

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

January 20, 2006

Case No. 05.116H, *Parent et al. v. Maine School Administrative District No. 40*

REPRESENTING THE FAMILY: Lynne A. Williams, Esq.

REPRESENTING THE SCHOOL: James C. Schwellenbach, Esq.

HEARING OFFICER: Peter H. Stewart, Esq.

INTRODUCTION

This special education due process hearing has been conducted, and this decision written, 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.

The student's mother initiated this matter by filing a hearing request form with the Maine Department of Education on September 27, 2005, on behalf of her son (DOB: xx/xx/xxxx).¹ The student's residence is with his mother, who lives in Maine School Administrative District #40. The student has been identified as eligible for special education services under the category of multiple disabilities, having been diagnosed over time with Attention Deficit Hyperactivity Disorder (ADHD), Emotional Disability (ED), and adjustment disorder. He is currently attending the Hyde School where his family unilaterally placed him in 2004. He is a boarding student there.

While this dispute involves a set of issues that are discussed later in this decision, the central disagreement arises out of the family's contention that the school neither provided nor offered the student an appropriate educational program during the years in question. Because of this belief, the family unilaterally placed the student in a series of private residential placements. In this case, the family argues that the school is obligated to pay for tuition and other costs associated with those placements. The school disagrees with the family's contention that the programs it provided, or offered, to [sic] student did

¹ While the student is now xx years old, the mother has been appointed his guardian for legal and medical matters.

not amount to a free and appropriate public education. Rather, the school asserts that the programs it offered the student were reasonably calculated to provide sufficient educational benefit to pass muster under the IDEA and state special education law. Further, the school contends that the residential placements made unilaterally by the family were not required for educational reasons; whatever need there may have been for an out-of-home living arrangement for the student was not related to school, nor to the student's educational requirements, but to other aspects of the student's life. The school argues that it has met all its obligations under the IDEA and therefore is not responsible for the tuition and other costs associated with the various unilateral placements made by the family.

The hearing officer conducted a pre-hearing conference on November 17, 2005. At the conference, the parties discussed the school's motion to dismiss several of the issues raised by the family. On November 22, the hearing officer issued his decision on the school's motion, dismissing issues 1, 2 and 4 of the family's issues. The hearing was held on November 29 and 30. At the beginning of the hearing on November 29, the family made a motion to reconsider, asking the hearing officer to revisit his decision on the school's motion to dismiss; the family submitted five pages of legal argument and a seven page affidavit, to which eleven exhibits were attached. Rather than delay the hearing pending the hearing officer's decision on the motion to reconsider, the hearing itself went ahead, and the parties presented evidence on all seven issues initially raised by the family, as described in the hearing officer's pre-hearing memorandum dated November 22. The hearing officer issued his decision on the motion to reconsider on December 12, reviving issues 1 and 2, but sustaining the dismissal of issue 4.

At the hearing on November 29 and 30, the family entered 90 pages of documents identified as Family Exhibits 1-89 into the record and presented 5 witnesses. The school entered 239 pages of documents identified as School Exhibits 1-71 into the record and presented 3 witnesses over the two days of hearing. The parties submitted written post hearing closing arguments, the last of which was received by the hearing officer on December 27, 2005, at which time the record was closed.

ISSUES

The family identified the following issues:

- 1) Were the IEPs and placements offered to the student from December 2003 through the end of the 2003-2004 school year reasonably calculated and implemented so as to provide the student with a free and [sic] appropriate public education;
- 2) Was the Walkabout placement an appropriate placement and, if so, is the family entitled to reimbursement of the costs associated with that placement;
- 3) Were the IEPs and placements proposed for the 2004-2005 school year reasonably calculated to provide the student with a free and [sic] appropriate public education;
- 4) Were the IEPs and placements offered for the 2005-2006 school year reasonably calculated to provide the student with a free appropriate public education;
- 5) Is the Hyde School an appropriate placement;
- 6) Is the family entitled to reimbursement for the expenses incurred to date with respect to the student's placement at the Hyde School; and
- 7) Is the student entitled to an award of compensatory education because SAD 40's failed to offer him a free and [sic] appropriate public education from December 2003 until November 2005?

