**STATE OF MAINE**

**SPECIAL EDUCATION DUE PROCESS HEARING**

August 9, 2004

Case No. 04.051H, *Maine School Administrative District No. 35 v. Parents.*

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| REPRESENTING THE FAMILY: | Richard O'Meara, Esq. |
| REPRESENTING THE SCHOOL: | Eric R. Herlan, Esq. |
| HEARING OFFICER: | Peter H. Stewart, Esq. |

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This special education due process hearing has been conducted, and this decision written, pursuant to state and federal education law, 20-A MRSA 7202 *et seq.* and 20 USC 1415 *et seq.*, and the regulations accompanying each.

The request for this hearing was filed by MSAD #35 on April 4, 2004. The student (DOB: xx/xx/xx), lives with his family in Eliot, ME within Maine School Administrative District. [sic] The student graduated from Marshwood High School in 2001. This is the second due process hearing in this matter. The due process officer in the initial hearing issued his decision on October 31, 2000. That decision was appealed to the United States District Court in Maine. From there, it was taken on appeal to the United States Court of Appeals for the First Circuit, which remanded the matter back to the District Court. The District Court remanded this case to the due process hearing officer, who was ordered to make certain specified findings and then determine the amount of the compensation due to the family for events that occurred during school year 2000-2001.[1]

A pre-hearing conference was held on May 4, 2004; the hearing was held on May 13 and 19, 2004. At the hearing, the family presented 3 witnesses and admitted

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[1] See, *Mr. And Mrs. R. et al. v. Maine School Administrative District No. 35,* 295 F. Supp 2d 113 (USDC ME 12/12/03).

documents identified as Parent's Exhibits, pages 1-96, into evidence. The school presented 2 witnesses and admitted documents identified as School's Exhibits, pages 1-321, into evidence. The parties submitted written post-hearing arguments. After reviewing those arguments and the record, the hearing officer requested and received factual stipulations from the parties. The record closed on July 20, 2004.

## PRELIMINARY STATEMENT

This dispute has traveled a long and winding road to arrive at this point. While it is not necessary to recount the entire history, some detail is useful in setting the context for the current controversy. The student, now XX years old, has Down Syndrome and was eligible for special education services throughout his school years. He was enrolled in Marshwood High School for five years and graduated in the spring of 2001. In school year 1999-2000, he received educational services at the high school for part of the school day and in a program called Work Opportunities Unlimited for the remainder of the day. For his final year in high school, school year 2000-2001, the school proposed an Individual Education Program (IEP) calling for him to receive nearly all of his educational services away from the high school campus in programs operated by WOU.[2]

His parents believed that the 2000-2001 IEP proposed by the school was not appropriate for the student and requested a due process hearing challenging it in August of 2000. The stay-put provision of the IDEA was triggered and, while the student did not attend Marshwood High School beyond late September 2000,[3] the 1999-2000 IEP served to describe the set of educational services offered to the student. The case went to hearing and the due process hearing decision was issued on October 31, 2000. The hearing officer found that the IEP proposed for school year 2000-2001 did "not pass muster" under the IDEA for three reasons: (1) the IEP did not contain any description of how the goals and objectives, which both parties agree were appropriate, were going to

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[2] Under this IEP, the student would receive services five hours each week at the Wellness Center in his high school. All other services were provided away from the high school. School Exhibits, p. 302.

[3] In late September 2000, the student was facing a suspension from school. The suspension had not been formally issued when the family chose to keep the student at home. The student never returned to high school, though he did graduate in 2001.

be implemented by WOU; (2) the IEP did not require that the special education services be provided by properly certified personnel; and (3) the IEP did not contain a behavioral intervention plan. The hearing officer ordered the school to convene the pupil evaluation team (PET) to develop an IEP that addressed those three concerns. The hearing officer also ordered that the stay-put order remain in effect until the new IEP was completed or the parties agreed to an alternative placement.

