

## I. Introduction

### Special Education Due Process Hearing Decision "Parent vs. MSAD #22"

DATE: July 20, 1999

CASE NO. #99.134

COUNSEL FOR THE PARENT: Parent represented self

COUNSEL FOR THE SCHOOL: School represented by Eric Herlan

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 June 1, 1999, the Department of Education received a request for a Due Process Hearing from the parents on behalf of their child. The Parents and their child live and attend MSAD #22 schools.

The pre-hearing conference was held June 16, 1999, with the hearing being held June 29 and 30, 1999, at the Reed Brook Middle School, Hampden, Maine. Three witnesses for the school and seven witnesses for the parents were scheduled to be heard with five for the parents and two for the school actually testifying. One hundred and thirty eight pages of documents were received.

The hearing was held open until July 9, 1999, to allow attorneys for the school to file briefs.

The student (D.O.B.) is enrolled in MSAD #22 and attends Hampden Academy where the student has just completed the student's 10<sup>th</sup> grade year. The student is in need of special educational services because of a behavior impairment. The student's educational goals and objectives are not at issue in this hearing, but access to the school program is questioned primarily because of three separate suspensions during the 98/99 school year. These suspensions totaled 9 days.

Also in question is personal safety. This question centers primarily around an incident which happened on May 27, 1998, in which the student and the student's mother were in conversation with a parent who was very angry with the student. This confrontation took place in the school guidance office.

The third issue questions the schools practice of announcing placement decisions regarding in district transfers late in the spring of the year before the school year in question, (i.e. the decision on a parental request to attend a building within the district, but outside of your normal building).

## **II. Issues for Hearing**

1. Is SAD #22 maintaining a safe educational environment for the student.
2. Are school personnel preventing the student from being able to access the student's school program.
3. Does the school practice of ruling on transfer request on an annual basis deny educational benefits to the student.

## **III. Finding of Fact and Stipulations**

### **Stipulations**

1. The student's current IEP and its goals and objectives are reasonably calculated to be of educational benefit.
2. The student's parents are residents of Winterport which is part of SAD #22.
3. There are no procedural issues.
4. Educational providers are appropriately certified.
5. Witnesses may make written statements in place of personal appearances provided both parties are in agreement.

### **Facts:**

Issue #1. Is SAD #22 maintaining a safe educational environment for the student.

- When the student and a female friend skipped school, the school sent school personnel to look for them. PW-4
- May 27, 1998, the Hampden police were called to Guidance Office. PW-2

## #99.134

- An angry parent and the student's mother were at the Guidance Office and the angry parent was asked by school personnel to leave school and not return. PW-2
- The chief of police and school assistance principal told the angry parent to stay away from the student. PW-3
- Mr. Greenier and Chief Rogers escorted the angry parent to his car and told him to leave school property and not to return without permission. SW-1
- The angry parent's son made threats to the student and the student's family. PW-3
- In the 13 months since the May 27th, 1998, incident in the Guidance Office with the angry parent, there has been no direct contact by the angry parent with the student's parents.
- The student goes through life "fearing nobody". PW-4
- During the May 27, 1998, incident in the Guidance Office, MSAD #22 personnel took the younger children of the family away from the confrontation. PW-4
- The angry parent called the assistant principal and apologized and said he would not return without permission. SW-1
- There have been no additional school incidents with the angry parent following the May 27, 1998, incident. SW-1
- When some kids threatened the student the teachers broke it up. PW-4
- The student gets along well with the students at UTC (Vocational Program) PW-4
- The student turned in two kids for smoking "weed" near the UTC (Vocational Program). PW-4
- "I've talked to the kids I turned in and they have mellowed out". PW-4
- The student doesn't feel completely safe at Hampden Academy because of the female friend's angry parent. PW-4
- During the May 27, 1998, incident the school's Guidance Counselor remained with the students throughout the incident. PW-4, SW-1
- The student has gone to the home of the female friend and her angry parent since the incident on May 27, 1998. PW-4
- Hampden Public Safety Director does not recall anyone alerting him to the possibility of the angry parent at the May 27, 1998, incident having a gun. PW-2
- Had the Hampden Public Safety Director suspected the angry parent had been carrying a gun he would have searched the parent for his own safety and that of others. PW-2
- On December 2, 1998, the student's mother met with the school principal and Special Education Director to discuss the behavior of another student who the student's mother believed brought a gun to school in May of 1998. At the