As stated earlier, the school submitted a motion to dismiss certain of these issues, and the family filed a motion to reconsider the hearing officer's initial decision on the school's motion. The hearing officer granted the family's motion in part, reviving issues 1 and 2 but sustaining the dismissal of issue 4.²

² Issue 4 involved events that occurred, or didn't occur, with regard to the development an IEP for the 2005-2006 school year. Because the hearing officer has dismissed that issue, issue 7 is modified as follows: Is the student entitled to an award of compensatory education because SAD 40 failed to offer him a FAPE from December 2003 until June 30, 2005?

FACTUAL FINDINGS

- 1) The student's mother filed a request for a due process hearing with the Maine Department of Education on September 27, 2005, on behalf of her son, (DOB: xx/xx/xxxx) for whom she has been appointed legal guardian for legal and medical matters. The student's father lives outside of the United States. He was copied on the hearing request form but did not participate in this proceeding. (Hearing Request Form, Testimony of Mother)
- 2) The student's residence is with his mother, who lives within Maine School Administrative District #40. The student is eligible for special education services under the category of multiple disabilities, as he has been diagnosed over time with a variety of conditions including Attention Deficit Hyperactivity Disorder (ADHD), Emotional Disability (ED), adjustment disorder, and Asperger's Disorder. (Hearing Request Form, Testimony of Mother)
- 3) The student attended the Riley School, an out-of-district private school in which his family had unilaterally placed him, for his xx and x grades. SAD 40 provided some tutoring services to him while he [sic] at the Riley School. For his xx grade year, school year 2001-2002, he attended Medomak Valley High School (MVHS), the secondary school operated by SAD 40. Initially, he was taking classes that would have earned him 8 academic credits, when a typical student earns 6 credits a year. During the year, he dropped one of his courses, Latin, and transferred to a lower level math course. His IEP provided him with assisted study hall time each time [sic] with academic support available, 60 minutes of consultation services per week and 30 minutes of occupational therapy consultation per week. He was quite successful under this program; earning 7 of the 24 credits needed for graduation, and was elected president of his class for the xx year. During his xx grade year, his mother discussed with the MVHS guidance staff the possibility of the student going to private boarding school beginning with his xx year. The school was asked to participate in the application process and, in January 2002, MVHS filed its part of the student's application. In May 2002, a PET met to discuss

and develop an IEP for the student. The IEP was modeled on the prior year's program. (SE 206-213, 216-223; Testimony of Mother, Crosby)

- 4) The student did attend private school in his xx year. He was enrolled by his family in the Kent's Hill School, an out-of district private general-purpose boarding school, and attended school there for all the 2002-2003 school year. In the summer of 2003, MVHS convened a PET to discuss the student's placement and IEP. At this PET, the school believed that it could provide a program that would meet the student's educational needs if he chose to enroll in MVHS for school year 2003-2004. His mother disagreed. The PET agreed to arrange a neuropsychological evaluation, to be done by Dr. Kendra Bryant, and further agreed to add 4 hours per week of tutoring to the student's IEP if he were to attend MVHS in the fall. The student did not attend MVHS. He was re-enrolled by his family at Kent's Hill for school year 2003-2004. He left Kent's Hill under suspension in mid-December 2003 and never attended school there again. The school first learned of the student's suspension from Kent's Hill School on December 18, 2003, when it received a request for a due process hearing from the family. (SE 150-154; Testimony of Mother, Kaufman, Crosby)
- 5) On January 12, 2004, a PET met at MVHS to discuss the student's current educational situation and to develop an IEP. The family did not want the student to attend MVHS. PET [sic] decided that a final decision on the IEP should not be made until after the results of Dr. Bryant's neuropsychological examination were available. Until the PET had an opportunity to review Dr. Bryant's report, the student would receive 1:1 tutorial services for 3-4 hours per day, five days per week, with transportation provided to and from the tutoring site. The student's mother was unwilling to allow him to attend school at MVHS; the student himself was anxious and concerned about going to school there.