The school convened two meetings of the PET in late 2000, the first on November 21, the second on December 21. At the November meeting, the school proposed to use WOU as the primary service provider, while at the December meeting the school withdrew WOU from its proposal, substituting Waban Projects, Inc. as the primary service provider. These PET meetings did not achieve consensus on the content of the student's IEP. The family thought that another PET would be scheduled to complete the development of the IEP. The school mailed a packet of documents to the family on January 11, 2001, which it identified as "your copy of the PET minutes of December 21, 2000, and IEP for your son." After receiving this packet, the parents neither asked the school to convene a PET meeting nor filed a request for a due process hearing to challenge the "IEP." The school did not convene a PET until May of 2001, when a PET met to discuss the student's participation in the high school's graduation ceremony.

The 10/31/00 decision of the due process hearing officer was appealed to the federal courts. The appeal made its way to the Court of Appeals for the First Circuit, from which it was remanded to the District Court for the District of Maine. From there, the case was remanded back to the due process hearing officer to determine the issues set forth below.

At the hearing in the instant matter, the family argued that (1) the school did not develop a modified IEP that complied with the IDEA or state special education law, (2) the purported IEP was not in compliance with the hearing officer's decision and (3) the purported IEP would not provide the student with a free and appropriate public education, as required by the IDEA and state special education law. For remedy, the family asserted that it is entitled to an award equal to the monetary value of compensatory education services for the entire 2000-2001 school year, The family argued that this amount was between fifty-five and sixty-thousand dollars.

The school directly countered the family's three arguments, taking the opposite position on each. As to remedy, the school argued that the family is entitled to an award equal to the monetary value of compensatory education services for the 2000-2001 school year from the start of school in September until Christmas vacation began, a total of 71 school days, as reduced by factors which fall under the general category of the family's failure to mitigate its damages. These factors include the family's failure to allow the student to participate in the work-site portion of the stay-put IEP after September 22, 2000 and the postponement of the December PET meeting from the 6th to the 2lst. The school contended that the award should amount to approximately eleven thousand dollars.

## ISSUES

On December 13, 2003, the United States District Court for the District of Maine remanded this matter to the due process hearing officer first to resolve certain specified issues and then to determine the amount of compensation due the family. The issues the court ordered the hearing officer to resolve are:

(1) if, and when, the school developed a modified IEP for the student;

(2) if so, whether the modified 2001-2002 IEP for the student satisfactorily addressed the deficiencies that the hearing officer identified in the original 2000-2001 IEP; and

(3) whether the modified 2000-2001 IEP as a whole, including the student's placement, would have afforded the student a free and appropriate public education.

295 F. Supp. at 120. The court went on to set forth certain general principals [sic] relating to the calculation of the monetary value of the compensatory education services to which the student is entitled, stating that:

> If the hearing officer finds that the modified IEP addressed the deficiencies and provided (the student) a FAPE, then the hearing officer is **ORDERED** to determine the monetary value of the compensatory education services that (the student) is entitled to for the period of time that the stay-put order was in effect. On the other hand, if the hearing officer finds that there was no modified IEP or that the modified IEP did not correct the deficiencies and provide (the student) a FAPE, then the hearing officer is **ORDERED** to determine the monetary value of the compensatory education services that (the student) is entitled to for the entire 2000-2001 school year.

295 F. Supp at 120. (Emphasis in original) At the pre-hearing conference, the parties agreed that the issues before the hearing officer were those as stated by the court, and set forth above [sic]

## FINDINGS OF FACT

1. The student did not receive any special education services, either at school or through any program operated by Work Opportunities Unlimited, after September 22, 2000. The school had initiated the process of imposing a 5 to 7 day suspension on the student. On September 22, the student's mother informed the school by letter that "We will be keeping (the student) out of school until this process (of developing an alternative placement) is complete." (School's Exhibits: 278-80, 299, Testimony of the student's father, and the school's Director of Special Services)

2. The school convened a PET meeting on November 21, 2000 to develop the IEP, as ordered. School officials, the WOU director, a consultant, the student's father, two advocates for the family and a speech/language therapist attended the meeting. While the meeting was productive, no consensus was reached regarding the specific placement. The discussion centered upon services to be provided in work-site and community-base [sic] programs operated by WOU, with additional services from school special education staff and outside specialists. Because the PET did not complete its discussion,

another meeting was scheduled for December 6, 2000. (School's Exhibits: 247-253, Parent's Exhibits: 53–91, Testimony of McIntosh, the student's father, and the Director of Special Services.)

