

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

August 30, 2004

**Case No. 04.102X, *Parents v. SAD # 44***

REPRESENTING THE FAMILY:     The family appeared *pro se*.

REPRESENTING THE SCHOOL:   James Schwellenbach, Esq.

HEARING OFFICER:             Peter H. Stewart, Esq.

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

This case involves Student (DOB: x/xx/xx) who resides with his parents in Bethel, Maine, a town within Maine School Administrative District #44. Student attended xx at the Crescent Park School in SAD 44 during school year 2003-2004. During the year, his parents became concerned about the difficulty he seemed to be experiencing in school, especially in the area of pre-reading skills. In the spring of 2004, the family asked the school to convene a Pupil Evaluation Team meeting to evaluate Student and determine his eligibility for special education services. The PET ordered speech/language, cognitive and educational achievement evaluations to determine whether Student had a learning disability. The PET reconvened on June 9, 2004 after the evaluation results had been received. At this meeting, the school recommended that Student be retained to do a second year of xx; the parents did not accept this suggestion. Based upon the evaluations and the other information presented, the PET reached consensus that Student did not have a learning disability and was not eligible for special education services. On July 12, 2004, Student's parents filed a request for this due process hearing with the Maine State Department of Education.

Both the family and the school share a concern about Student's ability to learn, and make progress in, the set of pre-reading skills that are an important focus in xx.<sup>1</sup> The dispute between the parents and the school centers upon a basic disagreement as to the cause of the difficulties Student had in xx. In essence, the parents fear that Student may have a language-based learning disability at the root of his problems and want the school to perform additional evaluations – specifically a neuropsychological evaluation – to establish or eliminate their concern. The school, on the other hand, attributes Student's difficulties to his developmental status and believes that, as his development continues and he becomes more mature, the problems he experienced in xx will improve and he will continue to learn and make good progress in his use and understanding of language.

As a remedy, the parents want the hearing officer to order the school to perform a neuropsychological evaluation, to find Student eligible for special education and to develop an appropriate individualized educational program (IEP) for him. The school asks the hearing officer to find that the evaluations already conducted by the school are appropriate and sufficient and that the conclusion of the PET that Student was not eligible for special education is correct.

The parties held a pre-hearing conference on July 27, 2004, to clarify the issues for hearing. Documents and witness lists were exchanged in a timely manner. The hearing was held on August 4, 2004. The parties submitted 34 pages of joint exhibits. The parents presented one witness; the school presented three witnesses. The parties submitted post-hearing arguments, the last of which was received by the hearing officer on August 16, 2004. The record closed on that date.

The decision in this matter follows.

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<sup>1</sup> The parents, for example, hired a private tutor to work with Student outside of school in this area. The school believed Student could benefit from another year in xx before entering xx grade, and recommended retention.

### **PRELIMINARY STATEMENT**

This case involves a xx year-old student who will enter xx grade when school opens for the 2004-2005 school year. A PET met on June 9, 2004, and determined that the student was not eligible for special education services. His parents believe that the PET determination is incorrect, and want the school to conduct a neuropsychological evaluation of their son to test for a language-based learning disability. The parents want the hearing officer to find that the PET incorrectly determined that the student was not eligible for special education services and to order the PET to develop an appropriate IEP for him.

The school believes that classroom observations and the evaluations already conducted show that the student is making acceptable progress in school, given his ability. The school asserts that the kinds of difficulties the student had in xx reflect normal developmental issues which will resolve as the student matures and do not arise from any underlying pathology. For these reasons, the school believes that the evaluations it has already conducted are both appropriate and adequate, and that the PET correctly concluded that the student was not eligible for special education services.

### **ISSUES**

There are two issues to be decided:

1. Did the school conduct appropriate evaluations of the student in the spring of 2004?
2. Was the Pupil Evaluation Team correct when it determined that the student was not eligible for special education services?

## FINDINGS OF FACT

1. The student was born on xx/xx/xxxx and lives with his parents within SAD 44. He entered and completed xx in school year 2003-2004. His parents were concerned about the progress he was making in xx, particularly in the area of pre-reading skills. The student received Title I services during his xx year. A Pupil Evaluation Team (PET) met in March of 2004 to consider the student's progress during the year, to discuss his current status and to determine whether he was eligible for special education. This PET ordered speech and language, cognitive and educational achievement evaluations of the student. The PET reconvened on June 9, 2004, after the evaluations had been completed. The student's mother attended this meeting. At this meeting, the student's xx teacher recommended that he be retained in xx for another year; his mother rejected the school's retention recommendation, choosing to have her son advance to the xx grade for the 2004-2005 school year. The PET reviewed the evaluations and determined that the student did not have a learning disability and therefore was not eligible for special education services. The student's mother joined in this determination. (Joint Exhibits 5-10, 29; Testimony: Mother, B. Sabin, A. Holt)
2. The student's mother has observed her son attempt to learn pre-reading and writing skills, letters, numbers and mathematical concepts both prior to and during xx. To help remedy this problem, the family enrolled the student in xxxx xxxxx prior to school, hired a private tutor to work with him outside of school during the school year, and enrolled him in an educational program this summer. The students' family has a sincere conviction that "something is going on" with the student that has not been identified by the evaluations conducted by the school. That conviction is the basis for the family's belief that further testing is necessary to determine what the student's problem is. (Testimony of Mother)
3. Christine Lindsey, B.S., M.S., was the evaluator who did the cognitive and achievement evaluations ordered by the March 2004 PET. Her B.S. is in Elementary Education and her M.S. is in School Psychology. Both degrees are