On February 2, 2004, the PET met at MVHS to review Dr. Bryant's report and modify the IEP, if necessary. Dr. Bryant's report is a lengthy document, 29 single-spaced pages of narrative, based on extensive interviews with the

student, his family, and his former teachers. Dr. Bryant administered a battery of testing mechanisms to the student over four days of testing; her report both records and discusses the results she obtained. Dr. Bryant reached a variety of conclusions and findings, including: 1) a set of recommendations about the kind of educational programming the student should receive; 2) the general conclusion that the educational program she recommended “can be provided within most school settings as long as [the student] is designated as being entitled to [special education] services and the school indicates a willingness and ability to provide those services”; 3) the finding that it would not be in the student’s “best interest to return to Medomak Valley High School...he feels stigmatized there as a result of recent incidents and tensions.” and, 4) the remark that it would be better for the student to continue receiving his education via the tutorial arrangement currently established through the end of the 2003-2004 school year “while plans are being made for 2004-2005 [and] while he addresses his mental health needs and living situation.” Dr. Bryant spoke at length about the student’s academic programming needs. She was “much more concerned currently with his emotional needs. He and his mother have agreed that his living with is [sic] mother has become untenable, and I concur.” Dr Bryant did not think that the student required a residential placement for either educational or therapeutic reasons.

The PET generally accepted Dr. Bryant’s recommendations: it changed the student’s handicapping condition to Multiple Disability, decided to continue the tutoring schedule that had been established, added psychological counseling and transportation services, and determined to continue the tutoring schedule that had already been established while MVHS and the family attempted to identify another high school in the area where the student might enroll. (SE 100-103, 108-137, 143-146; Testimony of Mother, Bryant, Kauffman)

- 6) After the February PET, the school continued to provide tutorial services to the student, and attempted to arrange for counseling services. It proved difficult to find a counselor both willing and available to work with the

student. After a while, the school agreed to fund and transport the student to and from counseling with a professional identified by the family. Mr. Kauffman also contacted high schools within an area bounded roughly by the towns of Augusta, Camden and Newcastle in an attempt to find a public high school in which the student might be enrolled. This search continued but on March 21, 2004, the student's mother unilaterally removed him from the SAD 40 program and enrolled him in a residential therapeutic wilderness program in Utah. The family contracted with an educational consultant to assist them in finding a situation that they considered appropriate for the student, such as Walkabout. (Testimony of Mother and Kauffman)

- 7) On March 22, the student left Maine for Utah to attend Walkabout Therapeutic Expeditions which describes itself as a "licensed therapeutic wilderness program designed to assess and treat adolescents ages 13-17 struggling with problems such as Oppositional Defiant Disorder, Substance, Depression Academic and other behavioral, emotional and family problems." In her e-mail to MVHS announcing his enrollment in Walkabout, the student's mother described it as a "medical placement" and stated that the "referral has been made by [the student's] psychiatrist". Her e-mail also stated, "Please be aware that this letter is also to serve as your 10 day notice of private school placement." The student's psychiatrist referred the student to Walkabout due to concerns about his "impulsive aggression, poor anger management and ongoing conflict at home" in the hope that successful treatment would avoid "the need for residential placement." His psychiatrist believed that the student had improved as a result of his time at Walkabout, had made "considerable improvement in his level of motivation to succeed academically" and also displayed a "sharp decline in aggressive outbursts." At Walkabout, the student was diagnosed with ADHD, adjustment disorder, and cannabis abuse. While there, the instructional services he received were limited to "one hour per week, maybe a little more". In the discharge summary from Walkabout, Dr. Hammond stated that the student had made a good start while there but that because his ineffective behavior patterns arose out of "the dynamics,

structures and patterns that became troublesome at home “[sic] and because that situation has “remained largely unchanged”, it would be unwise for the student to return to that situation. Dr. Hammond felt that the student would do best within a structured therapeutically supportive environment such as an emotional growth boarding school. (SE 60-62, 72-73, PE 20; Testimony of Hammond and Mother)