3. Because the family was unable to meet on December 6 as scheduled, the next PET meeting occurred on December 21, 2000 [sic] School officials, the adult program director of Waban Projects, Inc., the student's father, two advocates for the family and a consultant attended the meeting. Waban operates a "dayhab" program in Sanford, ME, along with supported employment options in Kittery, ME and Portsmouth, NH. The school announced that WOU was no longer a placement option for the student. Instead, the school now offered a program operated by Waban consisting of supportive employment for 30 hours per week monitored by supportive education staff, 5 hours per week of direct instruction from a special education teacher, and additional services from outside specialists (1 hour per month of speech/language therapy, 1 hour per month of ASL services, and a behavioral consultant as needed.) Of the 70 clients Waban serviced in its programs, there were only 3 other high school students. In all Waban programs, there were approximately 10 clients between the ages of 17 – 23. About 90% of Waban's clients are placed in the Waban programs by the State of Maine Bureau of Mental Retardation.

The goals and objectives of the IEP were not discussed at this meeting. Toward the end of this meeting, the school asked if the student's father would visit the Waban program and let the school know what he thought of it. The father agreed. The meeting ended without consensus on how or where or by whom the goals and objectives of the student's IEP were to be accomplished. The student's father visited Waban after the PET meeting in December but did not contact the school after the visit. During the visit, the student's father met with the Waban director, who showed him parts of the program. The father saw only clients in their fifties or sixties, many in wheelchairs. The father was not shown any younger people at Waban, nor was he taken to any of the

proposed work-sites. The school did not convene, and the family did not request, another PET to discuss the student's IEP, program or placement. The school did not inform the family before the December PET that WOU was no longer being considered as the placement for the student. At the PET, the school offered no explanation for WOU's removal as a placement for the student. (School's Exhibits: 217-229; Parent's Exhibits: 38-48; Testimony of McIntosh, the student's father, and the Director of Special Services.)

5. After the PET meeting of December 21, there was no contact between the family and the school until January 11, 2001, when the school mailed a packet of documents to the family. The school's letter described those documents as "your copy of the PET minutes of December 21, 2000 and IEP for your son…." (School's Exhibits: 317, 218-245; Testimony of Director of Special Services.)

6. The 2001-2001 [sic] IEP developed by the June 2000 PET contained a "service grid" setting out the specific services the student would receive at WOU. Those services were: (1) a consult once a week at the work site with a special education teacher; (2) on-going instruction in functional skills, delivered by WOU staff; (3) a consult once a month at the work site in ASL (American Sign Language) with a certified ASL interpreter; (4) vocational training 6 hours a day, 5 days a week, delivered by WOU staff; (5) a speech consult of 30 minutes each month by a Speech/Language therapist; (6) a behavioral consult on an as needed basis; and (7) a 6 week extended school year program consisting of once a month ASL consult and a total of 10 hours direct instruction in ASL, a tutor 4 hours a week for the 6 weeks, work with WOU staff 4 hours a day, 5 days a week, and 8 hours a week on pro-social skills development provided by Donegal Town, Inc. (School' [sic] Exhibits: 302)

7. The IEP developed by the November 21, 2000 PET meeting contained a "service grid" setting out the specific services the student would receive at WOU. Those services were: (1) a 1- hour consult once a week at the work site with a special education teacher; (2) 5 hours each week of instruction in functional, leisure and pro-social skills provided by WOU staff/ job coach/educational technician III; (3) 6 hours a day, 5 days a week of vocational training provided by WOU staff/job coach/educational technician III; (4) 30 minutes each month of speech consultation provided by a speech/language therapist; (5) 30 minutes each month of ASL consultation provided by an ASL interpreter; and (6) behavioral consultation on an as needed basis. (School's Exhibits: 255)

8. The packet mailed by the school to the family on January 12, 2001 contained a "service grid" setting out the services the student would receive at Waban Projects, Inc. Those services are described therein as follows: (1) 5 hours each week of direct instruction provided by a special education teacher; (2) 30 hours each week of vocational training defined as instruction in functional, leisure and pro-social skills provided by supportive employment staff; (3) a speech consult provided by a Speech/Language therapist and an ASL consult provided by an ASL interpreter 30 minutes each month at the work site; and (4) a behavioral consult on an as needed basis. (School's Exhibits: 229)

