STATE OF MAINE

SPECIAL EDUCATION DUE PROCESS HEARING

July 20, 1999

Case #99-109, Scarborough School District v. Parent

REPRESENTING THE SCHOOL: Eric Herlan, Esq.

REPRESENTING THE PARENT: Parent represented self.

HEARING OFFICER: Lynne A. Williams, Ph.D., J.D.

This hearing was held and the decision written pursuant to Title 20-A, MRSA, 7202 et. seq., and 20 USC 1415 et. seq., and accompanying regulations.

This hearing was requested by the school district on May 10, 1999. The case involves student, whose date of birth is [ ]. The student resides with the student's mother and step-father, in Scarborough, Maine. Student is eligible for special education services under the category of "Behavioral Impairment." From March 3, 1999 until the end of the 1998-1999 school year, student was receiving two hours per day, five days a week, of tutoring at the Scarborough Public Library.

The parties met in a pre-hearing conference on June 1, 1999, to exchange documents and lists of witnesses, and to clarify the issues for hearing. At the request of the school, the hearing was rescheduled from June 8, 1999 to June 9, 1999. The hearing convened on that date, and continued on July 7, 1999, at the Cumberland County Probate Court. The school entered 326 documents into the record; the parent entered 45 documents into the record. Seven witnesses testified. The hearing record was left open until July 14, 1999, for the submission of closing arguments. The parent submitted a closing argument and the district submitted a post hearing memorandum.

Following is the decision in this matter.

I. Preliminary Statement

This case involves a x-year-old student who is eligible for special education services under the category of "Behavioral Impairment". On February 3, 1999, Student made statements construed by the school principal to be threats to blow up the school. In response to those statements, student was suspended from school for ten days, and then placed in an out of school placement with the services of a tutor.

From March 3, 1999, through the end of the 1998-1999 school year, Student received two hours of tutoring, daily, at the Scarborough Public Library. These services were provided

pursuant to an IEP dated February 22, 1999. Prior to this placement, student's January 25, 1999 IEP placed the student in four resource classes and three mainstream classes per day, along with social work services.

The school district requested this hearing. It was the contention of the school district that student should not be permitted to return to school until an evaluation was performed to determine whether the student could safely be in a public school setting. The parent refused to consent to this assessment. The school district seeks to have the hearing officer order this assessment.

In addition, the parent now objects to student's out of school placement and contends that it is not an appropriate placement and that the program does not support student educationally.

II. Issues

- Has The school improperly placed and retained student in an alternative, out of school, educational placement, following the student's disciplinary suspension of February 4, 1999 through February 24, 1999?
- May the school, over the objections of student 's parent, conduct a psychological evaluation of student to determine whether the student can safely attend Scarborough High School?

III. Findings of Fact

1. Student initially entered Scarborough High School on January 23, 1998. At this time, parent failed to communicate to the school administration that the student had received special education services in at least two previous educational placements. (Exhibits 132, 155, 160-169; Testimony of Kaechele, Parent)

2. From January 23, 1998 until approximately early April of that year student was not identified with special needs, and received no special education services. (Testimony of Kaechele, Gorsuch-Perry, Parent)

3. In March 1998, after student exhibited behavior problems at school, parent informed the school that student had previously been identified as a special education student in New Mexico. On April 17, 1998, a PET meeting was held and student was identified as eligible for special education services under the category of "Behavioral Impairment." The IEP developed at that meeting indicated that student would remain in all current classes, except for one which would be dropped in order to add another study class. In addition, 120 minutes per month of social work services were given, as well as some classroom accommodations. Additional testing would be performed if no current test results were received from the previous placement. (Exhibit129; Testimony of Kaechele)

4. On September 2, 1998, a PET meeting was held, resulting in an IEP with essentially the same services and accommodations as the April 17, 1998 IEP. (Exhibit 119)

5. On or about September 14, 1999, Student precipitated an incident at the student's home which resulted in a fire. The police were called by parent and student was removed to the Cumberland County jail. (Exhibit 70; Testimony of Parent)

6. In a memo dated October 22, 1998, Sharon G. Pray, Educational Coordinator of the Cumberland County Jail, stated that student came to the jail on September 14, 1998, and between that date and October 1, 1998 was also placed in a residential setting for evaluation. The memo also indicates that student attended 25 days of school at the jail, and received good grades. It should be noted that the parent disputes the chronology in this memo, but in her testimony did not clarify what the correct dates were. (Exhibits 70-71; Testimony of Parent)

