for three years. She has also contracted with the CDS system part-time since 1998. She has worked with and around children with autism since 1998, both at CDS and at the school.

She began working with the student in the spring of 2003, in preparation for the [sic] student's transition to xx. She observed the student in the pre-school settings she attended early in 2003. Ms. Cammack had full access to CDS records and staff. The student received at least 60 minutes/week of OT direct services while at CDS.

Ms. Cammack attended all the PET meetings except the 9/9/03 meeting. Throughout the PET process, Ms. Cammack recommended 30 minutes/week of OT direct services as sufficient to support the student's educational development. Her recommendation for the reduction in OT direct services to 30 minutes/week was based, at least in part, upon two factors. First, under the school's model for delivering the services called for in the IEP, the occupational [sic] had fewer responsibilities than did the occupational therapist under the CDS model. This is because the school's physical therapist was responsible for some of the functions that the CDS occupational therapist performed. Second, the CDS services were delivered in a variety of settings – at home, in the various pre-school settings, in other agencies, or in private offices – with infrequent communication among the various providers and little carry-over from one situation to the others. In the school, however, the therapeutic supportive services were delivered in the school, the same place as the student's educational program was delivered. Ms. Cammack had an opportunity to observe the student throughout the school day to find out how the student was able to use the skills worked on in OT, and to participate and/or intervene as appropriate. The supportive services staff, including Ms. Cammack, and the educational staff talked to each other “all the time”; each professional was kept aware of what each other professional was doing with the student, and what the current status of the student was. This level of communication and co-ordination helped avoid duplication, kept the various programs integrated with each other, and provided for maximum carry-over from one setting to another. In essence, the educational setting at the xx was an environment in which the student had access throughout each school day to the full range of supportive services provided in her IEP.

The school's program is working very well for the student, who is a delight for Ms. Cammack to work with. If the IEP were modified to reduce OT direct services to 30 minutes/week, Ms. Cammack does not think that a reduction in OT direct services from 60 to 30 minutes each week would have any impact on the student at all. Further, such a reduction would allow her to have more time in the mainstream classroom. The report written by Paul Tardy, the parent's [sic] OT, did not contain anything that changed Ms. Cammack's



opinion that 30 minutes/week of direct OT services would meet the student's needs at this time. (Testimony: Jennifer Cammack, Timothy Rogers)

11. Paul Tardy is an occupational therapist who worked for the parents as a consultant/witness in this proceeding. He has provided OT services to the student under a private contract with the parents for about a year. He has a B.S. from the University of New England and has been licensed as an occupational therapist in Maine since 1996. His recommendation is that the student receive two hours/week of OT at school. At the time of the hearing, he had not spoken to or attempted to speak with Jennifer Cammack, the school's occupational therapist who has been working with the student since school began in late August. (Record: PE 88-93; Testimony: Paul Tardy)
12. The student's parents are educated and articulate people, highly involved with and committed to their daughter and her development as a student and as a person. It is hard to imagine more devoted parents. They had worked hard to construct a pre-school program for their daughter, using CDS resources as well as their own. They were diligent in providing information generated during the CDS system – test results, evaluation, reports, and CDS files – to the school during early 2003 in preparation for their daughter's transition to school. They were pleased, generally, with the services the student received from CDS and basically wanted to replicate that program in the school. They began the PET process for their daughter's transition to xx with very clear ideas of what was appropriate for her. Both parents attended all five PET meetings and participated extensively in the discussion held there, acting as vigorous advocates for the program they believed was best for their daughter. They had a sincere belief that the school was obligated to provide the same level and kind of services to their daughter as had been provided by the CDS system; they also believed that any deviation by the school from the CDS program had to be supported by "new" information. The parents disagreed strongly with the amount of OT the school proposed for their daughter, as they relied heavily upon the recommendations of their occupational therapist. In the PET process, the parents convinced the school to double the amount of OT in the IEP, from 30 to 60 minutes/week for the first month of school. When, at the October 2 PET meeting, the school proposed to reduce OT services to 30 minutes/week, the parents filed a request for a due process hearing. (Testimony: Mother, Father)
13. The parents received a copy of the completed goals and objectives section of the IEP either late in September or early in October. The mother believed that she had never received a copy of the Notice of Program Change from the school. (Record: PE-66; Testimony: Mother, Father)
14. It is the school's practice to mail the Notice of Program Change form to the family on the day the form is completed. (Testimony: Kristen Shorey)

