

Stephen G. Ulman
P.O. Box 687
Caribou, ME 04736

August 31, 1999

TO: William Fowler, Superintendent
Trenton School Department
Trenton, ME 04605

FROM: Stephen Ulman
Hearing Officer

SUBJECT: Hearing Decision #99.100 "Parent v Trenton School Department"

This is to provide you with my decision in the Special Education Due Process Hearing on behalf of the Student.

Either party may appeal this decision by filing a petition for review in Maine Superior Court or Federal District Court within 30 days of receipt of the decision. The petition for review in Superior Court must be filed in the County in which the student resides or the County in which the Administrative Unit is located.

The Administrative Unit shall submit to the Commissioner of the Department of Education, with a copy to the Due Process Consultant, hearing officer and parents, documentation that the Unit has either complied with this decision or that an appeal is pending. Such documentation shall be submitted no later than 45 days after the completion of the order in this decision. The parent may request the Department to review the Unit's compliance with this decision by filing a written complaint with the Commissioner of the Department of Education.

Any questions regarding this decision or the record of the hearing should be directed to: Due Process Consultant, Division of Special Education, Department of Education, State House Station 23, Augusta, Maine 04333.

Cc: Kristin Aiello
Eric Herlan
Michael J. Opuda

**Special Education Due Process
Hearing Decision**
"Parent v Trenton School Department"
August 31, 1999

Case No: #99.100

Counsel For The Parent: Kristin Aiello
Disability Rights Center

Counsel For The School: School was represented by Eric Herlan
Drummond, Woodsum and MacMahon

Hearing Officer: Stephen G. Ulman

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

On April 28, 1999 the Department of Education received a request for a Due Process Hearing from the Parent on behalf of the Student. Parent and Student lives in the town of Trenton, Maine.

The Pre-hearing Conferences were held June 1, 2, 7, 14, 1999, and the Hearing was held June 7, 1999 and August 11 and 12, 1999 at Ellsworth, Maine. During the first day of the hearing it became apparent that we were arguing the educational needs of the student and not the issues identified for hearing. For this reason the hearing was recessed until June 29th. At the parties request the hearing was further postponed until August 11, 12, 1999.

The Student's "stay put" placement remained in Bangor, however, Trenton was ordered to assume responsibility for the student's transportation as follows: Trenton took charge of transportation for the Student to and from the student's home directly to Bangor High School arriving within twenty minutes or less of the start of school and picked the student up within twenty minutes or less at the end of school

Documents were accepted into the records until 5 days before the hearing and were numbered as agreed to at the pre-hearing.

Seven witnesses gave testimony at the hearing. The record was held open until August 27, 1999, at the request of both parties.

The hearing was not open to the public.

I. Preliminary Statement

The student was originally placed out of the student's home district of Trenton because Trenton does not have a high school. Trenton residents are allowed to choose where they go to high school and the student chose Mount Desert Island (MDI). When behavioral issues at home and school made it necessary for the student to be placed in a more restrictive environment, the student became in part the responsibility of a state agency and was placed by Department of Mental Health, Mental Retardation, Substance Abuse Services (DMHMR&SAS) in Bangor for both residence and education. When the student decided to return home mid-April of the 1998-99 school year, the student did so without notifying the Trenton School Department of the student's self initiated change in residency/educational placement. As the student had been placed in Bangor through a state agency placement, Trenton School Department (TSD) was not actively involved in the student's Bangor placement.

Upon returning to the student home in Trenton, the student decided the student would enroll in the Ellsworth High School (EHS), rather than return to MDI. ESH refused the student admission and the student then applied at MDI, which also refused admission, at which time the student's parents filed for Due Process and the student returned to Bangor as "stay put".

II. Issues for Hearing:

The issues for hearing were:

1. Where is the Least Restrictive Educational Environment (LRE) for the student and how can/could have TSD guarantee the student access to that LRE?
2. Are compensatory services necessary?

III. Finding of Fact and Stipulations:

Stipulations

- The parents reside in Trenton and TSD is the district of current residency.
- TSD is responsible for providing Free and Appropriate Public Education (FAPE) to the student in LRE.
- Trenton does not have a high school, and does not have a written contract with any school unit to provide high school services.

