

**STATE OF MAINE**  
**SPECIAL EDUCATION DUE PROCESS HEARING**

**October 27, 1999**

**Case #99-193, Parents v. School Union #29**

REPRESENTING THE PARTIES:                   Both parties were pro se.

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 student's guardian, who is also the maternal uncle. Student's date of birth is xx/xx/xx and he resides with his mother, step-father and half sister. Student is a student at Elm Street School in Mechanic Falls and is eligible for special education services under the category of "Behavioral Impairment." He is currently placed in a regular classroom with full-time Educational Technician ('ed tech') services<sup>1</sup>, and pull-out services for writing and math.

The parties met in a pre-hearing conference on 9/15/99, to exchange documents and lists of witnesses, and to clarify the issues for hearing. However, immediately prior to the hearing the parties held a P.E.T. meeting and resolved most of the issues. The hearing convened on 9/30/99, at the South Paris District Court. The guardian entered 24 documents into the record, as well as submitting a written brief. The school entered 8 documents into the record, all submitted as joint documents. The I.E.P. crafted on the day of the hearing was subsequently submitted on October 12, 1999. A written closing argument was submitted by guardian on 10/16/99.

Following is the decision in this matter.

**I. Preliminary Statement**

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<sup>1</sup> Student's placement is in a regular classroom, yet the face sheet of his 9/30/99 IEP indicates that student is in a self-contained placement. Obviously this notation was made under MSER §5.7(A) of the previous regulations which stated "self-contained services are special education services in which students with disabilities receive a majority (50 percent or more) of their academic and behavioral instruction from an appropriately certified special education teacher." However, this section has been repealed, effective 11/1/99, and the new section defines a self-contained placement as one in which a "student receives special education and support services OUTSIDE THE REGULAR CLASSROOM [emphasis in original] for more than 60% of the school day in a self-contained program." MSER §11.6 (rev. 11/1/99) Under these new regulations, therefore, student is in a regular class placement with the services of an ed tech. Ed tech support is considered a special education service and should be so noted on the face sheet of the IEP.

This case involves xx year-old male student who is eligible for special education services under the category of "Behavioral Impairment." Pursuant to an I.E.P. dated 9/30/99, student is placed in a regular classroom with full-time access to an ed tech and 6.75 hours per week pull-out services for math and written language. Student also receives 1 to 1.5 hours a week social work services and there is one hour per month of psychological consultation services. According to the I.E.P. minutes, student also receives social skills training, not as a discrete program, but as a component of his academic services.

The guardian requested this hearing. It is his contention that social skills training is a necessary component of student's program which should be listed in the I.E.P. and quantified as to amount, duration and provider.

The school district contends that social skills training is not a special education service, but rather an activity that does not need to be specifically listed and quantified in the I.E.P.

## **II. Issues**

- Is social skills training a special education service or related service which must be specifically listed and quantified in a student's I.E.P.?

## **III. Findings of Fact**

1. Student was born dob. (Exhibit: P1)
2. From 1994 through the summer of 1998, student lived with his maternal uncle and the uncle's family in Vermont. (Testimony: Guardian)
3. Maternal uncle was appointed guardian of student on 8/24/94. (Exhibit: P2)
4. In late 1994 student was referred for evaluation by the Stockbridge, Vt. School District. The evaluator concluded that student suffered from a "constellation of post traumatic stress behaviors" and recommended eligibility for special education services under the category of "Emotionally Handicapped." (Exhibit: P-4, pp. 14-15)
5. The District then referred student for a Behavioral Assessment . A report dated 2/22/95 recommends "global therapeutic intervention in addition to effective behavioral management." One specific recommendation was "highly individualized therapy across the entirety of his school day." The evaluator also recommended that social skills training be incorporated into his behavior management program. (Exhibit: P-5, pp. 4-5)
6. Student began receiving services in Vermont during March of the first grade (1994-1995), under the eligibility category of "Behavioral/Social/Emotional." (Exhibit: P-7, page 3)