7. On September 16, 1999, Nancy Peters did educational testing of student. It is unclear where student was when this testing is done. The findings indicate no discrepancy between ability and achievement that would be indicative of a learning disability. (Exhibits 102-104)

8. Barbara Hirsch, the district's psychological examiner, conducted cognitive and psychological testing of student, while in jail. The results are discussed in a September 17, 1998 report and indicate that student is of average intelligence. Ms. Hirsch also identified some self-reported emotional and behavioral difficulties, including drug abuse, with additional emotional issues emerging on projective testing. (Exhibits 98-101; Testimony of Hirsch)

9. A PET meeting was held on September 22, 1998 to discuss the results of student's psychological and educational testing, as well as to review the records received from student's previous placement in New Mexico. A January 13, 1998 IEP from New Mexico indicates that student was eligible for special education under the category of "Seriously Emotionally/Behaviorally Disturbed" and was in an Independent Study Program due to ongoing absences and an inability to progress in the traditional school setting. Per the January 13, 1998 IEP, student was about to be placed in a social/behavioral program in a self-contained classroom, with psychological services and a behavior management plan. (Exhibits 132-151; Exhibit 97; Testimony of Kaechele)

10. A written report from Mary Monique, ISP Teacher at Las Cruces, New Mexico, indicates that student is not performing well in the ISP program, conflicting with the parent's testimony that the student was successful in that program. (Exhibit 152; Testimony of Parent)

11. The IEP produced on September 22, 1998 states that when student returns to school the PET will "continue in these efforts" (those of the New Mexico IEP) and will review testing and evaluations from the residential setting and other sources. (Exhibit 97)

12. A letter dated November 18, 1998 was sent from Ms. Gorsuch-Perry to parent, inquiring where student is attending school and offering to transmit the student's records to that location. (Exhibit 69)

13. At Thanksgiving 1998 student was placed in a residential/educational setting for students with emotional and/or behavioral issues. In early January 1999 there was an incident of physical aggressiveness involving another student, and on January 12, 1999 another incident. Following this second incident, student was discharged from this setting. It should be noted that parent disputes the details of these incidents as testified to by Ms. Quick. It should also be noted that the parent declined to release records from this placement or enter the incident reports, or other documents from this placement, into evidence. (Exhibit P41; Testimony of Quick, Parent)

14. On January 19, 1999 student returned unannounced to school and reregistered on January 21, 1999. (Exhibit 63, Testimony of Kaechele)

15. A January 25, 1999 PET meeting developed an IEP giving basically the same services and accommodations as specified in the previous two IEP's. Results from psychological testing done privately in September (when student was placed out of jail for a period of testing) are not considered because the parent declined to release them to the school. No behavior plan or behavioral interventions are developed. (Exhibit 56; Testimony of Kaechele, Parent)

16. On February 3, 1999, student was present with other students and Mr. Oliver, the special education teacher, in Mr. Oliver's classroom. Another student was complaining about his report card, when student stated "This place sucks" followed by a comment directed at another student, asking "You wanna blow up the school? Let's blow up the *[profanity]* school man!" (Exhibit 52; Testimony of Oliver)

17. Since the principal had already left for the day on February 3, 1999, the special education teacher notified the principal of this incident on February 4, 1999, and she attempted to contact the parent to notify her of the incident. The principal requested that Mr. Oliver prepare an incident report, which was done. In addition, interviews were conducted with witnesses to the incident. (Exhibits 51-52; Testimony of Oliver, Kaechele)

18. When the parent was contacted, the principal informed her that, due to this incident, student would be suspended for ten days, from February 6, 1999 through February 24, 1999.[1] (Exhibit 50; Testimony of Kaechele)

19. The PET met on February 22, 1999 to discuss the incident. The minutes of this meeting include a statement by the principal that "because of [student's] verbal threat to blow up the school, which resulted in a suspension, it was necessary that the school conduct a dangerousness assessment to insure the safety of student and all other individuals at the school." (Exhibit 42; Testimony of Kaechele)

20. The parent stated at this meeting that she felt the assessment was unnecessary and she felt that the incident had been taken out of context. Since that time she has refused to give consent for the assessment. (Exhibits 5-8, 42; Testimony of Parent, Kaechele, Gorsuch-Perry)

