

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

June 1, 2005

Case No. 05.010H, *Parent v. Orland School Department (Union #91)*

REPRESENTING THE FAMILY: Lynne A. Williams, Esq.

REPRESENTING THE SCHOOL: Eric R. Herlan, Esq.

HEARING OFFICER: Peter H. Stewart, Esq.

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**INTRODUCTION**

This special education due process hearing has been conducted pursuant to state and federal special education law, 20-A MRSA 7207 *et seq.* and 20 USC 1415 *et seq.*, and the regulations accompanying each.

The mother filed a request for this due process hearing on January 26, 2005, on behalf of her daughter, a xx year-old student (DOB: xx/xx/xxxx) at the Orland Consolidated School. The student lives with her mother in Orland, Maine, and is eligible for special education services under the category of Emotional Disability (ED). The Orland School Department has been responsible for her education since she entered xx.

While the relationship between the family and the school has run a somewhat difficult course over the years, the issue in this proceeding is limited to events that occurred in the current academic year, school year 2004-2005. Shortly after school began last fall the student, who was enrolled in a self-contained behavior program at school, displayed persistent aggressive and assaultive behavior toward other students and school staff. Because of these problems at school, the student did not attend school for most of the time from September 15 through October 31. A pupil evaluation team (PET) met on October 27 to develop a new individual education plan (IEP) for the student. This IEP called for the student to be educated largely by herself, in the company of a

special education teacher and an educational technician, and provided that she attend school 2 hours per day. (SE 86-89) The family and the school agreed, at a formal mediation session held November 30, that student's time at school would be increased to 3 hours per day beginning on December 6. The parties also agreed that further increases in the length of the student's school day would be conditioned upon the student's success in her 3 hours per day schedule. (SE 72)

At the hearing, it was apparent that the parties have agreed on precious little since November 30, when the mediated agreement referred to above was achieved. The family challenged the school's recent actions, arguing that, since December 6, 2004, the school has failed to lengthen the student's school day appropriately and has also failed to include the student in activities at school with her non-handicapped peers, thus violating the IDEA and state special education law. The school asserts that it has complied with all legal requirements in its efforts since December 6 to provide the student a school program that is reasonably calculated to enable her to receive educational benefit that is both adequate and appropriate.

The decision in this matter follows.

### **ISSUE**

The single issue to be resolved at this hearing is:

Whether the school's efforts to extend the student's program or school day are reasonably calculated to provide educational benefit to the student in the least restrictive educational environment?

### **FINDINGS OF FACT**

1. The student (DOB: xx/xx/xxxx) lives with her mother within Union 91 and is eligible for special education services under the category of Emotional Disability. In addition, she has been diagnosed over the years with other conditions including: Attention Deficit/Hyperactivity Disorder (ADHD), Oppositional Defiance Disorder (ODD), Mood Disorder, Overanxious Disorder of Childhood and Pervasive Developmental Disorder Not Otherwise Specified. The student also has been

observed with sensory integration, visual-spatial and visual-motor delays. The student began her 2003-2004 school year at the Orland Consolidated School. Because of her problematic behavior, which was both verbally and physically aggressive, the student was taken out of school and placed first in Stillwater Academy, a day treatment program for children presenting behavior problems. Her behavior and ideation became so extreme that she was transferred to the educational program at Acadia Hospital, a residential facility. Upon discharge from Acadia, the student returned to Stillwater Academy for about three weeks where she displayed such extreme behavior that she had to be physically restrained between 10 and 19 times per day. Because of this pattern of aggressive and assaultive behavior while at Stillwater, the PET moved her into a home-based tutoring program in early June. During the summer of 2004, she received extended school year services in a program that was primarily focused upon social and recreational activities, though some time was devoted to academics. The program ran for 2-3 hours per day, 5 days per week and lasted for 5 or 6 weeks. (Testimony of Mother, Fernandez, Fink and Lorigan, Dispute Resolution Request Form, School's Exhibits 34, and 256-258)