7. An I.E.P dated 3/13/95 indicated that student's services included a full-time educational assistant to implement a behavioral program and to provide academic support. He also received Extended Year Services. (Exhibit: P-7, page 3)
8. An IEP dated 3/13/96 (spring of second grade) added social skills training, at least 30 minutes per week, individual counseling and a structured behavioral management plan, for the balance of the 1995-1996 school year and the 1996-1997 school year (third grade). (Testimony: Guardian)
9. Student began fourth grade in a private school in Vermont, but was expelled after six weeks due to serious behavioral issues. (Testimony: Guardian)
10. After this expulsion, student was placed in a day treatment program in Vermont. The duration of this placement is unclear. (Testimony: Guardian)
11. Student returned to public school, completed fourth grade and, according to testimony of guardian, also completed fifth grade, during the 1997-1998 school year. (Testimony: Guardian)
12. Sometime between the end of fifth grade (6/98) and the beginning of sixth grade (9/98) student returned to Maine to live with his mother. (Testimony: Guardian)
13. Student entered sixth grade at Elm Street School in Mechanic Falls in September 1998. (Exhibit: P-16)
14. An IEP dated 9/23/98 indicated that student was eligible for special education services under the category of "Behavioral Impairment." The PET team adopted student's previous Vermont IEP (dated 2/20/98) and ordered new academic testing. Placement was in the regular classroom and services to be received included a 1:1 ed tech and academic pull-out services in writing and math for 3 to 6.75 hours per week. Student also received social work services, for 45 to 60 minutes a weeks, in a combination of direct services and consultation. The PET also developed a Behavioral Intervention Plan, including "time-outs, owning up to unacceptable behavior and writing a plan for reentry into the classroom." (Exhibit: P-17, pg. 6)
15. A PET meeting was held on 12/2/98 to review the testing results. A new IEP was developed with some new goals and objectives, including anxiety management, anger control and increased focus. (Exhibit: J-4)
16. An annual review PET was held on 4/27/99. An IEP was developed which amended the Behavior Intervention Plan and wrote some additional goals and objectives including sustained effort for completion of work, management of agitation and de-escalation and management of anxiety.

17. Student showed some academic progress and behavioral improvement during the sixth grade (1998-1999 school year) and some of the short-term objectives were met. (Exhibits: P-21, pp. 1-2, J-2; Testimony: Guardian)
18. According to Guardian, the school was able to manage student's behavior during the first trimester, although there were still level 3 (rage) behavioral incidents during this period. During the second trimester, student's behavior declined significantly. He was sent home with the police two times, and removed from the classroom or restrained several times. During the third trimester, academics declined and student's aggressive and violent behavior escalated. (Exhibit: P-21; Testimony: Guardian)
19. On 6/5/99, student's mother brought student into Maine Medical Center's emergency room after he became physically and verbally violent towards family members. She states that he was "out of control" and that his violent and aggressive behavior had been escalating over the prior year. (Exhibit: P-19, pg. 10)
20. Student was transferred to Maine Medical Center's Spring Harbor Hospital, where he remained hospitalized for eleven weeks, being discharged on 8/19/99. (Exhibit: P-19)
21. A psychiatric evaluation was done on 6/7/99 at Spring Harbor Hospital. Probable diagnoses included mood disorder, major depressive disorder and possibly emerging bipolar disorder or hypomanic symptoms resulting from a "marked degree of anger." The psychiatrist also notes what appears to be impaired social relatedness due to a highly hypervigilant and avoidant style, as well as oppositional defiant disorder occurring during the course of the depression. His recommendation included family therapy, individual therapy, learning basic skills in stress and anger management and, after some progress in individual therapy, initiation of group therapy. He did not see a need for residential or other out-of-home placement. (Exhibit: P-19, pp. 3-4)
22. The PET met on 8/19/99 to receive information about the student's hospitalization and to discuss placement and program for the 1999-2000 school year (seventh grade). Guardian and mother both indicated that they would like either a day treatment program or attendance at Elm Street School with appropriate services, including therapeutic classes and increased social skills training with Mrs. Sheckart, the Special Education Social Worker. The mother indicated that student wished to have this increased time. They also shared concerns about safety issues. (Exhibit: J-1, pp. 3-4)
23. The PET developed an IEP dated 8/19/99, keeping essentially the same goals and objectives but increasing the amount of times a particular positive behavior will be exhibited. Social work service was increased to 1.5 hours per week. All the goals and objectives continued to be behavioral in nature. Guardian requested that the IEP be written to include social skills training as a specific, 15 minute a day, special education service. The PET declined to indicate social skills training as a specific service. At parent's request the PET did agree to initiate an application for day

treatment for student, and to reconvene to discuss the need for such a placement.  
(Exhibit: J-1)