- All Trenton high school age students may enroll in any school where they are admitted and once admitted to that school, Trenton has a duty to pay a state-approved tuition amount toward the cost of the school program.
- The student is identified as a student in need of special educational services because of behavioral issues.
- The Individualized Education Program (IEP) goals and objectives are not at issue.
- The date of the most recent IEP is May 28, 1999.
- The last mutually agreed to educational placement was Bangor, which was the result of a Pupil Evaluation Team meeting (PET) on March 5, 1999.
- The April 27, 28, 29, 1999 Wings Progress notes reflect phone conversations and are Exhibits #P15-16-27.

Facts

- Guidance counselors from Ellsworth and MDI recruit Trenton 8th graders. PW-1, PW-2
- Once students pick the school, parents and student meet with high school counselor. PW-2
- Ellsworth and MDI meet with Trenton 8th grader's parents to help decide between Ellsworth and MDI. PW-1
- Trenton provides bus transportation to either Ellsworth or MDI at Trenton town expense. PW-1
- Ninety to ninety-five (90-95%) percent of Trenton students go to MDI or Ellsworth. PW-1, PW-2
- The student applied to both MDI and Ellsworth in mid-April 1999 and was rejected by both Ellsworth and MDI. PW-1
- Transportation to Bangor during "stay put" was paid for ½ by Trenton and ½ by DMHMRSAS. PW-1, PW-6
- The parents were required to arrange transportation. PW-1
- The parents were not given options other than Bangor for the student's education. PW-1
- Trenton had a meeting with MDI and Ellsworth following their turn down. PW-1
- The parents were not aware of tuition to schools other than Ellsworth or MDI. PW-1, PW-2
- The student returned home to live April 13, 1999. PW-1, PW-2
- The student had been at Summit View (SV) in Bangor prior to returning home. PW-1

- Trenton students have reasonable expectations that they will be accepted at whichever MDI or Ellsworth they chose. PW-1, PW-2
- No PET was held by Trenton, MDI, or Ellsworth upon the student return from SV. PW-1
- Ellsworth and Trenton share the same director of special education. PW-1
- Once Trenton student chooses between MDI and Ellsworth, they are bused for a field trip to that school. PW-2
- The student was initially accepted by the guidance counselor into Ellsworth upon the student's return from SV in Bangor. PW-2
- Ellsworth/Trenton Special Education Director talked about setting up PET upon return from SV in Bangor. PW-2
- Mr. Wright, Ellsworth Assistant Principal, said that because of Littleton, Co., Ellsworth School was now doing background checks on transfer students who had been on probation. PW-2
- Bev Holmes, Guidance Counselor at Ellsworth, had the parent sign an admittance form. PW-2
- Mr. Wright refused the student admittance to Ellsworth, April 27, 1999. PW-2
- When Trenton students go to MDI and Ellsworth, the students are choosing, not the school picking students. PW-2
- The parents were never given a written policy on doing background checks on students who have been on probation. PW-2
- The parent asked Superintendent Sawyer for a copy of the background check policy. PW-2
- Burt Barker told the student it was too late to enroll at MDI. PW-2
- The parent called MDI, (Burt Barker and Mr. Lebo) on April 27, 1999 three times and was unable to talk to either. PW-2
- Parents have not seen a written contract between MDI and Ellsworth. PW-1, PW-2
- The student lost interest in the student's education as a result of being returned to SV in Bangor. PW-2
- Trenton has had until 1994 a contract with MDI which called for state average tuition less 7.5%. PW-4, SE-152, PW-5
- MDI ended the contract because they were no longer willing to reduce state tuition. PW-4, SE-152
- If Consolidated School Districts (CSD) takes tuition students, they must take from any district wishing to send. PW-4
- MDI will not refuse our regular education students. PW-4
- LRE is at MDI. PW-4
- Contract stated between MDI and TSD "all students", but this was never enforced. PW-5, Se-152 #1

- Two formal votes have been taken in recent past by MDI board to take tuition students and both votes were in the affirmative. PW-5
- State average tuition (1998-99) is about \$5432 and MDI cost is \$5928. PW-5
- CSD is made up of Tremont, Bar Harbor, Mt. Desert and Southwest Harbor. PW-5
- Trenton has been invited to join the CSD. PW-5
- If another community is to join the CSD, it will force a discussion of the funding formula for the CSD. PW-5
- Advantages of Trenton becoming part of CSD:
 1. Predictability of enrollment
 2. True voice on school board PW-5