9. For the entire school year, the family described the compensatory education services needed by the student as requiring a full-time 1 on 1 aide at a cost of $33,000.00, a part-time behavioral consultant at a cost of $8,000.00, a masters level special education consultant at a cost of $6,000.00/school year, American Sign Language and Speech/Language consultants at a cost of $6,000.00, with additional unspecified costs for transportation and a computer with appropriate software. (Testimony of Sandra Pierce-Jordan).

## DISCUSSION

This matter is before the special education due process hearing officer pursuant to a remand order issued by the United States District Court for the District of Maine in *Mr. And Mrs. R v. MSAD No. 35,* 295 F. Supp, 113 (USDC Me, 12/12/03). In that decision, the hearing officer is ordered to make certain findings and then, based upon those findings, calculate the monetary value of the compensatory education to which the student is entitled. This proceeding, then, is not about whether the student is entitled to compensatory education; it is about how much compensatory education the student is entitled to under the facts and circumstances presented here. Once that is determined, the final step is the calculation of the monetary value of that compensatory education.

Pursuant to the court's order, the hearing officer must make the following determinations:

(1) if, and when, the District developed a modified IEP for the student;

(2) if so, whether the modified 2000-2001 IEP for the student satisfactorily addressed the deficiencies that the hearing officer identified in the original 2000-2001 IEP; and

(3) whether the modified 2000-2001 IEP as a whole, including the student's placement, would have afforded the student a free and appropriate public education.

As to the remedial calculation, the court was equally specific, stating:

> If the hearing officer finds that the modified IEP addressed the deficiencies and provided (the student) a FAPE, then the hearing officer is **ORDERED** to determine the monetary value of the compensatory education services that (the student) is entitled to for the period of time that the stay–put order was in effect. On the other hand, if the hearing officer finds that there was no modified IEP or that the modified IEP did not correct the deficiencies and provide (the student) a FAPE, then the

> hearing officer is **ORDERED** to determine the monetary value of the compensatory education services that (the student) is entitled to for the entire 2000-2001 school year.

Ibid at 129. (Emphasis in original) In light of these directives from the court – the three issues and the method to calculate the remedy – it is clear that the school must prevail on all three issues to escape responsibility for providing the monetary value of the compensatory education services due the student for the entire 2000-2001 school year. To avoid this consequence, the hearing officer must conclude that the school (1) did develop a modified IEP for the student that (2) satisfactorily addressed the deficiencies identified by the hearing officer in the 2000-2001 IEP and (3) would have provided the student with a FAPE.

For the reasons discussed below, the hearing officer concludes, even assuming *arguendo* that the documents mailed to the family on January 11, 2001 amounted to a modified IEP in compliance with IDEA requirements,[4] that such "IEP" did not satisfactorily address the deficiencies identified in the original 2000-2001 IEP by the hearing officer in his October 31, 2000 decision. Consequently, the student's family is entitled to the monetary value of the compensatory education services that the student is entitled to for the entire 2000-2001 school year.

**A.**

In the summer of 2000, the student's family filed a request for a due process hearing to challenge the 2000-2001 IEP proposed for the student by the school. In the decision, issued on October 31, 2000, the hearing officer found that while the

[4] Given the outcome of this matter, it is not necessary to decide this issue. However, under the facts and circumstances of this case, the hearing officer has serious concerns as to whether the school, which is obligated to prepare an IEP both procedurally and substantively in compliance with the IDEA, provided the family with a meaningful opportunity to participate in the development of the student's IEP. See, *W. G. v. Bd. Of Trustees*, 960 F. 2d 1479 (9th Cir. 1992). While it was clear at the end of the December 21st PET meeting that both the school and the family anticipated meeting again to complete the discussion of the student's placement and program, the school prepared and mailed the "IEP" immediately after Christmas vacation without scheduling another PET.

proposed placement at Work Opportunities Unlimited did not violate the LRE requirement of the IDEA, the IEP was deficient in three ways. To address those deficiencies, the hearing officer ordered the school to convene a PET to develop an IEP that:

a. describes in sufficient detail how the goals and objectives set forth in the current IEP are to be accomplished in the WOU placement;
b. requires that the special education services provided to the student are delivered by properly certified providers, or under the supervision of certified education providers;
c. contains a behavioral intervention plan to be employed by WOU/MHS staff, should the need for such intervention arise.