from the University of Maine. She is certified as a K-8 regular education teacher and a K-12 special education teacher. She has taught for 15 years, 9 years in regular education and 6 in special education. She is also certified as a “school psychological services provider.” At the time she evaluated the student, she was nearing completion of an internship that was part of her M.S. degree program. She had completed all of the course work required for her M.S. degree, and had also completed 1500 hours of work in her internship. Beyond that, she was working on an advanced program under the supervision of Thomas Collins, PhD. This “practicum” involved an additional 250 [sic] of work; Dr. Collins role was to supervise the choice of tests she administered, to review her work as it went along and to sign her report if he approved of its design and contents. (JE 13-20; Testimony of C. Lindsey)

4. Prior to her assessment of the student, she had completed approximately 400 cognitive or achievement evaluations in SAD 44. The PET asked her to test for a learning disability in the student. In addition to meeting with the student, she reviewed the student’s file which included the classroom observation reports made by the regular education teacher, read the minutes of the PET meetings, talked to the student’s mother, and consulted with the speech/language therapist who had conducted the student’s speech/language evaluation. After these interviews, Christine Lindsey administered the Third Edition of the Woodcock Johnson Tests of Cognitive Ability and Achievement. (WJ-III). After reviewing the results obtained on the cognitive aspect of WJ-III, she concluded that the student’s general intellectual ability was within the average range, though she noted a below average result in a specific area called “processing speed”. After reviewing the results obtained on the achievement aspect of the WJ-III, she concluded that the student’s academic skills, defined as “basic skills”, and his academic applications, defined as the “ability to apply his knowledge” were in the average range. Finally, she compared the cognitive results with the achievement results and determined that there was no significant discrepancy between the student’s intellectual ability and his academic achievement, defining a “significant

- discrepancy” as a discrepancy of approximately 20 points between the scores on the two tests. (JE 13-23; Testimony of C. Lindsey)
5. Christine Lindsey also administered a test called Dynamic Indicators of Basic Early Literacy Skills, Sixth Edition (DIBELS-6). This test is designed to identify which teaching method would be most appropriate to help a particular student reach particular goals. It is not designed to establish the existence of a learning disability. After obtaining the results from the WJ-III cognitive and achievement tests, she had the authority, as a school psychological services provider, to use further evaluative tests if so indicated. She did not use any other tests in this case because the WJ-III tests conclusively answered the only question asked by the PET. That question was: does the student have a learning disability? (JE 13-20; Testimony of C. Lindsey)
  6. Barbara Sabin was the student’s xx teacher in 2003-2004. She has a B.S. in Elementary Education and has taught xx for 29 years. She is certified as a K-8 regular education teacher and as a K-12 special education teacher. For 15 years, she taught xx in the mornings and special education in the afternoons. She was a Title I teacher for seven years, working with children who needed help learning reading skills, and has taught xx on a full-time basis for seven years. Literacy and math skills are among the major goals of her current xx program. (Testimony of B. Sabin.)
  7. The student entered xx as a highly motivated and hard-working student who was somewhat immature, both in terms of his development and his behavior. He had his xx birthday on xx/xx/xxxx and displayed behavior typical of children who are a little immature: he had a hard time sitting still, didn’t pay attention as well as others in the class and didn’t listen consistently. He came to xx without much educational background or many educational skills. At the beginning of the year, he was writing - making letters and figures - at a 3 or 4 year-old level. (Testimony of B. Sabin)
  8. The student made appropriate growth over the course of the year. During xx, he learned 23 capital letters. His fine motor skills, as evidenced by his writing and

drawing, had greatly improved. He had not, however, learned his numbers from 1 to 10, and continued to struggle with mathematics. By the end of the year, his skills were at a point relatively typical of an average child entering xx. At the June 9, 2004 PET meeting, his teacher recommended that he be retained in xx for a second year. The student's mother did not accept this recommendation. The student's xx teacher was aware that he was having certain difficulties in school. She did not refer him to a PET not only because she had observed that he was making real progress in school, demonstrating that he was capable of learning the things he needed to learn, but also she believed that his problems were developmental in nature, and arose from his immaturity and not any learning disability. Her opinion was that the student would grow beyond his difficulties as he matured over time, [sic] (JE 6-13; Testimony of B. Sabin)

## **DISCUSSION**

There are two issues to be resolved in this hearing. For reasons that are discussed below, I find that the evaluations of the student conducted by the school were appropriate in nature and that the professionals who performed the evaluations were qualified and properly certified. I conclude that the evaluations conducted by the school were in compliance with state and federal special education laws and, consequently, that the parents are not entitled to any additional evaluations at public expense at this time. I also find that the June 9, 2004 PET correctly concluded that the student did not have a learning disability and therefore was not eligible for special education services.

