

**Special Education Due Process
Hearing Decision
“Parent vs. Freeport”**

February 11, 1998

CASE NO. # 97.204

COUNSEL FOR THE PARENT: Parent represented self

COUNSEL FOR THE SCHOOL: School represented by Attorney Peter Lowe
Brann & Issacson, Lewiston, ME

HEARING OFFICER: Stephen G. Ulman

THIS HEARING WAS HELD AND THE DECISION WRITTEN PURSUANT TO
TITLE 20-A, @7207, et. seq., 20 USC, @ 1415 et. seq., AND IMPLEMENTING
REGULATIONS.

On November 12, 1997, the Department of Education received a request for a
Due Process Hearing from Mother on behalf of her son. Mother lives in Freeport and
student attends Freeport High School.

The Pre-hearing Conference was postponed from December 1, 1997 until
January 7, 1998 at the request of the parent. The Hearing convened on
January 30, 1998, in Freeport. At the pre-hearing conference all documents
were entered into the record and numbered.

Six witnesses gave testimony at the hearing. The Hearing was held open for
submission of additional information postmarked until February 7, 1998, and the
record was closed on February 9, 1998.

I. Preliminary Statement

Student is a student who has been identified as needing special educational services because of a behavioral impairment. He was first identified in Saco public schools during his kindergarten year. Student has spent time in several Maine public schools, as well as day treatment and residential programs. Student is currently a senior at Freeport High School (FHS), which he entered as a junior in 1996.

During a November 10, 1997, Pupil Evaluation Team meeting (PET), the team determined that Student's educational placement should be a day treatment program. Following the PET decision Student's mother requested a due process hearing to challenge the proposed Individualized Educational Program (IEP). Parent and Freeport entered into a "Stay Put Placement" which provides for student to receive one-to-one tutoring, counseling, and limited transition services while the proposed IEP is challenged by the parent.

Student's date of birth is xxx and he becomes a legal adult on that date in 1997.

II. Issue for Hearing

At the pre-hearing conference held in Freeport, January 7, 1998, we established the issues for hearing as follows:

1. Is student's November 10, 1997, Individualized Educational Program (IEP) reasonably calculated to provide educational benefit in the Least Restrictive Educational Environment (LRE)?
2. Were procedural errors made by Freeport between May 1997 and November 1997?

III. Finding of Fact & Stipulation

The following stipulations were agreed to:

Stipulations

- Student is a resident of Freeport.
- Student is a student in need of special education and is identified as behaviorally impaired.

Facts

- A confrontation between student and a non-student on school ground led to student being suspended from FHS. PW-1
- The forty five day suspension ended just before the beginning of the second quarter of the 97-98 year. PW-1
- Tutoring was available during those times student was out of school. PW-1
- Counseling continued during tutoring and suspension . PW-1
- Mother would benefit from family counseling to help her and student deal with educational issues. PW-1
- Day treatment is "Not gonna happen" it's far away. PW-2
- Student is not going to cooperate with day treatment placement. PW-2
- As far as day treatment, "I've been there, I've done that and I'm not doing that again," it doesn't help. PW-2
- The most important issue for student is graduating. PW-2
- Student is willing to go to adult education classes to get credits. PW-2
- The present counseling is helping. PW-2
- Student would like to participate in graduation ceremony. PW-2
- Student has spent a significant part of his public school education in and out of district day treatment and residential placement. PW-1, PW-2
- Student will not return to day treatment or residential placement under any circumstances. PW-1, PW-2
- Student feels he did not benefit from day treatment and residential treatment. PW-2
- Student will quit school before he returns to day treatment and residential treatment. PW-2
- Student feels he is benefiting from current counseling and tutoring. PW-2, PW-1
- Student loses his temper and says and does things that cause him trouble. PW-2
- Current counseling is helping student control his temper. PW-2
- Student wants to graduate with a standard diploma issued by FHS.
- Summary of Behavioral History developed by school is located at. S-2, SW-1
- Student has difficulty with anger management. SW-1