- If a Trenton student had done something that was very dangerous, MDI might not take that student. PW-5
- There is no formal application procedure for Trenton students to go to MDI. PW-5
- About four years ago MDI began discouraging late year transfers because of movement other than during semester breaks between MDI and Ellsworth. PW-5
- The current Superintendent of MDI could under certain circumstances recommend Trenton be allowed to join CSD. PW-5
- The current Superintendent of MDI would be reluctant to recommend a Trenton/MDI contract requiring all students be accepted, if any student is accepted. PW-5
- Trenton Special Education Director tried very hard to get student into Ellsworth. PW-6
- TSD could not have a PET with Ellsworth until the student was accepted by Ellsworth as a student, because TSD lacks high school staff. PW-6
- The student moved home to Trenton in April 1999. PW-6
- The student had originally intended to return to MDI in April (2 days before April vacation), but was told MDI did not take students that late in the year. PW-6
- Ellsworth refused the student application to attend because the student failed the background check. PW-6
- School Union 92 refused to provide tutoring because student was not enrolled in a high school system. PW-6
- The student was in residential placement because of severe emotional and behavioral needs. PW-6
- The student was extremely vested in returning home and to school. PW-6

- The student started regressing as soon as the student was refused admittance to MDI and Ellsworth. PW-6
- The Superintendent from Trenton felt it was MDI and Ellsworth's responsibility to educate student. PW-6
- The Bangor School System accepted the student back because the student had been no trouble in past enrollments. PW-6
- Transportation to Bangor was a problem. PW-6
- The student believed the student was unwanted by schools. PW-6
- Upon discharge from Jackson Brooks Institute (JBI) the team and the student felt the student was most ready to return home. PW-6
- The student was gone from 5 a.m. to 5 p.m. Monday through Friday when traveling from Trenton to Bangor. PW-6
- The student has had difficulties in the home environment. PW-6
- The student decided to return home on the student's own initiative. PW-6
- DMHMR&SAS and Department of Corrections claimed responsibility and participated in Hinckley and Kids Peace. PW-6
- Placement until April 1999 were supported by the student's family. PW-6
- Last Trenton IEP recommended staying in public school. PW-7
- When DMHMR&SAS placed the student at Hinckley School, Trenton's responsibility transferred to LEA. PW-7
- When student moved to Kids Peace in Ellsworth, Education responsibility moved to Ellsworth. PW-7
- In November 1998 student went to JBI and responsibility returned to Trenton which provided tutoring and paid for tuition. PW-7
- February 10, 1999 student left JBI and went to Summit House in Bangor. Placement was made by DMHMR&SAS and Trenton was not notified of placement. PW-7
- Trenton learned of the February 10, 1999 placement when notified by the Bangor School Dept. PW-7
- State agency clients are the responsibility of the LEA where the placement program is located. PW-7
- While at Summit House the student attended Bangor High School. PW-7
- The student decided to leave Summit House on April 13, 1999. PW-7
- On April 21, 1999 a meeting was held and it was decided that a PET would be convened on April 26, 1999. PW-7
- The student was a motivated student in April of 1999. PW-7
- There is no written policy prohibiting late term admission at MDI. PW-7

- There is no written policy prohibiting admission to Ellsworth without background check. PW-7
- The violence in Littleton, Colorado played a role in the students being refused admission in Ellsworth. PW-7
- Trenton is the responsible school system, but has no control over MDI or Ellsworth acceptance of students. PW-7
- Trenton does not have the appropriate staff to hold a PET at the High School level. PW-7
- The May 28, 1999 PET held in Bangor was set up by Trenton. PW-7, 134
- A contract would be good between Trenton and MDI/Ellsworth which guaranteed all student admittance to the school of choice. PW-7
- The student did not complete the junior year during 1998-99. PW-7
- The student is a very independent young person. PW-7
- There were issues and concerns in 1997 regarding the safety of the student and other students. PW-7
- Vacation week was from April 17 through April 25, 1999. PW-7
- The first time Trenton knew of the student's return home was April 21, 1999. PW-7
- The Due Process hearing requested was made on April 28, 1999. PW-7
- "Stay put" went into effect April 28, 1999. PW-7
- Bangor High School was the last agreed to placement and became "stay put". PW-7, pg 16
- Transportation during "stay put" was problematic because of timing for student because of 12-hour stay. PW-7
- Appropriate transportation was offered by Trenton on June 8, 1999. PW-7
- The student did not take final exams at Bangor. PW-7
- A PET is scheduled for August 25, 1999 at MDI. PW-7
- The last day of school was June 18, 1999. PW-7
- Trenton has no authority to issue or cause to be issued high school credits. PW-7
- The student came back home from Bangor on the student's own volition without the benefit of a PET change of placement. PW-7
- The student has been positive and successful in using tutoring as a tool for catching up. PW-2
- The student did not take 1998-99 finals. PW-7
- The student did not get 1999 2nd semester credit. PW-7