### **I.**

In this matter, the family argues that the school should conduct, at public expense, a neuropsychological evaluation of the student in order to identify the source of the problems he was encountering in xx. In order to obtain such an evaluation, the family must show the evaluation process used by the school violated the standards for evaluations set forth in the Maine Special Education Regulations, Section 9, Evaluation Procedures. Because the family is requesting an additional evaluation, rather than

challenging the validity of those evaluations already done, the relevant regulatory section is MSER 9.5 (C) (C)<sup>2</sup>, which states, “The student shall be assessed in all areas of suspected disability or disabilities.” Thus, in order to obtain a neuropsychological evaluation at public expense, the family must show that the student had, or was suspected of having, a neuropsychological disability during the time the PET was making the eligibility determination. The facts in this case do not support such a conclusion.

The student’s teacher, who has taught xx for more than 20 years and has worked 7 years in Title I programs teaching reading, quickly recognized that the student had some problems facing him in xx. He was young, having just turned xx on xx/xx/xxxx, was immature, and came to school without many of the skills his classmates had already acquired. Despite these obstacles, the student was highly motivated, worked hard and made good progress toward learning the skills he needed to learn. His teacher attributed the student’s deficiencies to his relative youth and developmental immaturity. She saw no signs of any learning disability - indeed, the student did learn and continued to make progress throughout the year - and consequently did not refer the student to the PET process. She did see signs typical of developmental immaturity in the student and attributed his problems to that immaturity. She also believed that the student would grow beyond many of the difficulties he had experienced in xx as he matured over time. Both for that reason and because at the end of the year the student was at a skill level typical of an average child entering xx, she recommended to the family that he be retained in xx for another year. In the end, his teacher believed that the fact the student was behind others in his class was attributable to his youth and developmental immaturity, and not to any learning disability or neuropsychological disability.

The PET reached a similar, but not identical, conclusion. At the March meeting, the PET heard the family’s concerns and requested speech and language, cognitive and achievement evaluations of the student. While the concern of the PET was centered on the possible existence of a learning disability, there was no discussion of any need for a neuropsychological evaluation.

After administering the WJ-III cognitive and achievement evaluations, the school’s primary evaluator reached the same conclusion as the student’s xx teacher: while

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<sup>2</sup> This is not a typographical error.



the student had difficulties in certain areas, he was generally in the low average to average range, was performing and learning in a manner consistent with his abilities, and displayed behaviors typical of developmentally immature children about his age. While she had the authority as a school psychological services provider to pursue other evaluations if the results on the WJIII series had so indicated, she did not see any reason to perform any other tests. She determined the tests she performed conclusively answered the referring question asked by the PET: does the student have a learning disability? In her professional judgment, no further tests were needed.

In summary, through June 9, 2004, no one involved with the student, including the family, had suggested anything indicating that it was necessary to perform a neuropsychological evaluation of the student. In fact, the student's mother signed a "Learning Disability Evaluation Report" form on June 9 indicating that she agreed with the PET's conclusion that there was no discrepancy between her son's ability and achievement and that he did not have a learning disability. There is simply no factual basis in the record of this case upon which it is possible for this hearing officer to conclude that the June 9 PET erred by not ordering a neuropsychological evaluation of the student. Consequently, the hearing officer finds that the evaluation process employed by the school in this matter complied with applicable special education law and regulations.

## II.

The family also contends that the June 9, 2004, PET incorrectly determined that the student did not have a learning disability and was not eligible for special education services. For many of the reasons already discussed, the evidence in this case does not support that contention.

In order to be eligible for special education services under the category of "specific learning disability"<sup>3</sup>, a student must have a "psychological processing disorder" and an achievement deficit amounting to a "severe discrepancy" between the student's intellectual ability and achievement. In this case, even assuming *arguendo* the existence

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<sup>3</sup> *See*, MSER 3.11.

of a processing disorder, there is no evidence whatsoever of any discrepancy between the student's intellectual ability and his achievement. Rather, the only evidence presented at the hearing on this issue conclusively establishes that there is no "significant discrepancy" between the student's intellectual ability and his academic achievement scores.<sup>4</sup> The school's primary evaluator specifically reached this conclusion by applying a discrepancy analysis to the results obtained by the student on the WJ-III cognitive and achievement tests. There was no evidence presented at the hearing to contradict this conclusion. Consequently, this hearing officer determines that the June 9 PET correctly concluded that the student did not have a learning disability and, therefore, was not eligible for special education services.

### **ORDER**

Finding no violation of law, no order need be issued.

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Peter H. Stewart, Esq.  
Hearing Officer

Date

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<sup>4</sup> *See*, JE 18-19.