## IV. DISCUSSION

### 1.

The initial question presented in this matter is whether the 2003-2004 Individualized Education Program (IEP) developed for the student provides her with a free and appropriate education, as required by federal and state special education laws. It has long been established that the applicable standard on this issue is whether the IEP is reasonably calculated to enable the student to receive some meaningful educational benefit. *Rowley v. Board of Education*, 101 S. Ct 3034, 3051 (1982). Neither the federal special education law (IDEA), 20 USC 1401 et seq., nor state special education law, 20 MRSA 7202 et seq., obligates a school to create an IEP which provides the “highest attainable level (of benefit) or even the level needed to maximize the child’s benefit.” *Rowley*, at 3047. It is enough if the IEP is designed to provide some educational benefit. *Lenn v. Portland School Committee*, 998 F. 2d 1083 (1<sup>st</sup> Circuit 1993). Furthermore, in Maine it is clear that, “parental preference alone cannot be the basis for compelling a school district to provide a certain educational plan for a handicapped child.” *Brougham v. Town of Yarmouth*, 823 F Supp, 9 (D. ME 1993).

The argument that the parents make in support of their claim that the IEP is not reasonably calculated to enable their daughter to receive meaningful educational benefit appears to be focused upon procedural concerns and the manner in which the IEP was developed, rather than upon substantive concerns about the content of the IEP itself.<sup>1</sup> The chief complaint appears to be that the school “did not fully incorporate the results of the tests and evaluations” of the student that were obtained by the CDS system and her parents into the IEP. (Parents’ Post-Hearing Brief at 8). This argument fails for two reasons: first, the IDEA places no obligation upon a school to “fully incorporate” the results of tests or evaluations conducted either by an early intervention agency (CDS) or by private providers hired by the parents of a child transitioning into xx; and, second, the school did review all the information provided both by the CDS system and the parents, including tests results and evaluations.<sup>2</sup> The school also conducted observations of the

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<sup>1</sup> At the hearing, the parties devoted considerable time and testimony to the question of how much occupational therapy was required by the student. If [sic] fact, the reduction of OT from 60 to 30 minutes/week apparently convinced the parents to request this due process hearing. While this issue was not seriously pursued in the post-hearing arguments, the hearing officer concludes that there is no evidence in the record to establish that the proposed reduction in OT would have harmed the student or prevented her from receiving educational benefit from her program. While the parent’s [sic] occupational therapist recommended, in October, that the student receive two hours/week of OT, his testimony on this point is not persuasive because he had no current information about how the student was responding to the amount and kind of OT she was receiving in the educational environment at school.

<sup>2</sup> What the school did not do was to agree with the parents and the occupational therapist hired by the parents. The school did not agree that the student needed exactly the same

student in the winter of 2003 when she was in the CDS system, observed and discussed her status and needs with CDS providers, and reviewed all the CDS records for the student. After a review of all this information, including the test and evaluation information provided by the parents, the school staff came up with a plan of how to deliver the appropriate supportive services in a school environment, sufficient in both kind and amount, to enable the student to benefit from her educational program. Only when this initial plan was drafted did the PET meeting process begin, in May of 2003. The details and contents of the IEP were discussed over the three PET meetings held in May, June and August of 2003. The IEP was implemented at the start of school on 8/26/03 and has been discussed and modified as a result of the two PET meetings held since school started<sup>3</sup>. This is a reasonable, and legal, way to develop an IEP for a student transitioning from CDS into xx.