IV. Conclusion

Issue #1 Where is the LRE for the student and how can/could have Trenton School Department guarantee the student access to that LRE?

The vast majority of Trenton's High School age students attend either MDI or Ellsworth, and therefore, the least restrictive educational environment, non-disabled peer group and closest building for this student is contained within these two districts. As it presently stands Trenton School Department has no legal standing which would allow them to force either of these districts to take Trenton students. Such a contract existed with MDI, but was not renewed when it expired in 1994 and there is nothing which would allow TSD to force Ellsworth or MDI to enter into a new contract which would require the enrollment of any or all TSD students who apply. It was made clear that the residents of Trenton highly value their tradition of choosing their high school and it was suggested that the State Department of Education (DOE) should force the receiving district to take any TSD student who apply subject to Due Process. Such a solution could and should be explored, but as it would transfer significant educational responsibility from the district of residence to the receiving district, such a action would likely generate much debate, and is not a remedy available to this hearing officer.

The stipulated fact remains that the TSD must provide/guarantee this student access to non-disabled students subject to the student's special educational need as identified by the PET and recorded in the IEP.

Regarding the refusal by MDI and Ellsworth to admit the student. Their actions were not at issue following their dismissal from this hearing, however, TSD needs to consider the following in paying tuition to receiving schools, be they public or private. Decisions made by school staff and administration do not rise to the level of written school policy which is approved by the appropriate school boards. These staff/administration decisions when not written can and often do vary in their application based on current events, such as the events in Littleton, Colorado. If these actions are applied in a manner which is discriminatory toward students with special education needs, they are a clear violation of Section 504 of the Rehabilitation Act and the TSD would be prohibited by law from continuing to provide financial support to any agency which discriminated against disabled students.

TSD is responsible for holding a PET in accordance to the Special Education Regulations and they failed to do so. TSD argues that they do not have necessary staff at the high school level and, therefore, can not hold a PET until a receiving high school is located and provides the necessary professionals. Such

an arrangement created a situation in which this special education student was left with a single school administrator working in an advocacy role without the benefit of the PET process. This is a process which is not in compliance with state and federal law/regulations.

Issue #2 Are compensatory services necessary?

The student returned home without the benefit of pre-planning and this was not due to any error by TSD. For this reason TSD has a reasonable time period to convene a PET and develop an IEP. TSD failed to do so because of lack of appropriate staffing. Once the parents requested Due Process and “stay put” became the placement, TSD failed to provide appropriate transportation. The transportation provided by TSD left the student alone and unsupervised in Bangor for several hours at the end of the school day. This transportation continued until changed by order of the hearing officer at the June 3, 1999 pre-hearing conference.

As a direct result of the lack of a PET meeting by TSD and inappropriate transportation during “stay put”, the student did not complete what would likely have been a successful 2nd semester and no credits have been awarded.

V. Order

TSD will within thirty (30) days of receipt of this order establish and maintain written contracts with the necessary high school certified educators to ensure TSD’s ability to conduct PET meeting without staff from receiving districts.

TSD will within ten (10) days of receipt of this order establish a procedure to administer the student’s final examinations that were missed in June of 1999. TSD will then provide the student with such tutoring as may be needed to complete the requirements for the student’s junior year. Once the second semester credits for the 1998-99 school year have been awarded the above ordered tutoring will end.

