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January 26, 1998

TO: Mother
Ms. Denise Smith

FROM: Carol B. Lenna
Hearing Officer

RE: **Special Education Hearing SAD 57 v. Parent, Case 98.193**

On Wednesday, January 20, 1999, the parties met in a special education due process hearing convened on behalf of the student. The parties were not represented by counsel. Present were: Denise Smith, Director of Special Education, SAD 57; Lorrie Kingsbury, teacher, SAD 57; parent; Diane Herrle, advocate and friend; and Dianna LeClair, friend. On that date, the Hearing Officer dismissed the hearing. Following is the summary of the issues, discussion and action of the Hearing Officer.

The student is a xx year old student in SAD 57 who is currently not identified as a student with disabilities as defined in Maine Special Education Regulations, Chapter 101, Section 3. During the summer of 1998, the parents obtained a neuropsychological evaluation, which included an assessment of attention deficit disorder. They presented this evaluation to the school in the fall of 1998. The PET met, considered this and other assessments, and found that the student did not meet the definition of a “disabled student”, and was therefore not eligible for special education services. He was found to meet the definition for “handicapped person” under Section 504 of the Rehabilitation Act of 1973. A “504” plan of accommodation was developed for him.

On November 17, 1998, the parents requested the school pay for the neuropsychological evaluation obtained by them. On December 8, 1998, the school formally rejected this request. As required by state regulation they filed a hearing request with the Department of Education on this issue on December 9, 1998.

At the prehearing conference in this matter, the parents confirmed that they disputed the determination of the PET in October that found the student not eligible for special education services, but had not yet requested a hearing. The Hearing Officer expanded the issues for hearing to include the eligibility dispute. Two days before the hearing the parents wrote to the Hearing Officer and stated that they no longer wished to pursue the eligibility question. At the hearing the parents confirmed that they presently were not disputing the PET determination which found the student not eligible for special education instruction. The parent went on to say that, in the future they might bring forth this claim, but were not prepared to do so at this time.

At that point the Hearing Officer dismissed the hearing for lack of standing. The student is not a “student with a disability”. The parent does not argue that the evaluation obtained by them disputes that fact. The parent does not argue that the PET action failed to consider this information. The parent does not argue that the PET should have found the student eligible for special education services.

The parent did make it clear that they have an interest in bringing forth a hearing on the question of eligibility in the future. The Hearing Officer informed the parent that if such a hearing moved forward, and the evaluation in question was used in evidence to argue that fact, the issue of obtaining this evaluation at public expense could be introduced as an issue in this subsequent hearing.

The parties were given the opportunity to ask questions regarding the ruling. After a brief discussion, the hearing was dismissed and the parties adjourned.

Cc: Michael Opuda
Frederick Bechard, Supt.