While it would be possible to end this discussion with the conclusion that the IEP is “reasonably calculated” to enable the student to receive meaningful educational benefit, it is useful to note that, based upon the evidence presented at the hearing, this IEP goes far beyond minimal legal requirements. From the time the student gets off the special education school bus until she goes home at the end of the school day, she is in the company and care of a well-trained and highly qualified staff of teachers, Ed Techs, and specialists who look after her, teach her, work with her, challenge her and protect her. The staff is both skillful and caring. Throughout her day in school, the student is never far away from one of these adults whose job is to take care of her and help her keep on learning skills she needs to know. By all reports from those who work with the student at school, she is making wonderful progress under her IEP as it is being implemented, progress described as “fabulous” by her special education teacher and “incredible” by one of her specialists.<sup>4</sup>

There was simply no evidence produced by either party that indicated that the student was doing poorly at school under this program. Rather, the evidence presented at the [sic] supports the conclusion that the student was thriving at xx. This program is not only “reasonably calculated” to provide educational benefit, it is currently providing significant educational benefit to this challenging xx student.

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kind and amount of supportive services in a full time, team teaching educational setting that she got in the part time, pre-school system operated by CDS.

<sup>3</sup> In addition to discussing parental concerns at the 9/9/03 and 10/2/03 PET meetings, the school “specialists” and the school staff discussed their actual experience with the student during the first weeks of her xx year.

<sup>4</sup> Even the student’s mother was unwilling to testify that their daughter was not doing as well as she expected her to do in school.

2.

The parents' next argument is that they were denied the opportunity to participate in a meaningful way in the Pupil Evaluation Team process that led to the development of the IEP for their daughter, in violation of the IDEA and state special education law. The record in this case does not support such a conclusion.

The record reveals an extraordinary amount of parental participation in the PET process that led to the IEP at issue. Beginning in April of 2003, there have been five PET meetings held involving this student. The meetings were quite long, and often ran over the scheduled time. Both parents attended each of the five PET meetings; both parents participated extensively in the discussions at each of the five PET meetings. The parents were active and aggressive advocates at the five PET meetings; they spoke at length and in detail for what they believed their daughter needed in her IEP.<sup>5</sup> Far from being ignored by the school staff at the PET meetings, the record shows that the school made several changes to the IEP in response to suggestions offered by the parents. For example, OT was initially set for 30 minutes of direct services/week; it was increased to 60 minutes/week in response to the parent's argument that their daughter needed more than 30 minutes/week. There are other examples: the school added two hours of PT consultation time for the first month of the school year, and also added 60 minutes/month of S/L consultation time. Both of these additions were made in response to parental concerns.

The evidence in this case, both documentary and testimonial, reveals that these parents were involved to a remarkable degree in the PET process for their daughter. They were full participants in series of five PET meetings, held over a six-month period, concerning the question of what an appropriate education program for their daughter should include. The parents provided, and the school reviewed, data, test results and evaluation reports<sup>6</sup> generated prior to the student's transition to xx. It is clear that the parents knew how to make their views known to the school, and did so on a frequent basis. In addition to including the school's ideas about how to deliver an appropriate program in the school environment, the current IEP reflects parental concerns and parental ideas.<sup>7</sup> These parents were neither ignored nor excluded from full participation in the PET process.

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<sup>5</sup> See, e.g., SE 144-180, a "transcript" of the May 22 PET meeting. This transcript was prepared by the parents and serves as a good example of their active and educated participation in the process that produced the IEP for the student.

<sup>6</sup> In fact, the school reported that the student was "the most tested kid" ever to enter xx.