- Student has not availed himself of special education services. SW-1
- Student needs a therapeutic environment for his remaining education. S-37, SW-1
- Student has spent 25% of his life since kindergarten in residential treatment. S-37.
- Check-in system for student was used unsuccessfully at Freeport High School. SW-1
- Student's social emotional needs are more important than his academic needs. SW-1
- Student needs to learn strategies and skills to control anger before he can be ready for life after high school. SW-1
- Not uncommon for student to refuse to attend out of district placement and then attend when required. SW-1
- There was no transitional plan when student came to Freeport. SW-1
- Two tutoring sessions, Nov 12th, 13th, were not provided by Freeport School. SW-1, S56
- Freeport Schools offered to make up the two (Nov. 12, 13th) missed tutoring sessions. SW-1, S56
- Freeport made a mistake when it didn't do transition plan. (TP) SW-1
- Student experienced no damage because of the 8 month delay in developing a TP. SW-1
- Student needs 5 ½ credits to graduate. SW-1
- Student attended about 60% of his tutoring sessions, but was late or left early often. SW-2,S-54
- Student often did not do his work. SW-2
- About two weeks ago Student started doing work on the computer and work has improved. SW-2
- The two days of tutoring (Nov. 12, 13th) were missed because student and mother said student was quitting and the tutor thought they meant it. SW-2
- Student had a successful Junior year at FHS. SW-3
- Student passed most of his courses during his Junior year. SW-3
- Student's mom was a tremendous help to student and school during 1996-97 year. SW-3
- FHS is not a place where a therapeutic environment exists. SW-3
- Student behavior during the early 1997-98 school year was very inappropriate and he was suspended. SW-3, S-39
- Student has been in FHS a total of 5 school days so far in 1997-98 and there have been two incidents. SW-3
- The safety of school students and teachers would be in question if student came back to FHS at this time. SW-3
- Student needs immediate feedback and intervention when incidents occur. SW-4

IV. Conclusions

The IEP developed in November is educationally sound and clearly developed by caring professionals who have the best long term interest of student in mind. From a special education perspective it provides student with increased structure in a day treatment setting which is clearly less restrictive than tutoring in the Freeport Public Library. Unfortunately, the November IEP is not reasonably calculated to be of educational benefit. Not because of educational shortcomings, but because student will not participate in the out of district placement. Freeport argues that student's refusal to participate and threats of quitting school are not at all unusual and that many students verbalize the same feeling and then after being exposed to the day program change their minds. Under normal circumstances, this approach of out of district placement backed up by the belief that a trial period would lead to acceptance of the day program, would be a reasonable choice. However, this situation is very unusual because student is legally an adult who is expected to know his own feelings, be able to share those feelings, and most importantly student has had previously experienced similar day treatment programs and found them so unacceptable that he would "quit school" before he returned to day treatment. If student had not had this significant personal experience and formed such a strong negative feeling, it would be reasonable to expect that a trial period would lead to acceptance of the day treatment program. Such is not the case and it is not reasonable to expect that a similar program would now be reasonably calculated to become beneficial.

Student asks to be allowed to return to FHS, however, he is unwilling to accept full time adult supervision. Without a full time adult aide with student at all times, it is not reasonable to expect educational benefit. Two major incidents occurred within a very few days of school during fall 1997.

Student is clear in his testimony saying that the current off campus counseling is helping him deal with losing his temper. He reports counseling is giving him an opportunity to "get rid of" his angry feeling in an appropriate manor. In addition, student reports that he made a personal discovery about two weeks ago, that if he didn't get to work in his tutoring he would not graduate in the spring of 1998. A decision that student reports making on his own and acting upon by starting to work in his tutoring sessions. The tutor reported that student has done more work in the last two weeks than in the whole rest of the second quarters of the school year. There is no way of knowing if hard work the last two quarters of the year will allow student to graduate with his class, however, the possibility seems real.

In addition to student needing a personal commitment to work, counseling to provide him the place and skills to appropriately deal with his behavioral issues in a manner which will allow him to continue his education, student also needs the support of his home environment. student's mother needs to continue to develop supportive skills which will allow her to "hold it all together" while student completes his education. She needs the skill and knowledge to support and reinforce student's new found coping skills, as well as his two week commitment to studying at his tutorial sessions. A very real concern is regression during school vacation. If student is correct in his feeling that counseling is helping him learn temper control skills and providing an appropriate place to "get rid of" his angry feelings, school vacations are a concern. Without the opportunity to continue counseling, student seems likely to regress to a point where returning to school in the fall, if need be, would be unlikely.