21. The PET, which met on February 22, 1999, changed student's placement to an out of school placement at the Scarborough Public Library. Student was to receive two hours per days of tutoring, five days a week, pending the completion of the proposed "dangerousness assessment" and its review by the PET. (Exhibit 42; Testimony of Delaware)

22. Social work services, as per the IEP in force when the incident occurred, were offered, but declined by student. (Testimony of Parent)

23. The February 22, 1999 PET did not address the issue of whether the behavior was a manifestation of student's disability, although the school states that it agrees that it is a manifestation. (Exhibit 42; Testimony of Gorsuch-Perry)

24. The February 22, 1999 PET did not prepare an assessment plan in anticipation of conducting a Functional Behavior Assessment, nor did it address the creation of a Behavioral Intervention Plan. (Exhibit 42)

25. According to the teachers present at the February 22 meeting, since the student's return to school student had been completing coursework but had fallen behind. (Exhibit 42)

26. In a letter dated February 24, 1999, Ms. Hirsch forwarded an assessment plan to parent, which was subsequently received, but not consented to, by parent. (Exhibit 326; Testimony of Hirsch, Parent)

27. From March 3, 1999 through the end of the 1998-1999 school year, student attended the alternative, out of school placement. The parent initiated ongoing contact with Mr. Oliver and Ms. Delaware, student's tutor, and expressed concern

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[1] This length of this period is due to the fact that there was an intervening vacation week, and the actual suspension was in fact ten school days.

regarding student's progress and lack of educational support in this placement. (Exhibits P7-10; Testimony of Parent, Delaware)

28. On March 25, 1999, Ms. Gorsuch-Perry wrote a letter to parent, describing a previous offer to return student to the school site, in a separate 1:1 tutorial setting, pending the completion of the requested evaluation and a PET meeting. In the letter she noted that parent had declined the offer. (Exhibit 10)

29. A Draft/Proposed IEP was prepared by the school and dated June 2, 1999. This document includes behavioral goals and the use of Behavioral Data Sheets. (Exhibits 309-311)

IV. Conclusions

- **Has Scarborough High School improperly placed and retained student in an alternative, out of school, educational placement, following his disciplinary suspension of February 4, 1999 through February 24, 1999?**

The parties do not dispute the facts surrounding the verbal comments made by student on February 3, 1999. The parties do not disagree that the threats were a serious matter and should be treated as such, and they agreed that the February 6, 1999 ten-day suspension was valid. However, the parties do disagree on the appropriateness of placing student in an alternative, out of school, educational placement.

There are very specific circumstances under which a student with a disability can be removed from school when the parties do not agree to a change of placement. Federal law gives schools the authority to suspend a student for violation of the school's disciplinary code for up to ten days. *See* §1415(k)(1).

It also gives them the authority to place the student in an appropriate interim alternative educational setting for a maximum of 45 days in certain, but not all, disciplinary situations. Those circumstances are "(i) The child carries a weapon to school…; or (ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school…." *See* §1415(k)(1) In addition, the school may request a hearing officer to order the 45-day change in placement, and the hearing officer may so order if she determines that the school "has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others." *See* §1415(k)(2) In either case, this removal may be done without parental approval, but is subject to a parent's right to due process. *See* §1415(k)(7).

A school may also request an injunction from a judge (*Honig* injunction) permitting the school to place the student in a 45 day alternative educational setting. *DOE Q & A Document*, Question 3, 64 Fed. Reg. 12415 (March 12, 1999)

In this case the school argues that it relied on the PET's authority to make a change in placement. PET's are permitted to make a change in placement, even without consensus, subject only to the parent's right to due process. Following the February 22,1999 PET meeting, at which the change of placement was made, it would have been appropriate for parent to file for due process if she disagreed with the placement or the program to be provided. Parent did not do so. In fact, parent testified at the hearing that she thought that perhaps this out of school placement might work better for student. From March 3, 1999 through the end of the 1998-1999 school year, student regularly attended the out of school placement, with no attempt on the parent's part to object to the placement or to file for due process to change the placement.

The district was fortunate that the parent did not file for due process, in that they were able to avoid seeking an order from a hearing officer or a judge, pursuant to §1415(k)(2) or *DOE* policy, in order to place student in an alternative educational setting, based on danger to self or to others. I find it troubling that they did not follow the specific disciplinary procedures specified in IDEA '97. These procedures were designed to protect the rights of students with disabilities, and assure that there is full consideration of whether the student is in fact dangerous, as well as the suitability of the proposed alternative educational placement. Because the parent did not file for due process following the PET's action, the school was able to effectively circumvent these procedural protections.