<sup>7</sup> It is true that the school did not accept every suggestion made by the parents. However, the IDEA does not require a school to comply with every parental request. While IDEA gives parents an opportunity to participate in the PET process, it does not place parents in control of the process. Again, it is well established that a school is not compelled to adopt the educational program preferred by the parents. *Brougham v. Yarmouth, id.*

Finally, the parents assert that the school violated the IDEA and state special education law by failing to provide them a Notice of Program Change form, and a completed version of the student's IEP including the "goals and objectives" section, in compliance with timelines contained in the law and regulations. The school responds in two ways. First, it argues that these documents were provided to the parents in compliance with the timelines, or so close to them as to be *de minimus*. Second, the school argues that even if the family received the documents at issue after the timelines set forth in the law, no educational harm to the student occurred as a result, and therefore no remedy can be imposed. For the reasons discussed below, the hearing officer is persuaded by the school's arguments on the issue and finds that no violation of the IDEA occurred here.

The "Notice of Program Change" form (SE 89) is dated 8/19/03 and initialed by Ms. Shorey, the special education teacher. It states, among other things, that the IEP reduces OT services to 30 minutes/week and S/L services to 90 minutes/week. The parents testified that they did not receive that form. Ms. Shorey testified that it is her practice to mail the form on the day she prepares and signs it, though she has no specific memory of mailing this particular document, just one among many similar documents prepared and mailed in the week before school started. Thus, the evidence is inconclusive. However, it is not necessary to determine which version is correct because (1), OT services were never reduced to 30 minutes and (2) the mother signed, on 8/19/03, a Consent for Placement form, giving her consent to the educational placement described in the attached PET minutes. (SE 116-120) It should be noted that parents consented to this placement fully aware of the details of the supportive services provided in the IEP, as demonstrated by their dissent as to the level of S/L services called for. (SE 120) The IDEA mandates that parents receive notice before a school changes a child's educational program so that parents have an opportunity to discuss the change with the school, or take other action they deem appropriate, before the change occurs. It is clear that these parents knew, at least by August 19<sup>th</sup>, what services the school planned to provide for their daughter and had every opportunity to act, prior to the start of school, in the event they wished to withdraw their consent to the placement of their daughter into this program. The hearing officer concludes that the parents had actual notice of the program the school planned for their daughter. Therefore, even assuming *arguendo* that the parents did not get the Notice of Program Change form from the school, the hearing officer finds that no prejudice to the rights of the parents, nor educational harm to the student, occurred as a result. The student's ability to receive an appropriate education was in no way diminished thereby. These facts do not support any remedy. *Roland M., 910 F.2d 983 (1<sup>st</sup> Cir, 1990)*

The parents next assert that the school was untimely in providing them an IEP, complete with goals and objectives. After reviewing the somewhat contradictory documentary evidence, it is most likely the school mailed the goals and objectives section to the parents on 9/24/03 and that the parents received it on 9/30/03. The relevant section of the Maine Special Education Regulations, Ch. 101.[sic] 10.2, provides that "a complete copy of the Individualized Education Program shall be provided to the parent within 21 days of



## **WITNESS LIST**

### **FOR THE FAMILY:**

Jodi Fadrigon, B.S. (RN), B.A. - Case Manager, United Cerebral Palsy (Bangor)

Paul Tardy, B.S. - Occupational Therapist

Mother

Father

Dee Cyr, A.A. - Teacher, United Cerebral Palsy (Bangor)

Emily Davenport, B.S. – Teacher, Developmental Therapist

Colleen Nilan, B.A., M.S. - Speech/Language Pathologist

### **FOR THE SCHOOL:**

Timothy Rogers, PhD. - Psychologist

Allison Berube, B.S., M.S. - Physical Therapist

Jennifer Cammack, B.S. - Occupational Therapist

Kristen Shorey, B.S. - Special Education Teacher, SAD 22

Julia Mahon, PhD. - Speech/Language Pathologist

Carrie Thurston, B.S. - Director of Special Education, SAD #22

## **DOCUMENTARY EVIDENCE**

Parent's Exhibits 1 - 105

School's Exhibits 1 – 512

Dispute Resolution Request Form dated 10/6/03