It is clear that Freeport erred when it failed to develop a transitional plan upon student entering FHS in 1996. About 8 months lapsed before a plan was developed. Had student continued with his original IEP the lack of a transitional plan could have had a significant negative effect, but such was not the case. student's education was completely changed by the incidents that lead to his 45 day suspension and November 1997 IEP. As a result of these educational changes any transitional plan that was or would have been in place would have become moot.

V. Order

Freeport will provide off campus counseling and supporting transportation costs for up to 5 sessions/week. The actual number of sessions up to 5 to be decided by the counselor.

Freeport will provide student's mother with up to one session of family counseling and transportation costs per week. The actual number of sessions up to one per week to be decided by the counselor.

These counseling sessions will continue uninterrupted through school vacations until changed by the PET action or student's graduation.

Tutoring will continue at the Freeport Public Library at a rate sufficient to allow for student's spring graduation if student participates fully in the tutoring program.

Freeport is to revisit the existing transition plan to bring it into compliance with IDEA 97, specifically as it relates to adult students and notification of the transfer of rights and safeguards.

SCHOOL'S WITNESS LIST

1. Joan Nason, Special Education Director
2. Doug Daggett, High School Social Worker
3. Thomas Edwards, High School Principal
4. Margaret Pelletier, Tutor
5. Bruce Brown, Special Education Teacher
6. Steve Freeman, Rehabilitation Counselor, Office of Rehabilitation Services
7. Jim Lincoln, Guidance Counselor
8. Arthur DiRocco, Director R.E.A.L. School
9. Susan Pettingill, Assistant Director R.E.A.L. School
10. Diedre Carr, Teacher, Freeport High School
11. Dr. Andrew Cook, Psychiatrist
12. Joseph Heathco, Teacher, Freeport High School
13. Kendra Farrell, Teacher, Freeport High School
14. Hank Ogilby, Teacher, Freeport High School
15. Jim Outwater, Teacher, Freeport High School
16. All witnesses listed by the Parent

PARENT WITNESS LIST

1. STUDENT
2. PARENT

Case No. 97.204

SCHOOL'S EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>	<u>Date</u>
	, Freeport High School, <u>Evaluation Report</u> S1	03/17/97 Psychological Evaluation
S2	Summary of Behavioral History, Student	10/10/85- Present
S3	<u>Pupil Evaluation Team Meeting and Individual Educational Program</u>	10/10/85
S4	Psychological Evaluation	10/10/90
S5	September and October Behavior Summary	11/13/90
S6	The Spurwink School <u>Semi-Annual Progress Report</u>	03/91
S7	Saco/Dayton/Thornton <u>Pupil Evaluation Team Meeting Minutes</u>	05/02/91
S8	The Spurwink School <u>Semi-Annual Progress Report</u>	06/20/91
S9	The Pike School, Inc. <u>90 Day Residential Review</u>	09-12/92
S10	The Pike School, Inc. <u>90 Day Residential Review</u> by Keith Charpentier, M.Ed.	12/01/92
S11	Letter signed by Thomas Bull, M.D., Inc., Child Psychiatry, re: 12/11/92 and 12/18/92 sessions with Student	
S12	The Pike School, Inc. <u>90 Day Clinical Review</u> by Keith Charpentier M.Ed.	03/12/93
S13	Summary of Psychoeducational Evaluation by Alina Shumsky, Ph. D., School Psychologist	09/26/94
S14	Letter from Andrew Cook, M.D. re student's medication	10/13/94
S15	MSAD #75, Topsham, Maine <u>Minutes of Pupil Evaluation Team Meeting</u>	10/20/94
S16	MSAD #75, Topsham, Maine <u>Minutes of Pupil Evaluation Team Meeting</u>	10/23/95
S17	MSAD #75, Topsham, Maine <u>Minutes of Pupil Evaluation Team Meeting</u>	12/05/95
S18	Special Education Department, Freeport High School, <u>Evaluation Report</u>	03/17/97