24. On 8/31/99 Guardian filed a request for an expedited hearing. The issues at this time included several procedural issues, as well as Guardian's request that the IEP explicitly list social skills training as a service and quantify that service. (Testimony: Guardian)
25. Immediately prior to the 9/30/99 hearing, the PET met and all of the issues but one were resolved. The PET added one hour per month of psychological consultation services. In addition, it added goals, including learning the recognition process of intellectual explanations for school rules, identifying face-saving behaviors, describing more than one perspective to a hypothetical conflict, role playing interactions in a hypothetical conflict and engaging in a student helper role. The remaining issue involved whether student's IEP should specifically include a social skills training component, fully described and quantified. (Exhibits: J-7, J-8)
26. Student is currently receiving 45 minutes per day of social skills training from his ed tech during his special education language block. The ed tech is using a social skills manual given to her by the previous special education teacher. Student has stated that he feels the activities are designed for younger children and he dislikes them. (Exhibit: J-8; Testimony: Guardian)
27. All testimony at hearing was in support of student's need to receive social skills training. (Testimony: Guardian, Mother, Mr. Spencer, Ms. Eastman, Mr. Hatch)
28. Guardian opined that the social skills training currently being provided is inadequate. He states that he believes it is too simplistic and narrow. He offered into evidence information about the value of proactive social skills training and various programs. (Exhibits: P-22, P23, P24)
29. Both Guardian and Mother believe that student can be educated at Elm Street School and feel that proactive social skills training can help him learn and internalize positive social behaviors, impulse control and anger management. Spring Harbor Hospital did provide some proactive social skills training, which helped student. (Testimony of Guardian, Mother)
28. Guardian feels that student needs help in understanding the ramifications of his behavior. An example of this is an incident at Elm Street School when the police were able to successfully assist student in understanding the ramifications of his behavior. He does not need basic social skills, such as knowing he should raise his hand in class, not interrupt, sit still, etc. His behavior at school dances and intramural athletics is appropriate. BIP data collected last year showed student to be "typical" 80-85% of the time. (Testimony of Guardian; Exhibit: J-8, pp. 2-3)

29. Mr. Spencer testified that all related services and support services are clearly described in the IEP, and are appropriate. It is his opinion that social skills training is an activity, rather than a special education service, and therefore does not need to be specifically noted on an IEP nor quantified as to level of service. Mr. Spencer testified that social skills training is so central to the student's program that it is integrated into many aspects of student's program. He also noted that although Guardian stated that social skills training had been given at the school in Stockbridge, there is no mention of it in any of the Vermont IEP's. (Testimony: Mr. Spencer)
30. Ms. Eastman, the family's independent educational consultant, testified that the main component missing from student's program is socially appropriate skills training. (Testimony: Ms. Eastman)
31. Mr. Hatch echoed Ms. Eastman's sentiments, and also noted that he was familiar with various social skills training programs and would be happy to work with the district to design one for student. (Testimony: Mr. Hatch)

#### IV. Conclusions

- **Is social skills training a special education service or related services which must, or may, be specifically listed and quantified in a student's IEP?**

The issue as stated goes to a narrow question of law, i.e. whether Federal or state law or regulations or related case law either mandate or proscribe the inclusion in an IEP of social skills training as a special education service or related service. The Individuals with Disabilities Education Act, 20 U.S.C. §1415 et. seq, and the Code of Federal Regulations, 34 CFR Part 300, are both silent on this question. The Maine Special Education Regulations, however, do include social skills training under the section on Supportive Services, when they discuss the services that are considered Psychological Services:

“A certified school psychological service provider or psychologist licensed by the Board of Examiners of Psychologists may provide [among other services] social skills training.” MSER §6.11<sup>2</sup>

As the above cited section indicates, Maine law includes social skills training as a Supportive Service and defines Supportive Services as “...such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from his/her special education program...” This section goes on to list examples of supportive services and includes both counseling and psychological services. The section further notes that “[t]he term Supportive Services is synonymous with the term “Related

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<sup>2</sup> This section is current as of 11/1/99, when the newly revised Maine Special Education Regulations become effective. The previous section was MSER §6.6)

Services” as used in the 1997 Amendments to the Individuals with Disabilities Education Act.” MSER §2.28.

If we refer back to the section on Related Services in the Federal regulations (34 CFR § 300.24) we find that although social skills training is not present among those services specifically listed, the list is not exhaustive, as the following Comment to the Federal Regulations indicates.

“Must a public agency provide related services that are required to assist a child with a disability to benefit from special education, whether or not those services are included in the list of related services in Sec. 30024? The list of related services is not exhaustive and may include other developmental, corrective or supportive services if they are required to assist a child with a disability to benefit from special education. This could, depending upon the unique needs of a child, include such services as nutritional services or service coordination. These determinations must be made on an individual basis by each child’s IEP team.” *DOE Q & A Document*, Question 34, 64 Fed. Reg. 12479 (March 12, 1999)

As one must conclude there is no proscription against listing social skills training as a related or supportive service, the question becomes whether the service must be specifically listed on the IEP. Since all IEP’s are by definition “individualized”, and in light of the above definition of related services, the simple answer to this question is that if the student needs the service to benefit from special education, it must be included on the IEP.

There is no question that this student needs social skills training to benefit from his education. All parties have agreed to that and all goals are behavioral. In fact, all agree that social skills training is the centerpiece of student’s program. His BIP addresses intervention strategies for when student exhibits negative behaviors. However, student still needs to learn and internalize alternative positive behaviors. In this case educational progress is equivalent to behavioral progress. Student will be unable to make educational progress without learning these alternative behaviors, since he will either be out of school or in some “time out” situation much of the time.