- 8) The student was discharged from the Walkabout program on May 12, 2004 and returned to Maine shortly thereafter. Upon his return, the MVHS provided the student with the program developed by the February 2004 PET that he had been receiving before his family sent him to Walkabout: the student received 1:1 tutoring for four hours per day, five days a week, psychological counseling, and transportation to and from both. These services were provided to the student until mid-June, when the student left Maine to go to the Netherlands to visit his father. The PET met on May 27 and again on June 16 to review the student’s program and develop an IEP for the 2004-2005 school year. The school was offering a placement at another public high school in the area, with Lincoln Academy in Newcastle the likely placement. The student’s mother discussed the Hyde School, a private out-of-district regular education school with day and boarding students at both the May 27th and June 16th PET meetings. At the June 16th PET meeting, the student’s mother announced that, of all the boarding schools the family had considered, the student preferred the Hyde School. She further stated that the student would be enrolled in a summer program operated by the Hyde School; if he did well enough there, he would be admitted in the fall for school year 2004-2005. She described the student’s summer schedule as follows: he was going to fly to the Netherlands on June 18 to visit his father for three weeks; he was returning in time to begin the Hyde School summer program from July 5th to August 8th. She left the PET meeting before it adjourned, due to another commitment, leaving her advocate at the meeting as her representative. Prior to the end of the meeting, the family’s advocate presented a letter, already signed by the student’s mother, informing the PET, in part, about “our

decision to reject the district's offer of placement... We do not believe the placement will adequately address [the student's] severe emotional and academic needs. As I informed you earlier today, I intend to place my son at a private institution and I plan to seek reimbursement at public expense." The PET continued on to develop an IEP for the student's 2004-2005 school year. That IEP called for 200 minutes per week of direct instruction, 60 minutes per week of consultation, 50 minutes per week of psychological counseling, and 120 minutes per week of tutoring. This IEP could have been implemented in a public day school placement. (SE 32-34, 37, 44, 60; Testimony of Mother and Kauffman)

- 9) The student attended the Hyde summer program from July 5th to August 8th and did well enough in the program to be admitted into the Hyde School for school year 2004-2005. His tutoring resumed after the completion of the summer program. On August 24th, the student's mother notified the MVHS that she was going to unilaterally place the student in the Hyde School for school year 2004-2005 and that she was going to seek "reimbursement at public expense" for the costs associated with the placement. She also stated that the student's "summer tutoring" would end on August 27th. The student registered for classes at Hyde on September 8th. The student was successful in his first year at Hyde; during this year, MVHS provided both counseling and tutorial services. His mother reenrolled him for school year 2005-2006. The student has always attended the Hyde School as a residential student. (SE 30; Testimony of Mother, Kauffman, Truluck)
- 10) The student's mother engaged Julia Domino, Ph.D., to carry out a neuropsychological examination and evaluation of the student. Dr. Domino conducted interviews and administered tests on December 17, 18, and 21, 2004 and on January 19 and May 31, 2005. The student and his mother were the primary sources for her information gathered via interviews. She did not contact the student's former teachers or other staff members at either Medomak Valley High School or Kent's Hill School. Dr. Domino spoke to "someone at Hyde" for 2-3 minutes and observed the student in two of his

classes, one a movie and the other a lecture. She also had a tour of the school and campus with a guide who explained, in general terms, the program offered by the Hyde School. Dr. Domino did not contact Dr. Bryant, who performed a neuropsychological evaluation of the student early in 2004. Dr. Domino concluded that the student was suffering from Asperger's Disorder, an Autism Spectrum Disease. She also concluded that the student's intellectual functioning, including higher reasoning and cognitive flexibility fell within normal limits. Her treatment recommendations, as related to his educational needs, included a structured daily routine, supervision and prompting both with homework and in class, some modifications in the testing mechanisms used in school, and possibly some use of headphones to minimize the effects of distracting noises. Dr. Domino did not recommend residential placement for the student. (PE 5-17; Testimony of Domino)

DISCUSSION AND CONCLUSIONS

A.