2. The student began the 2004-2005 school year at the Orland Consolidated School pursuant to an IEP developed by the PET, which included the student's mother, at a meeting on September 1, 2004. The student's mother requested that physical restraints not be part of the IEP, and the PET initially acceded to this request. The school intended to implement this IEP in a self-contained behavior program at the school, called the Foundations Program, a new program that was specifically designed for this student and several others. The staff consisted of a certified special education teacher and several educational technicians. Dr. Christine Fink, a psychologist licensed in Maine, acted as a consultant to the program. In the Foundation Program, the student quickly began to display aggressive and assaultive behavior toward the staff and other students, including kicking, punching, trying to bite, choking, and hitting both staff and students in the nose, mouth, face, abdomen, legs or back. The student was assaultive on a frequent basis in September, with at least one incident occurring on September 8, 9, 10, 13, and 15. At a PET meeting held on September 15, the school told the student's mother that, because of the

frequency and violent nature of the student's outbursts, that [sic] physical restraints had to be available to the staff for the protection of both the student and others in the classroom. The student did not attend school for about a week after September 15 because she was on a trip with her mother. The student returned to school after returning from her trip and shortly thereafter, on September 27, kicked the Foundations Program special education teacher on her shin, breaking the skin. As a result, the student was sent home from school and did not return until November 1. During that time, the school funded home tutoring for the student, and authorized the tutor to provide as much tutoring as she could. The special education teacher who was kicked by the student on September 27 sought medical attention, was placed on medical leave throughout the month of October and did not returned [sic] to teaching in this program. (Testimony of Lorigan, Fernandez, Fink, SE A-18 through A-38, 97-99)

3. A PET meeting was convened on October 27, 2004 to design a plan to transition the student back into school and the program she would receive. The student's mother was present at the meeting, as was the student's new special education teacher. This IEP called for the student to be in a room by herself, with a special education teacher and an educational technician. The room has a sliding "curtain wall" dividing it from the rest of the Foundations Program classroom. There are no windows to the outside; there is a window in the door to the student's classroom. The room has its own bathroom. All the members of the PET agreed that the student should transition back to school slowly and, consequently, the IEP called for her to attend school only 2 hours per day at first. The student, on her first day at school in the new program, again displayed aggressive and assaultive behavior directed at other students, school staff members and her private counselor. (Testimony of Mother, Allard, Lorigan, SE A-39 to 41, A-43, 27-28, 86-89, 325-330)
4. On November 30, the family and school staff attended a mediation session that occurred as a consequence of the family's request for a due process hearing for the student. The parties reached an agreement at the mediation, set forth full in the record at SE 72. Notably, the agreement called for the student's school day to be lengthened, beginning December 6, to 3 hours per day and provided that any

additional lengthening of the day “will be judged on (the student’s) continued progress...”. The agreement also called for further evaluations and an increase in the amount of time the student is with her non-handicapped peers, beginning with lunch-time. By the time of the hearing, the school had substantially complied with the terms of the mediation agreement. (Testimony of Lorigan, SE 72)

5. Christine Fink, PhD is a clinical neuropsychologist who did a functional behavioral analysis of the student in January of 2005 and submitted a 9-page report that served as one basis for the behavior intervention plan for the student that was adopted by a PET that met on January 26, 2005. In the [sic] her report, Dr. Fink notes the complex set of special needs presented by this student, as well as the challenging behaviors she displays, and makes a series of recommendation. The student has many needs, and her program must be carefully designed to give her the best possible chance to succeed at the twin goals that all the adults involved with her agree upon: she needs to be working toward a 1) longer school day that provides for 2) more interaction with other children who receive both special and regular education at school. A slow [sic] gradual approach toward these goals, building incrementally toward more time in school and more inclusion with other students, is far more likely to succeed with this student. Further, the development of a set of close [sic] collaborative relationships among the adults, both in school and at home, who are involved in the student’s education is very important to the success of the student, who is quick to sense and respond – usually negatively - to any discord that may exist among the adults around her. Dr. Fink is available [sic] On January 26, 2005, the family filed a request for a due process hearing. (Testimony of Fink, SE 34-42, Dispute Resolution Request)
6. Jennifer Cammack is a Registered and Licensed Occupational Therapist who was engaged to do an OT evaluation of the student in January of 2005. She observed the student in a classroom setting on January 14, met with the staff afterwards and made a series of suggestions to her teachers about more productive strategies, generally involving more “structure” in the classroom, that they could use to deal with the student. She then observed the student in the classroom again, one week later. There was a marked improvement in the classroom, from one observation to another; the