Although the PET was technically correct in its placement of student, it is problematic that there was little discussion of the appropriateness of the placement itself and of the proposed program at the February 22, 1999 PET meeting. Nor was there any discussion of other alternative placements. The minutes from that meeting indicate that other than the principal, team members voiced few, if any, arguments, either in support of or against the change in placement. A PET meeting is supposed to be a venue for discussion and information sharing, not a vehicle for rubber stamping an administrator's prior decision. However, whether there was consensus or not, the PET did follow the letter, if not the spirit, of the law when changing student's placement.

To date, no manifestation determination has been done. Following a disciplinary change in placement, a school is required to convene a PET to determine what, if any, relationship exists between the student's conduct and his disability. *See* §1415(k)(4). The school now contends that it does not contest that the February 3, 1999 incident was a manifestation of the student's disability. However, a school cannot simply avoid holding a manifestation hearing by admitting that there is a linkage between the student's behavior and disability. To do so eliminates what could be an important and informative discussion of the student's behavior, and possible strategies to address that behavior. There was a reason that procedural protections following disciplinary action were included in IDEA '97 and they must not be circumvented.

In addition, the school has failed to conduct a Functional Behavioral Assessment (FBA) and develop a Behavior Intervention Plan (BIP), as required by §1415(k)(1)(B).

Following a disciplinary suspension, a school is required to conduct an FBA and implement a BIP to address the behavior that resulted in the suspension.

However, the testimony at the hearing and the documents received into evidence suggest that further assessment of student, particularly of a social/emotional nature, will be necessary prior to the development of an individualized, and successful, BIP. This further assessment has been stymied by parent's refusal to release records of recent, relevant testing and her refusal to consent to the school's proposed assessment. Furthermore, student's attendance at school has been sporadic, and there were at least three months following student's initial registration at school when the school was unaware that the student was an identified special education student.

Any change in placement, whether made under §1415(k)(2) or by a PET, must contain certain elements. Specifically, an alternative educational setting (AES), following a disciplinary incident, must meet certain standards. In general, it must

> "(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and (ii) include services and modifications designed to address the behavior [leading to suspension] so that it does not recur. *See* §1415(k)(3)

Although the school is not required to replicate the exact program a student had before being placed in an AES, it must provide a program that will allow for mastery of the student's IEP goals and objectives.

The school argues that student's change of placement was made by the PET, rather than under the disciplinary provisions of §1415(k)(2). In making a determination of the validity of the change of placement, this is certainly the case. However, while the change in placement is not a disciplinary change of placement *under* §1415(k)(2), it is nonetheless a disciplinary change and should be evaluated as such. The change in placement was precipitated by a behavioral incident, and the February 22, 1999 PET, which made the change, was singularly motivated by the behavioral incident. The PET minutes state "Due to behavioral issues, [student] is to receive semi-private tutorial services until further assessments are performed." Consequently, the out of school placement made by the PET should be evaluated not only as to whether it provides FAPE, but also as to whether it meets the requirements of §1415(k)(3). I find that it does not.

The school is currently providing student with tutorial services that enable the student to "continue to participate in the general curriculum, although in another setting." The student has access to the student's academic courses, a tutor to support the student academically and the materials to complete assignments.

The alternative setting also enables the student to receive services and modifications specified in his IEP. Social work services were offered but declined by student.

However, the out of school placement does not include the services and modifications designed to address the behavior that led to student's removal from school. *See* §1415(k)(3) As noted above, no BIP has been created or implemented in student's current setting. Nor has an FBA been completed. Failure to comply with the FBA requirement has already caused at least one Maine hearing officer to overturn an AES placement. *See* Freeport Public Schools, 26 IDELR 1251 (SEA ME 1997); *See also* William S. Hart Union High Sch. Dist., 26 IDELR 1258 (SEA CA 1997), Bd. of Educ. Of the Akron Central Sch. Dist., 28 IDELR 909, 911 (SEA NY 1998)

Although it is again noted that there has been a roadblock put in the way of the school, the parent's denial of permission to conduct an assessment of student, it is a fact that since at least April 1998, the school has provided special education services to student under the category of "Behavioral Impairment". IEP minutes, disciplinary incidents and teacher comments have all made note of behavioral issues. Yet, the school has neither conducted a functional behavioral assessment nor developed and implemented a behavior intervention plan. It is noted that the June 2, 1999 Draft/Proposed IEP does include behavioral goals and some strategies for reaching those goals. This is a step that should have been taken before the February 3, 1999 incident occurred.