In this matter, the family contends that the school neither provided nor offered to provide the student with a free and [sic] appropriate public education from mid-December 2003, when the student was dismissed from the private boarding school in which he had been unilaterally placed by his family and returned to SAD 40, until June 30, 2005, shortly after the student his [sic] finished his first year, school year 2004-2005, at the Hyde School.³ During that time period, and in response to their perception that the school persisted in offering inadequate educational programming to the student, the family made a series of unilateral placements, enrolling the student in private residential facilities outside the district. In March 2004, the family unilaterally placed the student in the Walkabout program in Utah, for a six-week session. In July 2004, after his return to

³ Earlier in this proceeding, the family claimed that SAD 40 also failed to offer the student FAPE for school year 2005-2006. The hearing officer granted the school's motion to dismiss this claim, on the basis that changes in the federal special education law enacted in the IDEA 2004, effective on July 1, 2005, relieved SAD 40 from any obligation to develop an IEP for the student, who was then attending an out-of-district private boarding school as the result of a unilateral parental placement. *See*, Hearing Officer's Pre-hearing Memorandum of 11/21/05.

Maine from Walkabout, the student was enrolled, again by his family acting unilaterally, in a residential summer program operated by the Hyde School, a private out-of-district regular education school. While no academic credit was attached to this program, it was, for the student, a required part of the application process leading towards possible admission into the Hyde School. The student did well enough in the summer program so that, in the fall of 2004, he was admitted into the Hyde School. Again acting unilaterally, his family enrolled him as a boarding student in the Hyde School for school year 2004-2005.⁴ In this case, the family seeks reimbursement for costs associated with the unilateral placements described above, either according to unilateral placement/tuition reimbursement principles or as a compensatory education award for the school's past failure to provide the student with a free and appropriate public education.

The school accepts neither the family's contentions nor its conclusions. The school asserts that at all times relevant to this case it either did provide or offer the student an IEP that was reasonably calculated to provide meaningful educational benefit to the student, or was in the process of developing or implementing such an IEP when the family terminated that process by unilaterally placing the student into an out-of-district private residential placement. Further, the school argues vigorously that the student did not require a residential placement for educational reasons, notwithstanding the possibility that other, non-educational factors in the student's life may have made a residential placement seem appropriate to the family. The school concludes by asserting that it has met all the obligations imposed upon it by the IDEA or state special education law and, therefore, that the family is not entitled to any of the remedies it seeks.

In order to prevail in this matter, the family must first establish that the individualized education programs provided or offered to the student did not provide him with a free and [sic] appropriate public education. To do that, the family must show that the IEPs at [sic] were not reasonably calculated or implemented so as to provide the student with an opportunity to obtain meaningful educational benefit. If the family succeeds in this first inquiry, the next step is to show that the unilateral placement made, and the program provided there, actually amount to an appropriate placement for the

⁴ The student successfully completed school year 2004-2005 at Hyde, and is currently in his senior year there.

student. If the family succeeds on both these issues, it is entitled to reimbursement for costs associated with the unilateral placement under examination. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985), and *Florence County School District v. Carter*, 510 U.S. 7 (1993). The family, as the party seeking relief, carries the burden of persuasion in this situation. *Schaffer v. Weast*, USSC, Slip Opinion No. 04-698 (November 14, 2005).

After reviewing and evaluating the evidence and legal arguments submitted by the parties, the hearing officer determines that the individualized education programs at issue in this matter were reasonably calculated so as to provide the student with meaningful educational benefit and thus provide him with a free and [sic] appropriate public education. The hearing officer concludes, therefore, that the actions of the school at issue in this matter do not violate any of the provisions of federal or state special education law. Consequently, the claims for relief made by the family are denied. The reasons for this determination are set forth below.

B.