student's teacher and educational technicians were "very skillful" and implemented Ms. Cammack's suggestions "flawlessly", the student seemed more comfortable in the more structured setting and was more compliant and attentive over the three-hour span of observation. At one point during the observation, the student's advocate and the school's special education director entered the classroom together. There was some disagreement between the two, and when the student became aware of the conflict, she showed signs of stress – her face "went white" – that receded only when the two adults left the classroom, at Ms. Cammack's request.

The student is a complex and challenging little girl who is approaching her "last chance" to be educated in her local school system. She needs very badly to experience some success in school. Consequently, any attempt to lengthen her school [sic] should be done very gently and very gradually, perhaps an increase of 20 minutes to start, and that only after much discussion among school staff and family members. Additional mainstreaming also ought to be approached very carefully. It should probably occur in [sic] non-academic area first, and possibly some form of reverse mainstreaming might to be productive. (Testimony of Cammack, SE A-4 through A-15.)

## **DISCUSSION**

Prior to this hearing, the parties agreed that the single issue to be resolved here is whether the school's efforts to extend the student's program or school day are reasonably calculated to provide educational benefit to the student in the least restrictive environment. The family argues that the student's school day, which is currently three hours long, should be lengthened to include more time in school, and more time in school activities with other children, both other special education students as well as her non-handicapped peers. The family believes that the student is already capable of handling the additional challenge of more time in a school setting, with more contact with non-handicapped children, and asserts that the school has violated the student's IDEA rights because it has not yet provided either to the student. The school, while recognizing that a longer school day and more interaction with other children represent valid goals for the student, believes that progress toward those goals must be accomplished gradually, thoughtfully and in a manner designed to maximize the student's opportunity to succeed.

The school contends that the program the student currently receives is designed to help the student become ready for a longer school day, with more inclusion. The school argues that the efforts currently being made in regard to the student, and the program those efforts have produced, are appropriate and are reasonably calculated to provide educational benefit to this student, thus complying with the requirements of the IDEA. For the reasons set forth below, the hearing officer agrees with the school and concludes that the efforts the school has made to extend the student's program and school day are consistent with the IDEA. The school's actions thus far have not violated any of the student's rights arising from state or federal special education law.

This student presents a complex set of challenges to any school system with the responsibility for education [sic] her. She is eligible for special education under the category of Emotional Disability but, in addition, has been diagnosed with a series of conditions including Attention Deficit/Hyperactivity Disorder, Oppositional Defiance Disorder, Mood Disorder, Overanxious Disorder of Childhood and Pervasive Developmental Disorder Not Otherwise Specified. Her behavior in the various settings in which she has been placed has been challenging, to say the least. Her behavior over the last two years, in school and in the more restrictive placements where she has been educated, has been characterized by outbursts of aggressive, assaultive, defiant and at times dangerous attacks, verbal and physical, directed at school staff and other students. During school year 2003–2004, when she was attending Stillwater Academy, a day treatment program specializing in children presenting behavioral issues too difficult for most local schools, the student displayed such difficult behavior that she had to be physically restrained by Stillwater staff between 10 and 19 times per day.

Upon entering the Foundations Program, a self-contained behavior program developed by the school for the 2004-2005 school year, the student quickly began to display similar aggressive and assaultive behavior toward school staff and other students.<sup>1</sup> That behavior included kicking, punching [sic] trying to bite, pushing,

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<sup>1</sup> In the summer of 2004, the student received extended school year services in a program that ran 2 or 3 hours per day, five days per week, for 5 or 6 weeks. The student did relatively well there, with fewer behavioral incidents than in school. However, the summer program was mostly playtime, in social and recreational activities, with only minimal time given over to “academic” training.

choking, and hitting school staff and students in the nose, face, abdomen, legs and/or back. At least one such incident was reported on September 8,9,10,13 and 15, 2004. Her behavior in the Foundations Program was so disruptive and dangerous that the use of physical restraints to control the student, which had been excluded by parental request, had to be reinstated by the PET on September 15, 2004. Later in September, the student kicked her teacher in the shin, breaking the skin on the teacher's leg.<sup>2</sup> After this incident, the student was sent home from school, and did not return until November 1, when she was educated in a self-contained setting in a room by herself, with a new special education teacher and an educational technician, pursuant to a new IEP developed by a PET that convened on October 27. The student continued to present difficult behavioral challenges to the school staff in this new setting.