WITNESS LIST

PW-1		Father
PW-2		Mother
PW-3	James Cameron	Chair Trenton Selectman
PW-4	Christine Sandberg	Chair Trenton School Board
PW-5	Howard Colter	Superintendent MDI
PW-6	Amanda Hitchings	WINGS
PW-7	Harold ("Tug") White	Special Education Director Ellsworth and Trenton

EXHIBITS

School Exhibit List

- 1 Letter from Mr. Herlan to Ms. Aiello, dated 5/26/99
- 3 Report of psychological consultation, dated 11/16/98
- 8 Jackson Brook Institute Discharge Summary, dated 2/10/99
- 13 Letter from Mother to Ms. Ferriter, dated 5/19/99
- 16 Bangor IEP, dated 3/5/99 with attached Behavior Plan
- 22 Summary of Least Restrictive Settings
- 23 Spurwink Educational Report, dated 2/10/99
- 25 Spurwink Service Agreement
- 26 KidsPeace Educational Discharge Summary, dated 11/12/98
- 27 Letter from KidsPeace to Mr. White, dated 11/16/98
- 28 Letter from KidsPeace to Mother, dated 10/14/98
- 29 KidsPeace Consent for Programming, dated 10/6/98
- 30 KidsPeace Individualized Service Plan, dated 9/29/98
- 40 Letter from KidsPeace to Mother, dated 10/30/98
- 41 Letter from Department of Mental Health to Mr. White, dated 10/22/98
- 42 Letter from Kids Peace to Mr. White, dated 9/30/98 with attached
Proposed Goals and Objectives
- 47 Letter from KidsPeace to Mr. White, dated 9/18/98
- 48 Letter from KidsPeace to Mother, dated 9/10/98 with attached Consent
form
- 50 KidsPeace Initial Service Plan, dated 9/1/98
- 55 Letter from KidsPeace to Mother, dated 9/8/98 with attached draft Service
Plan
- 61 Letter from Regroup House (Hinckley) to Mount Desert Island High School,
dated 2/3/98 with attached Authorization for Release of Information

- 63 Billing form from Spurwink to Mr. White, dated 1/98
- 64 Spurwink Service Agreement, dated 1/98
- 66 Mount Desert Island High School IEP, dated 1/20/98
- 72 Mount Desert Island High School PET Minutes, dated 12/22/97
- 76 Letter from WINGS regarding meeting December 12, 1997
- 80 Needs Assessment, dated 12/4/97
- 81 Waiver of 7 Day Notice Requirement, dated 12/22/97
- 82 Referral for Special Education (Mount Desert Island High School), dated 12/4/97 with attached Letter from Mother, attached Transcript, and attached Psychological Review (dated 8/97
- 89 Psychological Review, dated 10/23/97
- 92 Evaluation Report, dated 1/6/97
- 96 Evaluation Report, dated 1/15/97
- 99 Student Assistance Team Minutes, dated 9/10/97
- 102 Notice of PET Meeting, dated 12/97
- 105 Letter from Regroup House (Hinckley) to Whom it May Concern dated 6/12/97
- 107 Telephone Message, dated 12/27/96
- 108 PET Minutes, dated 12/19/96
- 110 Letter from Mr. White to Mother, dated 11/25/96
- 111 Acadia Hospital Report, dated 10/11/96
- 126 Referral for PET, dated 10/96
- 133 Materials Generated at PET Meeting, dated 5/28/99

Parents Exhibit List

- P-1 5/28/99 IEP (Bangor School Department)
 - P-2 4/21/99 WINGS strengths assessment
 - P-3 3/28/99 through 4/3/99 Weekly Progress Report (Bangor High School)
 - P-4 3/14/99 Education Intake Summary (Summit View)
 - P-5 3/9/99 ISP (Summit View)
 - P-6 3/5/99 IEP (Bangor School Department)
 - P-7 2/15/99 Initial ISP (Summit View)
 - P-8 2/6/99 JBI Psychiatric Update
 - P-9 2/5/99; 2/12/99 Spurwink School/JBI Weekly Evaluation Report
 - P-10 1/30/98 Report Card (Regroup House, Hinckley)
 - P-11 Trenton Annual Town Report and warrant for 1999 Annual Town Meeting
 - P-12 Minutes of Annual Trenton Town Meetings and letters to Assessors Regarding appropriations 1988 through 1998*
 - P-13 Trenton Elementary School Newsletter dated April 2, 1999
 - P-14 Letter from Kristin Aiello, Esq. To Eric Herlan, Esq. Dated June 23, 1999
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Page 12
#99.100

* Trenton Board of Selectman Chair James Cameron has been asked to bring records of Trenton Annual Town meetings and Special Town Meetings from twenty years to current. Because of the nature of the filing of the minutes, the Town Clerk advised that they could not be removed for copying, therefore they could not be provided herein.