The PET convened by the school was charged with these three specific tasks.[5] As to the first task, set out in paragraph (a) above, the PET was ordered to describe specifically how the existing goals and objectives were to be accomplished in the existing placement at WOU. Nothing else was "on the table." The content of the goals and objective [sic] section of the IEP was not at issue; at the initial hearing, the parties had agreed that the goals and objectives were appropriate for the student. The placement at WOU was not at issue; in his decision, the hearing officer had expressly determined that the placement at WOU was in compliance with the LRE requirement of the IDEA. The problem with the IEP developed by the June 2000 PET, identified by the hearing officer in unambiguous terms, was that the description of how those appropriate goals and objectives were to be accomplished in the WOU program was so vague as to be nearly meaningless. In the 10/31/00 decision, the hearing officer found that the original IEP contained "no bridge" between those goals and objectives and the program described in the IEP and that it was "simply inadequate to assert that the lengthy and detailed goals and objectives will be

[5] It should be noted here that the order contained in the hearing officer's 10/31/00 decision both described and limited the responsibility of the PET to be convened by the school to develop the new IEP.

taught on an 'on-going' basis by…(WOU staff)…during the interstices of a seven hour day already fully programmed with activities…" [6]

To remedy this deficiency, the school was ordered to convene a PET to develop a specific and meaningful program to accomplish the existing goals and objectives in the existing placement, WOU. The PET convened by the school did not comply with this order. Instead, the school drafted an "IEP" that not only modified the existing goals and objectives but also proposed an entirely new placement in which the student would receive his services. This unilateral change of placement by the school is a departure from the directive in the hearing officer's decision simply not contemplated -- or permitted -- by the terms of that decision. In making this unilateral decision to change the student's placement from WOU to Waban, the school violated the terms of the hearing officer's directive, and did not "satisfactorily address the deficiencies" identified therein.

This hearing officer did not reach this conclusion without careful consideration of the implications in the school's unilateral change of placement. At the hearing in 2000, the parties strongly disagreed on whether the student's placement at WOU was in compliance with the LRE provisions of special education law. The hearing officer ultimately agreed with the school's arguments, concluding, "By placing the student in the WOU program, the school keeps him in his home community…in a situation where he has already experienced some measure of success…"[7] In addition, under the June 2000 IEP, some of the student's services were to be provided at his high school. The presence of these factors provides support for the hearing officer's conclusion that the student's placement at WOU met the LRE requirement.

The school, in the "IEP" it developed after the December PET meeting, unilaterally deleted WOU as the placement and instead proposed Waban Projects, Inc. At the time of the December PET, Waban had approximately 70 clients, only 3 of whom were high school students and only 10 [sic] were between the ages of 17 and 23. Waban is based in Sanford, Maine where it operates a "dayhab" center for its clients. When the student's father visited the dayhab center facility, he saw only older clients, many in their fifties

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[6] Hearing Officer Decision, at 10, SEA ME, 10/31/00

[7] Id.

and sixties, and many of them in wheelchairs. The ' [sic]IEP" proposed that the student work 30 hours each week in supported employment worksites in Kittery and Portsmouth, accompanied by Waban staff. Under this "IEP", none of the student's services were to be provided in his high school.[8] The student had no prior experience in the Waban placement and had never been interviewed by Waban staff. These facts surrounding the Waban placement also bear directly upon the LRE issue but do not provide the support the WOU placement does. Had they been present in the initial hearing, the hearing officer's conclusion would very likely have been different.