In conclusion, I find that the PET acted within its statutory authority when it changed the placement of student on February 22, 1999. However, the alternative educational placement, as it is now configured, is in violation of §1415(k)(3)(B), in that the setting does not include services and modifications designed to address the behavior exhibited on February 3, 1999.

- **May Scarborough High School, over the objections of student's parent, conduct an evaluation of student to determine whether the student can safely attend school on site?**

Federal law permits a hearing officer to override a parent's refusal to consent to a re-evaluation of a student. *See* §1414(a)(1)(C)(ii) However, nowhere in the Individuals with Disabilities Education Act, or in the accompanying Federal and state regulations, is there a specific mention of a "dangerousness assessment". As noted and discussed above, there are specific situations under which a school can request a hearing officer or judge to remove an allegedly dangerous student to an alternative educational placement, but mandating the completion of a "dangerousness assessment" is not part of this process. Nor is conditioning the return of the student to his previous placement a part of this process.

As previously discussed, the hearing officer finds that the alternative educational placement in which student has been placed since March 3, 1999 is inappropriate and a violation of the requirements of §1415(k)(3). In addition, the district has failed to do a

functional behavior analysis (FBA) and to develop a behavioral intervention plan (BIP). The district is now required to remedy all of these violations of IDEA.

In order to meet its mandate, the district needs to have whatever information is necessary to permit the PET to create an appropriate program for student, containing both an educational and a behavioral component, and to identify a placement in which this program can be delivered. The school does not currently have complete information about student, particularly current information of a psychological and social/emotional nature. The parent is concerned with subjecting student to additional psychological testing, citing the amount of previous testing done, including testing done last September, when student was temporarily removed from jail for assessments to be done. Yet she has steadfastly refused to forward the results of this testing to the school. If the school had been permitted to review the results of this testing, they might not have been able to successfully argue that further psychological testing is necessary. However, it would be foolish and probably doomed to failure, to create a BIP in the absence of current psychological and social/emotional testing of student. It is only partly the fault of the school that no BIP had been created prior to the incident of February 3, 1999, because although the school consistently failed to address student's behavioral issues, the parent herself did not forward information about student's history to the school in a timely manner, and continues to withhold pertinent information.

When developing a program for a student, and subsequently making a placement decision in order to deliver the program, a PET must consider the whole student. While the goal is always to provide an appropriate education, there are many facets of a student which impact upon the student's educational progress, including social/emotional/behavioral factors. This is the reality that the parent seems to be unwilling to concede. Over the years student has demonstrated some emotional issues and some serious behavioral incidents. A family history in the school records from New Mexico indicates that the parent had concerns about student's behavior as early as third grade. At the behest of the parent herself, student spent about one month in jail. The student was subsequently placed in [school], an intensive residential program designed to educate students with emotional problems. This, too, was a placement initiated by the parent. These facts indicate to the hearing officer that the parent has at least some concern about student's emotional and behavioral stability. One does not place a child in these very restrictive settings based on educational concerns alone.

In addition, student's educational failure appears to be at least partly due to his unwillingness to attend class and complete assignments. Educational testing alone will be insufficient to determine the etiology of student's reluctance to engage in school and educational activities.

Perhaps the hearing officer misunderstood what exactly the district was proposing when it discussed the "dangerousness assessment" to be done by Dr. James Moran. The impression was that Dr. Moran would somehow "predict" whether student might be a danger to the student or to others if the student were to return to school. There is no reliable evidence that the hearing officer is aware of that indicates that anyone can

reliably "predict" another's behavior based on psychological testing. Even Ms. Hirsch, the school's own psychological examiner, noted in her testimony that past behavior is the best predictor of future behavior.