<u>Exhibit No.</u>	<u>Description</u>	<u>Date</u>
S19	Freeport Public Schools <u>Psychological Assessment</u>	04/09/97

		and 04/16/97
S20	Freeport Public Schools <u>Pupil Evaluation Team Meeting Minutes</u>	05/09/97
S21	Freeport Public Schools <u>Individual Education Program</u>	05/09/97
S22	Upcoming Events for Freeport High School	September 1997
S23	Letter to Mother from Joan P. Nason re development of assessment plan and/or modification of behavioral intervention plan	09/09/97
S24	Letter to Mother from Joan P. Nason re response to request for information	09/15/97
S25	Freeport Public Schools <u>Pupil Evaluation Team Meeting Minutes</u> and attachments	09/15/97
S26	Letter to Mother from Joan P. Nason re opposition to comprehensive psychological evaluation.	09/16/97
S27	Suggested Psychological Battery from Joan P. Nason, Director of Special Services	
S28	Freeport Public Schools Policy on Weapons in School	09/19/97
S29	Letter from Paula Smith, Guidance Counselor, re student conflict	09/19/97
S30	Letter to Thomas Edwards, Principal, from Chris Hamilton re incident with student	09/19/97
S31	Letter from Michael Moulton re incident at Freeport High School	09/23/97
S32	Letter to Mother from Joan P. Nason re amending PET minutes, 9/15/97, with attachment, Freeport Public Schools FERPA policy	09/29/97
S33	Special Education Hearing Decision, <u>Parent v. Freeport</u>	09/30/97
S34	Letter to Robert Lyman and Mother from Carol Lenna, Hearing Officer, re: <u>Parent v. Freeport Public Schools</u>	10/01/97
S35	Freeport Public Schools <u>Pupil Evaluation Team Meeting Minutes</u>	10/06/97
S36	Freeport Public Schools <u>Parental Notice</u> to Mother from Joan Nason	10/07/97
S37	<u>Psychiatric Summary</u> by Andrew Cook, M.D.	10/20/97
S38	Freeport Public Schools PET Minutes	10/30/97
<u>Exhibit</u>		
<u>No.</u>	<u>Description</u>	<u>Date</u>
S39	Principal Edwards' Statement	11/5/97

S40	Principal Edwards' letter to Mother	11/5/97
S41	Freeport Public Schools PET Minutes	11/10/97
S42	Joan Nason's letter to Parent	11/12/97
S43	Joan Nason's letter to Parent	11/14/97
S44	Parent's letter to A. Leigh Phillips	11/11/97
S45	Stay Put Placement Agreement	
S46	Parent's letter to A. Leigh Phillips	11/18/97
S47	Parent's Letter to Commissioner of Department of Education	11/13/97
S48	Parent's letter to Ms. Nason	11/26/97
S49	Ms. Nason's letter to Parent	12/2/97
S50	Ms. Nason's letter to Parent	12/8/97
S51	Student's Report Card of Quarter 1	1997
S52	Overview Information Booklet by R.E.A.L. School	
S53	Assignment sheets prepared by tutor	
S54	Student Attendance Summary, September – December 1997, with monthly calendars	
S55	R.E.A.L. School Application and Release Form	
S56	Ms. Nason's letter to Parent and Student	12/19/97

B. Parent Exhibit List:

- P-1 Psychological Assessment dated April 9, 16, 1997
- P-2 PET Minutes/ IEP/ TransitionPlan dated May 9, 1997

- P-3 PET Minutes dated September 15, 1997
- P-4 Hearing Decision #97.161 dated September 30, 1997
- P-5 PET Minutes/Revised IEP dated October 6, 1997
- P-6 Tape recording of PET on October 6, 1997
- P-7 Psychiatric Summary dated 10/20/97
- P-8 Riverview Foundation Assessment dated 10/29/97
- P-9 PET Minutes/Revised IEP dated October 30, 1997
- P-10 Tape recording of PET on October 30, 1997
- P-11 Letter from Thomas Edwards dated 11/05/97
- P-12 Letter from Thomas Edwards dated 11/10/97
- P-13 PET Minutes/Revised IEP dated 11/14/97
- P-14 Letter from Joan Nason dated 11/14/97
- P-15 "Stay Put" agreement dated 11/20/97
- P-16 Letter from Joan Nason dated 12/02/97
- P-17 Letter from Joan Nason dated 12/19/97
- P-18 Letter from Joan Nason dated 12/29/97