**B.**

In addition to the school's unauthorized and unilateral change of placement for the student, the PET failed to comply with the hearing officer's order when it did not develop an IEP that described "in sufficient detail how the goals and objectives set forth in the current IEP are to be accomplished…" [9] The description of how the goals and objectives are to be accomplished that is in the "IEP" developed by the school after the December PET is no more, and is arguably less, specific than the description in the June 2000 IEP originally reviewed by the hearing officer. In the initial decision, the hearing officer stated. "…I find the IEP fails to contain sufficient information as to how the student is to be instructed in those areas referred to in the goals and objectives section of the IEP." After a comparison of the "service grids" [10] in the June 2000 and January 2001 IEPs, this hearing officer reaches the same conclusion about the "IEP" developed by the school after the December PET.

Under both IEPs, the student spends 30 hours a week in "vocational training". He is accompanied by WOU staff in the June IEP, and by supportive employment staff in the

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[8] It should be noted that the Waban representative who appeared at the December PET was Stan Littlefield, Waban's Adult Program Director. At the time of the PET meeting when the Waban program was first identified as the placement for the student, Mr. Littlefield had never met the student, who was [sic] had just turned xx and had not yet graduated from high school.

[9] Hearing Officer Decision, at 10.

[10] The service grid for the June 2000 IEP is at School Exhibits, p. 302; the service grid for the January2001 "IEP" in at School Exhibit, p.223.

January IEP. Under the June IEP, the student receives "instruction in functional skills" from WOU staff on an "on-going" basis and receives services in "Leisure and pro-social skills" from WOU staff for 5 hours a week at a "non-work site" such as the high school "wellness center." Under the January IEP, the "leisure and pro-social skills" instruction is provided during the 30 hours a week of vocational training by "supportive employment staff." Under both documents, the student receives a total of 1 hour each month of consultation from a speech/language therapist and/or an ASL interpreter, and behavior consultation "as needed". The major difference in the services described in the 2 documents is that the January IEP provides for 5 hours a week of direct instruction from a special education teacher, while the June IEP calls for 1 hour a week of consultation time at the work site with a special education teacher.

While the differences between the two documents are relatively minor, the similarities are remarkable. Indeed, they are essentially the same service grids, modified to reflect the school's decision to name Waban instead of WOU to as the providing organization. In both, the student spends 30 hours each week in an unspecified working situation accompanied by non-educational staff[11] who are identified in the grids as responsible for providing "instruction in functional skills on an on-going basis" (June IEP) or "instruction in functional, leisure and pro-social skills" (January "IEP") somehow

[11] At the hearing, the school argued that the "IEP" it prepared after the December PET includes an Educational Technician III to accompany the student on a full-time basis. This hearing officer does not agree with that conclusion. While here [sic] is an Ed Tech III mentioned in the 11/21/00 service grid (SE 255) as a provider of 35 hours of service a week, that reference has been deleted from the 12/21/00 service grid (SE 223). The only reference to an Ed Tech III in the documents mailed to the family in January 2001 is in a document entitled Proposed Implementation Plan for (the student's) IEP (SE 224), which states that an Ed Tech III will be with the student "while at the work site". However, that statement is at odds with the service grid in another critical aspect. The service grid provides for 5 days/week of vocational training while the Proposed Implementation Plan provides for only 3 days/week of vocational training. In the face of this direct inconsistency, and given what must be considered the school's intentional deletion of any reference to an Ed Tech from the earlier proposed IEP, the content of the service grid prevails and must be seen to describe the services to which the student is entitled. Since the service grid in the "IEP" prepared by the school after the December PET meeting does not contain any mention of an Educational Technician, the hearing officer cannot conclude that the student is entitled to that service. This is another aspect in which the school did not "satisfactorily address" the deficiencies identified in the 10/31/00 hearing officer decision.

interspersed into the hours scheduled for vocational training. Neither document contains an adequate description of how the goals and objectives of the IEP are going to be accomplished. There is no way to read either IEP and derive a clear description of what the student would be doing during his day, no way to know from either IEP when or how the student was going to learn the skills discussed in the goals and objectives of each.