December meeting the student's mother failed to mention the angry parent's gun, nor does school personnel remember her reporting the incident before the hearing. PW-5

- The student's mother reports that she told the principal that the student had brought a gun to school and the principal shrugged it off. PW-5
- The assistant principal recalls no time regarding the May 27, 1998, incident when the parents reported a gun on school property. SW-1
- The student's mother has reported guns on school property on several occasions and the school has investigated and found nothing. SW-1
- A follow-up meeting was held with the student's mother, the Special Education Director, and the assistant principal for a debriefing a few days after the May 27, 1998, incident. The student's mother did not mention a gun at school at that meeting. SW-2
- The student has been concerned about one other student and his adult brother. SW-2, 57
- The student made a complaint on January 14, 1999 to a police officer about the student's fears of a student named J. SW-2, 35, 62
- The student said at the January 14, 1999, meeting that the student did feel safe at school, but was worried about an adult off school property. SW-2, 35
- The student feels safe at UTC (Vocational Program), however, at times the student seems to be anxious at Hampden Academy and every time the school has addressed the issues. SW-2, 62, 35
- The student was not afraid to come to school. PW-1
- The student has a good attitude toward school. PW-1
- SAD #22 provides safe and positive educational environment for all students. PW-2

Issue #2 Are school personnel preventing the student from being able to access the student's school program.

- The student ripped up the student's Behavior Modification Plan and said the student "doesn't give a fuck what we say". PW-1, 21B
- The student was suspended for 3 days December 16, 17, 19, 1998 for using bad language at teachers. PW-4, SW-1, PW-1, 42A, 44-49
- Not all students are suspended for swearing. PW-1
- The student is not always suspended for swearing. PW-1
- If swearing is directed at staff they are suspended. PW-1
- The student has moved from mainstream for one class last year to a full mainstream load this year. PW-1
- Excepting the suspensions the student has had a wonderful year. PW-1

**Page 5**

**#99.134**

- The student has been suspended 3 times this year for a total of 9 days. PW-1
- The student's attendance was regular and very good. PW-1
- The student was not tardy or late to class. PW-1
- The student passed every subject. PW-1, PW-5
- The student was suspended for 3 days, May 26, 27, 28, 1999 for swearing at staff. PW-1, 21-21G, SW-1, 21B
- The student is allowed to leave classroom when agitated as part of the student's behavioral plan. PW-1, 133-136
- The student's Education Technician followed the student from the room and confronted the student for leaving. PW-1
- The student was suspended for 3 days in April for using a CD player in violation of school policy. PW-1, 24B, 24E, SW-1
- The student is happy with the student's UTC (Vocational Program). PW-3, PW-5, SW-1
- SAD #22's Special Education Director intervened during the April 1999 suspension to allow the student to attend a field trip with UTC (Vocational Program) during this three day suspension. PW-3, SW-1
- The student is doing better in school in the last two years. PW-3, PW-5, SW-1, SW-2
- The student feels fine with next years (1999-2000) school program. PW-4
- The student considers Mr. Boudreau almost like a brother and a good person to talk to. PW-4, PW-5
- All removals from school have been 3 day suspensions and expulsion has not been threatened. PW-4
- MSAD #22 suspends the student from UTC (Vocation Program) whenever the student is suspended from Hampden Academy. PW-5
- Mr. Greenier has never threatened to keep the student's mother off school grounds. SW-1
- The student's mother reports that Mrs. Greenier has threatened over 30 times to keep her off school grounds. PW-5
- Make-up work was offered and provided for periods of suspension. SW-1
- Grades are not negatively affected by suspension if work is made up. SW-1
- When the student returned the student was helped by Education Technician and the student made up the work. SW-1
- Following the May 27, 1999 suspension the student was given extra time to hand in take home examinations. SW-2
- The student's IEP is silent on suspension. SW-2

Issue #3 Does the school practice of ruling on transfer request on an annual basis deny educational benefits to the student.