The first unilateral placement for which the family now seeks reimbursement is the placement of the student into Walkabout Therapeutic Expeditions program in Utah. The student was enrolled there from March 22, 2004 and was discharged on May 12, 2004. The family claims that the IEP the school offered to the student from the [sic] mid-December 2003, when he was suspended from the Kent's Hill School, until March 22, 2004, when the student left Maine to attend the Walkabout program, did not amount to a free and [sic] appropriate public education.

The IEP at issue has two stages to it. The school convened a PET meeting on January 12, 2004 to discuss the student's current educational situation and to develop an IEP for him. The school had contracted, late in 2003, with Dr. Kendra Bryant to do a neuropsychological evaluation of the student. Because her report had not yet been completed on January 12, the PET developed an "interim" IEP to be delivered until the report arrived. The PET also agreed to meet again after receiving the report and to revise the IEP as appropriate based on the contents of the report. Under the interim IEP, the student would receive 1:1 tutorial services for 3-4 hours per day, five days per week with transportation provided to and from the tutoring site. The tutorial model was chosen

because the student's mother was not willing to allow the student to attend MVHS and the student himself was anxious about that prospect.

The PET met again on February 2 to discuss Dr. Bryant's report and to modify the IEP, if necessary. Dr. Bryant⁵ reached a series of conclusions: she agreed with the idea that it was not a good idea for the student to return to MVHS; she thought it was better for the student to continue getting his education via the tutorial model already in place than for him to try to re-enter a new school so late in the academic year; she thought the tutorial model should continue through the end of the school year in June 2004 while the school and the family develop [sic] plans for school year 2004-2005 and the student addresses [sic] his mental health needs and living situation, as living with his mother had become "untenable". Dr Bryant also made a series of educational recommendations and reached the general conclusion that his educational program could be provided within most public school settings. Dr. Bryant did not conclude that the student needed a residential placement for educational reasons. Based on Dr. Bryant's recommendations the PET made a series of determination relative to the IEP: it changed the student's handicapping condition to Multiple Disability, added psychological counseling services and determined to continue the tutorial model at current levels while the school and family attempted to identify another high school in the area that the student could attend.

There were certain problems that occurred with the implementation of the February 2 IEP. The school had trouble finding a counselor both willing and available to work with the student. The family suggested some options, and the school contracted with a counselor recommended by the family. While the school was unable, in the time prior to the student's withdrawal, to find a neighboring high school immediately willing to admit the student, the school continued to make the attempt. The student missed some tutorials due to vacation schedules and transportation miscues but, in general, MVHS substantially implemented the IEP from February until March 22, when the family took

⁵ The hearing officer found Dr. Bryant to be a thoroughly credible and persuasive witness, and relied heavily upon her conclusion that the student's IEP at all times relevant to this matter could be provided in a public school setting.

the student out of the program, and enrolled him in the Walkabout Therapeutic Expeditions program in Utah.

The hearing officer finds that, under the circumstances presented here, the IEP as developed and implemented between January 2004 and March 22, 2004 was both reasonably calculated and implemented so as to provide the student with a free and appropriate public education. After December 18, 2003, when the school learned of the student's suspension from Kent's Hill School, it scheduled a PET to be held shortly after the school's Christmas vacation to discuss the student's educational situation and to develop a program that would provide him with appropriate educational services. His family clearly did not want him to return to MVHS as a student, so that option was taken off the table. Dr. Bryant's neuropsychological report was not completed when the January PET met, so no guidance was available from that source. The PET's decision to provide the student his educational services via a tutorial method until Dr. Bryant's report was available was a reasonable choice under the circumstances. After the report arrived, the PET met again in early February and made changes to the IEP that were consistent with the recommendations in the report. Psychological services were added to the IEP⁶ and the parties agreed that the tutorial services would continue while the school pursued its attempt to find a neighboring high school for the student to attend, either later in the 2003-2004 school year or at the start of the 2004-2005 school year. The fact that the school could not find another high school quickly does not render this IEP inappropriate, especially given the advice of Dr. Bryant that the student would be best served by completing the school year in the tutorial program because he would likely have a very difficult time entering a new academic situation in the middle of the school year.⁷ The hearing officer finds that family did not meet its burden to show that the IEP at issue was inappropriate, either in design or implementation. Consequently, the family's claim for