The school has devoted a considerable amount of time, energy and effort over the last 2 years in an attempt to find ways to help this student learn to cope with the behavioral, social, and academic demands of being in school. It is clear it [sic] that cannot be easy for this student to be comfortable in a school setting, given the set of physical, emotional, behavioral, social and cognitive challenges she carries within her. It is equally clear that this student presents a terribly difficult set of challenges to the school. The school has responded to this challenge with a remarkable amount of energy and professionalism. In an attempt to provide the student with an appropriate education in her neighborhood school, the school developed the Foundations Program, housed in the same building as the rest of the elementary grades, as a self-contained behavior program for the student and other children presenting similar problems. When the student's [sic] became unmanageable in the Foundations Program classroom, the school developed an alternative setting for her, which was approved by the family at the October PET. At the mediation session held on November 1, the school and the family agreed to lengthen the student's school [sic] from 2 to 3 hours per day, which occurred in early December 2004. In January of 2005, the school engaged both a neuropsychologist and an occupational therapist to perform evaluations of the student. The competence of these professionals is

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<sup>2</sup> The teacher sought medical attention, went on a medical leave and did not return to teach in this program.



demonstrated by the content and the quality of their extensive reports<sup>3</sup>, which the January 26 PET used to develop the set of teaching and intervention strategies currently employed by the teachers and educational technicians working with the student.

The hearing officer concludes that the purpose of the current program, which is based in large part on the January evaluations referred to above, is to create a situation in which the student can successfully accomplish a longer school day, with more interaction with other students. As noted by the evaluators, it is important to develop a set of close collaborative relationships among the adults involved in the student's education. It is also important that changes to the student's program, whether lengthening her school day or introducing more interaction with other students, be implemented gradually, in such a way that the student has the best possible chance to succeed. The hearing officer believes that the school is, and has been, committed to the task of helping this student to develop and to experience some success. The hearing officer concludes that the school's efforts toward that end, and the program it has created and is continuing to develop, are reasonably calculated to accomplish the twin goals that both the school and the family agree are vital to this child's development – a longer school day with more interaction with other students.<sup>4</sup> The IDEA is not violated by the school's actions in this matter.

#### **ORDER**

Finding no violation, no order need be issued.

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Peter H. Stewart	Date
Hearing Officer	

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<sup>3</sup> The report of the neuropsychologist is found at SE 34-42; the occupational therapist's report is at SE A-4 to A-15

<sup>4</sup> The family has asserted that the setting where the student is currently being educated violates the IDEA's LRE requirement. The hearing officer rejects this assertion. The family participated in the development of this program, at PET meetings held on October 27, 2004 and January 26, 2005 and, in those meetings, consented to the setting for the program and to the length of student's school day. Further, there was no evidence introduced at the hearing to indicate that this student is ready at this time for either a longer day or more interaction with other students. The timing, manner and extent of progress toward those goals is a matter for the PET, and not the hearing officer, to determine [sic]

## **WITNESS LIST**

### **FOR THE FAMILY:**

Student's Mother

Dawn Fernandez, Educational Technician/Advocate

Sheila O'Donnell, Educational Technician

Jodi Leach

Barbara Field, Student's Grandmother

Candice White, Educational Technician

### **FOR THE SCHOOL:**

Christine Fink, Psychologist

Jennifer Cammack, Occupational Therapist

Nicole Allard, Special Education Teacher

Beth Anne Lorigan, Special Education Director

## **DOCUMENTS**

Parent's Exhibit 1:                    Neuropsychological Evaluation Report (9 pages)

School's Exhibit's 1 – 92:        Pages 1 – 339

Dispute Resolution Request Form