- Written permission for Winterport students in K-8 to attend a school other than Winterport is granted on a per student, per year basis by the Superintendent of Schools. SW-2, 131
- It is hard on family not knowing until June if they will be going to Winterport or Hampden. PW-5
- The next time MSAD #22 decides on which school the parents children will attend will be for the 2000-20001 school year. At that time there will be one younger brother and one younger sister of the student who will be going with the student to Hampden Academy because they will be too old to attend Winterport and only two of the 7 children will be eligible to attend Winterport. PW-3, PW-4, PW-5

#### **IV. Conclusion**

Issue #1 Is SAD #22 maintaining a safe educational environment for the student?

Student safety is certainly an issue of great concern to not only to student's and parents, but equally to school personnel. How safe is safe and how can anyone predict when a heated exchange will pass, or escalate into increasingly more violent confrontations.

The incident of May 27, 1998 involved the student and a female friend leaving school early in the day. School personnel notified both students parents and sent school personnel to look for the students. When the student and the student's mother returned to school along with the female friend the girl's father was also at school and he was angry. He apparently shouted at the student and said things that upset the student, the student's mother, and school personnel. The police were called and the angry parent was ordered to leave and not return to school property. The angry parent apparently did as he was ordered and later called the school personnel and apologized for his behavior. Over the approximately 13 months since the incident the student and the angry parent have met several times both in public places and at the angry parents home with no recurrence of the incident. Although it appears the student was uncomfortable in some of these meetings, the student is not taking special precautions to avoid contact with this family, in fact the student has gone to their home since the May 27, 1998 incident.

Although it is difficult to image anyone being completely safe in school or virtually any other environment it appears that MSAD #22 has and is providing a reasonably safe educational environment. When the parent became angry they removed small children from the area, a teacher remained in the area while other staff called police, police and school personnel removed the angry parent from school property and MSAD #22 took special precautions to know when the angry parent was on school property following the incident. MSAD #22 actions have been successful and no additional confrontations have taken place on school grounds.

Although the student's mother talked about the possibility of the angry parent having a gun, there is no credible collaborating evidence to support the accusation and the reports were not made at or near the time of the May 27<sup>th</sup> incident.

Issue # 2 Are school personnel preventing the student from being able to access the student's school program?

The parent contends that MSAD #22 has, by the 9 days of suspension, prevented the student from accessing the student's education. Current MSER at 10.10 require the school to provide tutoring when a student is suspended for a full day or longer, however, the Maine Legislature overrode state regulation in 1997 when it adopted P.L. 1997 ch. 594, 1, codified as 20-A M.R.S.A. 1001(9-B). This provision reads as follows:

They (the principals) retain the authority to sanction an exceptional student as defined in section 7001, subsection 2 for misconduct that violates school rules. Notwithstanding the duties of school administrative units as described in section 7202, the school board may authorize the superintendent, principal or assistant principal to enforce this subsection by allowing the superintendent, principal or assistant principal to suspend an exceptional student up to a maximum of 10 days individually or cumulatively for infractions of school rules. When an exceptional student is suspended for 10 days or less for a violation of school rules, the school board is not required to provide a tutor, transportation, or any other aspect of the student's special education program.

Therefore, the suspensions were within the 10 day limit and not a violation of law. On this issue state and federal law are substantially similar.

**Page 8**  
**#99.134**

Issue #3 Does the school practice of ruling on transfer request on an annual basis deny educational benefits to the student?

There is no doubt additional stress felt by the family each year when they wait for a ruling from MSAD #22 about a transfer of all their children from Winterport to other buildings within the district. However, in this hearing we are focusing on the student involved in this hearing. By the time the decision is made for the 2000 - 2001 school year the next two younger siblings of the student will also be at Hampden Academy leaving the two youngest family members as the only two who's placement will be in question. With the student's next two younger brothers and sisters going to Hampden Academy they should provide enough support to neutralize the bulk of any negative family impact waiting for the decision will create.

#### **V. Order**

As there was no violation of the Maine State Special Education Regulations, or State or Federal law, there is no order.