⁶ The IEP provided that transportation would be provided to the student to and from tutoring, and went on to say that transportation may be provided to and from both counseling and the new public high school placement. (SE 102)

⁷ In her report, Dr. Bryant states, in part, that, "The current tutoring may be the best temporary academic situation. Something more comprehensive absolutely should be planned at least for the next academic year. However, I worry about [the student] having to start with a class in mid-term...he would feel a high level of stress starting behind the rest of his class..." (SE 134)

reimbursement for costs associated with the unilateral placement in the Walkabout program is denied.⁸

C.

The family also makes a claim for reimbursement of the costs associated with its unilateral placement of the student in the Hyde School, a private out-of-district regular education secondary school that admits both boarding and day students.⁹ The family argues that the IEP the school offered the student for school year 2004-2005 was not

⁸ While the finding that the IEP at issue would have provided the student with FAPE resolves this matter against the family, the hearing officer also concludes that the Walkabout program was not an appropriate educational placement for the student. First, the Walkabout program was not an educational placement at all. On March 21, 2004, the student's mother informed the school that she was placing him into "a residential therapeutic program in Utah for treatment and evaluation." In the same letter, she continued, in part, "This is a medical placement...[he] is to be doing deep psychotherapy...the referral has been made by his psychiatrist. [sic] (SE 73) The student's mother characterized the placement as a medical one when attempting to obtain reimbursement from a mental health agency. (PE 20) The student's therapist at Walkabout testified the student spent only "about an hour per week" with a teacher while there. Further, the hearing officer finds that the evidence in this matter simply cannot support the conclusion that the student requires a residential placement to deal with his educational needs. The professionals, both educators and neuropsychologists, who had experience with the student concluded that his educational program could be implemented in a public school setting, with appropriate special services. Dr. Bryant expressly stated, both in her report and her testimony, that the student did not need a residential placement for educational reasons and went on to say that his educational program could be provided in a public high school as a day student, given appropriate special services. Dr. Domino did not make explicit recommendations regarding the student's educational placement itself, but her comments about measures that would help the student in school were relatively simple adjustments that could easily be accomplished in a public school. (PE 15) The school staff consistently believed that the student's IEP could be provided in a public day school. The student's significant academic and social success in the xx grade at MVHS, when he earned 7 of the 24 credits needed for graduation and was elected president of his class, reinforces the conclusion reached by the hearing officer that this student did not require a residential placement for educational reasons.

⁹ The family's initial placement of the student at Hyde came in July 2004, when the student began a summer program operated by Hyde. There was no academic credit given for this program but it was, for this student, a required part of his application to the school. The notion was that if the student could successfully complete the summer program, then he would be admitted into the Hyde School. As it worked out, the student was successful enough in the summer program to gain admission into the Hyde School for school year 2004-2005 and his family enrolled him there.

reasonably calculated to provide him with a free and [sic] appropriate public education as required by state and federal special education law. For the reasons set forth below, the hearing officer finds that the IEP developed and offered to the student after the June 16, 2004 PET meeting would have provided him with a free and [sic] appropriate education had it been implemented as written in a public high school setting.

After the student returned to Maine from the Walkabout program in Utah, the school restarted the tutorial program that had been developed by the February 2nd PET: the student was being tutored 1:1 for four hours per day, five days each week, [sic] received psychological counseling services, with transportation to and from each. The school also reopened the search for a local high school other than MVHS in which the student could be educated for school year 2004-2005. PET meetings were held on May 27th and June 16th. At the May meeting, the student's mother stated that she was happy with the tutoring currently being provided, and introduced the possibility of the student attending the Hyde School. The school continued to propose that the student receive his IEP in a public high school setting, rather than in a private residential school.