When explaining why the June 2000 IEP did not "pass muster,'[sic] the hearing officer stated:

> It is simply inadequate to assert that the lengthy and detailed goals and objectives will be taught on an on-going basis by…(WOU staff)…during the interstices of a seven hour day already fully programmed with activities. The goals and objectives…contain specific and detailed information about what the student is supposed to learn to do and when he is to accomplish each goal. This IEP contains no bridge between the goals and objectives and the program… It is insufficient for the school to entrust the WOU with the responsibility to design the means of accomplishing the goals and objectives from the school, and from the PET. This IEP does exactly that and is therefore deficient in the regard, [sic]

(Hearing Officer Decision, p. 8, SEA ME, 10/31/00) Substituting "Waban" for "WOU", that language applies with equal strength to the instant case. This hearing officer concludes the "IEP" developed by the school after the December PET and mailed to the family in January of 2001 is flawed for exactly the same set of reasons that apply to the June 2000 IEP. Consequently, the hearing officer determines that the purported IEP did not satisfactorily address the deficiency identified in paragraph (a) of the hearing officer's order.

**C.**

This hearing officer has determined that the school has not "satisfactorily addressed the deficiencies" in the original IEP. Given that determination, the hearing officer is ordered by the court to determine the monetary value of the compensatory education services that the student is entitled to for to the entire 2000-2001 school year. In doing so, the hearing officer is guided by the general principle that the function of a

compensatory education order is to remedy a school's failure to provide a student with the free and appropriate education guaranteed by the IDEA and state special education law. Typically, this is accomplished by making it possible for the student to receive services in the present time that he should have received at some time in the past.

At the hearing, the family introduced evidence about both the kind and cost of the services to which the student is entitled. That evidence established that the student is entitled to the following services, with costs attached: (1) a full-time 1 on 1 aide at $30.00/hour; (2) a behavioral consultant at $100.00/hour; (3) a masters level special education consultant at $75.00/hour; (4) an American Sign Language consultant and a speech/language therapist; and (5) other costs such as transportation and computer equipment as part of the academic portion of the compensatory education program, According to the family's computations, the total costs of those services for an entire school year are:

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|---|---|
| $33,000.00 | I [sic]on 1 aide |
| 8,000.00 | behavior consultant |
| 6,000.00 | special education consultant |
| 6,000.00 | ASL and S/L consultant |
| $53,000.00 | |

Further, the family noted additional but unspecified costs for transportation, a computer and software.

The school's major argument on damages was that its liability should cease at the beginning of Christmas vacation in 2000, or 71 days into the 2000-2001 school year. In addition, the school asserted that the monetary value of compensatory education services for that time period should be reduced. In support of that reduction, the school advanced a series of arguments generally based upon the notion that the family failed to mitigate it [sic] damages. However, these arguments were made to, and rejected by, the *Robbins* court which stated, in part, that,

> …the Court has considered and rejects the District'[sic] arguments that…(the family's)…claim for compensatory education should be reduced. Specifically, the school asserts that because the parents objected to very little in the 2000-2001 IEP, the amount of their compensatory education claim should be decreased accordingly…This Court also rejects

> the (school's) argument that by withdrawing (the student) from Marshwood, the family failed to mitigate their damages.[12]

This hearing officer considers the court's ruling on these issues to be the law of the case, and therefore will not re-open these matters.

The hearing officer finds the services described by the family to be appropriate and the costs attached to those services to be reasonable. Consequently, based upon the evidence produced on this issue, the hearing officer concludes that the monetary value of the compensatory education services to which the student is entitled for the entire 2000—2001 school year is $55,000.00 (fifty-five thousand dollars).

**ORDER**

For the reasons set forth above, the school is ordered to pay to the family $55.[sic]000.00 (fifty-five thousand dollars), the amount determined above to be the monetary value of the compensatory educational services to which the student is entitled for school year 2000--2001.

Peter H. Stewart. Esq. Date
Hearing Officer

[12] 295 F. Supp at 123.

## WITNESSES

FOR THE PARENTS:

Louis Hall McIntosh, Advocate

Sandra Pierce-Jordan, PhD.

Father of Student

FOR THE SCHOOL:

Carole Smith, Director of Special Services, MSAD #35

Ryan Mountain, Vice President, Work Opportunities Unlimited

## DOCUMENTS

Parents Exhibits, pages 1-96

School's Exhibits, pages 1-321