What student needs is some comprehensive psychological testing that can assist the PET in identifying the most appropriate program and placement. The district would be well advised to abandon its quixotic search for predictive certainty and get on with the task of assessing student's emotional, social and behavioral needs and identifying the services and supports to address those needs.[2]

Nor is psychological testing alone needed in order to create an appropriate program for student. There is some indication in the record, and from testimony, that student had been identified with a learning disability in the past. The educational testing done by Nancy Peters and Barbara Hirsch last November, while finding no clear evidence of a learning disability, is suggestive enough that additional testing should be completed by the district. While the hearing officer will not identify specific tests to be included, they should be instruments which are designed to identify problems in the areas of written language, math calculation and visual-motor integration.

In addition, the parent, in both her testimony and correspondence to the school, has indicated that student has some level of hearing loss, yet there is no evidence of an audiogram in the record. The parent should be encouraged to obtain a current audiogram to determine the existence and nature of any hearing loss student might have.

In conclusion, I find that a current psychological assessment of student, done by a qualified examiner of the school's choosing, is warranted. If the parent continues to refuse to consent to this assessment, the school district shall be permitted to override lack of consent and conduct the assessment.[3]

V. Order

1. The school shall convene the PET to develop a detailed assessment plan, including psychological and educational testing, by July 30, 1999. The school

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[2] This statement does not suggest that the District should be prohibited from using Dr. James Moran to do a current psychological assessment of student. However, the focus must be on student's needs rather than the needs of the school for some sort of predictive certainty. Nor does this statement preclude the examiner's review and analysis of past behavioral incidents as input into student's current psychological and social/emotional functioning.

[3] In her written closing argument, the parent requests compensatory education for student in the form of placement in a private educational facility such as Acusico or Southern Maine Learning Center. Since this request was never raised either prior to or during the hearing, no evidence was submitted regarding the appropriateness of these facilities or the ability or inability of the school to deliver FAPE to student. Therefore this request will not be addressed in this decision. When the PET meets following the completion of the proposed assessment, the PET will need to review the whole continuum of educational placements, and can address this issue at that time if parent so wishes.

shall make every effort to involve the parent in the development of this plan. If the parent does not attend the PET meeting, the school shall immediately forward the assessment plan to her for her signature.

2. The parent shall make student available for assessment, as specified in the plan, within five business days of receiving the assessment plan, unless summer schedules make that impossible. In any case the parent shall make student available for assessment no later than August 15, 1999. If she refuses to make student available for testing, she will be in violation of this order.

3. The school shall complete the proposed assessment and forward the results and recommendations to the PET no later than August 23, 1999.

4. The PET shall reconvene by August 30, 1999 to review the assessments and complete the following tasks:

   - Remedy the IDEA violations by preparing a detained BIP, utilizing the information and recommendations from the proposed assessment.[4]
   - Develop an IEP for student, including behavioral and academic goals and objectives.
   - Consider the continuum of placements for student, ranging from on site at the school to off site placements and identify the setting most conducive to student's academic and behavioral success.[5]

5. The parent is encouraged to obtain an audiogram for student from an audiologist. If the results are available prior to the August PET meeting, and there is an indication of hearing loss that may require accommodations in the school setting, such accommodations will be discussed at that meeting. If the results are not yet available, a subsequent PET meeting will be scheduled if necessary.

6. The PET shall reconvene by September 30, 1999 to evaluate the efficacy of student's program, BIP and placement. If deemed necessary, the PET shall order an on site FBA to be conducted by a qualified behaviorist and shall incorporate these results and recommendations into an amended BIP.

7. In the event that parent has not made student available for testing by August 25, 1999, the school district may file for an expedited hearing to request this hearing

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[4] While the school did violate IDEA by failing to hold a manifestation hearing, the school has acknowledged the link between behavior and disability. Since the issues usually discussed at a manifestation hearing will be covered at the August 1999 PET, the school will not be required to hold a separate manifestation hearing. However, the acknowledgement that the behavior is a manifestation of student's disability should be noted in the PET minutes.

[5] The school shall keep in mind that the current, out of school placement, at least as currently configured, is inappropriate.

officer to issue an order permitting Student's placement in an alternative educational placement, based on danger to self or to others.[6]

8. This hearing officer will retain jurisdiction over this case until September 30, 1999. Proof of compliance with this order shall be submitted to the hearing officer as well as to the Due Process Coordinator.

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Lynne A. Williams, Ph.D., J.D. Date
Hearing Officer

[6] The issue of dangerousness was not a part of this decision, because the school did not request the student's change in placement pursuant to §1415(k)(2). If an expedited hearing is requested, evidence regarding dangerousness will be considered at that time.