This discussion was resumed at the June 16th meeting. The student's mother came to this meeting with her advocate. By this time, the school had identified a high school in Newcastle as a placement for the student in 2004-2005. His mother told the PET that, of all the boarding schools he had visited, the student preferred the Hyde School; further, she explained that the student would be enrolled in a summer program operated by the Hyde School. If he did well enough there, he would then be admitted to the school for school year 2004-2005. The student's mother had to leave the meeting prior to its conclusion, leaving behind with her advocate a signed letter dated June 16, 2004, in which she rejected the school's "offer of placement" and declared her intention to "place my son at a private institution and I plan to seek reimbursement at public expense." (SE 44) The advocate gave this letter to the PET. The PET continued to develop an IEP for the student for the 2004-2005 school year. That IEP called for 200 minutes per week of direct instruction, 60 minutes per week of consultation services, 50 minutes per week of psychological counseling, and 120 minutes per week of tutoring. The IEP included recommendation [sic] for certain adaptations and modifications and a behavior intervention plan. The PET designed this IEP to be provided in a public high school,

with the IEP services to be delivered in conjunction with regular education classes and activities.

Shortly after the June 6 PET meeting, the tutorial services ceased because the student went to Europe to visit his father. He returned in time to begin the Hyde summer program on July 5th. The tutorial services resumed after the summer program ended, early in August, and continued until August 27th, when his mother ended them. On September 8th, the student registered for classes at the Hyde School. [sic] for school year 2004-2005. The student successfully completed the 2004-2005 school year at Hyde. During his first year at Hyde, the school provided the student with both counseling and tutoring. He was reenrolled by his mother for school year 2005-2006. The student has always attended Hyde as a residential student.

The hearing officer finds that the IEP developed as a result of the PET meetings described above was reasonably calculated to provide the student with a free and [sic] appropriate public education. The services contained in the IEP were appropriate both in kind and amount. In fact, this IEP was very similar in kind to the IEP provided to the student in his xx grade year at MVHS, under which he achieved considerable success. As compared to his IEP for the xx grade, the 2004-2005 IEP adds psychological counseling to the services the student would receive, as recommended by Dr. Bryant, who reviewed this IEP and testified that 1) it set out a program that was appropriate for the student and 2) could be provided within [sic] public school setting. It also contains a behavioral intervention plan to respond to any behavioral or emotional issues that may arise, as well as sufficient tutorial time to help the student deal with any academic difficulties he might encounter. Given his demonstrated success under a less comprehensive IEP in the xx grade, and the absence of any evidence - or professional recommendation - that the student required a residential placement for educational reasons, the hearing officer concludes that [sic] IEP offered to the student for school year 2004-2005 would have provided him an opportunity to obtain meaningful educational benefit and, therefore, that it passes muster under the IDEA and state special education law.¹⁰

¹⁰ The family's basic objection to this IEP is not so much about the program it describes as it is about the placement - a day placement in a public high school - it calls for. As

ORDER

Because, for the reasons discussed above, the hearing officer found that no violation of federal or state special education law occurred here, the family's claims are denied.

Peter H. Stewart
Hearing Officer

Date

stated earlier in this decision, there was insufficient evidence presented in this matter to support the conclusion that this student requires a residential placement for educational reasons. *See*, footnote 7. While this issue is not presented here, given the record of this case, it seems likely that the placement of this student in a residential setting would be found inconsistent with the LRE requirement contained in both the IDEA and state special education law.

WITNESSES

For the family:

Student's mother

Julia Domino, Ph.D., neuropsychological examiner

Charles Hammond, PhD, student's therapist at Walkabout

Richard Truluck, Dean of Students, Hyde School

Betsey Jones, student's tutor while at Hyde School

For the school:

Richard Kauffman, Director of Student Services, Medomak Valley High School

Sarah Crosby, Guidance Counselor, Medomak Valley High School

Kendra Bryant, PhD, neuropsychological examiner

DOCUMENTS

For the family:

Parent's Exhibits 1-89

For the school:

School's Exhibits 1-71