The role of this service is central. Mr. Spencer testified that social skills training is so central to the student’s program that it is integrated into many aspects of student’s program. It is true that social skills training is contained under Psychological Services in the state regulations. MSER §6.11 Therefore, it conceivably could be a service provided as only one part of a diverse set of Psychological Services. If so, there would seem to be no need to specifically list social skills training in the IEP

However, in this case social skills training seems to be much more. Student’s IEP contains no academic goals; all goals are behavioral. And if one considers the range of behavioral goals that might be contained in an IEP, it seems apparent that student’s goals

are heavily weighted towards the internalization of social skills.<sup>3</sup> Yet the question remains: how will student work towards achieving these goals?

The central nature of social skills training in student's IEP and program is just the reason that the components of the social skills training program should be clearly discussed and understood by the PET members, the family and the professionals involved. Evidence indicates that this is not just the case of a child without friends, or a loner or a bully or other such child who may be significantly helped in his or her social interactions by sessions with a counselor or by role playing interactions. Student has been diagnosed with significant psychiatric issues, has exhibited numerous violent episodes at school and at home, has spent eleven weeks in a psychiatric hospital and has had restraints used on him at school.

In addition, student has indicated that he finds the social skills training workbook currently being used to be childish and guardian feels it is simplistic. Student will not succeed in reaching his goals if he does not buy into the program. The ed tech has stated that social skills training is currently included as part of the student's language arts block. As guardian has pointed out, this is the academic area that is student's most difficult. He notes a two-pronged problem here: first, that social skills training is being combined with the student's most difficult academic work; and, secondly, that the social skills training work may be taking away from much needed work on language arts and written language. In addition, student's BIP, like most BIP's, is reactive and designed to come into play when student's negative behavior so warrants. What guardian wishes to see is proactive training in the social skills area.

It is true that schools are allowed considerable leeway in choosing a methodology to be used in implementing the IEP. Jonesboro Pub. Schs., 26 IDELR 1073, 1082 (SEA AR 1997). Parents do not have a right to compel a school district to provide a specific program or employ a specific methodology. Lachman v. Illinois State Board of Educ., 852 F.2d at 297. However, the section in the IEP addressing the supportive services to be provided to the student must at least include the amount of each service, and the staff positions responsible for providing the services. MSER §9.3. Furthermore, the amount of services to be provided must be described to the extent that "the level of the agency's commitment of resources will be clear to parents and other IEP team members." *DOE Q & A Document*, Question 35, 64 Fed. Reg. 12479 (March 12, 1999)

Merely listing 45 minutes a day of social skills service on student's IEP will not meet this standard. More detail must be given. Who will be the primary provider? When will the service be provided? Will social skills training be a combination of direct work and consultation with other teachers and providers? The family, as well as the student's teachers and providers need to know the answers to these questions.

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<sup>3</sup> The current goals appear excellent and include learning the recognition process of intellectual explanations for school rules, identifying face-saving behaviors, describing more than one perspective to a hypothetical conflict, role playing interactions in a hypothetical conflict, engaging in a student helper role and managing anger and anxiety.



This hearing officer is not in a position to answer these questions. As noted above, that is within the purview of the PET. Guardian has provided informative written materials about various methodologies. Mr. Hatch had additional materials with him at the hearing and stated that he would be glad to work with the district to design a program for student. Professionals such as Mr. Hatch, Ms. Eastman and Ms. Sheckart should be asked to help lead the team in its development of an appropriate social skills training program for student.

The PET has not had a full and informative discussion about what sorts of training methodology might work well for student. It is incumbent upon the PET to have that discussion and to rewrite the IEP to reflect the informed decisions that they make. I strongly encourage the PET to include student in at least part of that discussion since he has expressed displeasure with the current social skills training format and materials and might be more likely to buy into a program which he helped design.

In addition, the PET must strive to insure that services are coordinated. Student is served by a counselor, a social worker, a special education teacher and other regular education personnel. In addition to student's direct social skills program, social skills training can, and should, be integrated into all of his day, particularly counseling and social work services, but also athletics, P.E. and other subjects.<sup>4</sup> To do this successfully, however, student's IEP should contain a staffing component, consisting of a regular meeting of student's various providers, at which time they could coordinate their efforts, give feedback and exchange suggestions.

In summary, I would be remiss if I did not note the positive spirit of collaboration that the parties have shown. I feel that the issues discussed in this decision are based only on interpretive disagreements, and that all parties truly wish to design a program that is in the best interests of the student. Taking the initiative to hold an IEP meeting right before the hearing to try to resolve as many issues as possible was a very positive step, and I have a strong sense that this spirit of cooperation and collaboration will continue.

## **V. Order**

1. The PET shall convene by 12/1/99 and complete the following tasks:
  - Review materials regarding proactive social skills training programs and design an appropriate program for student. Such program shall be implemented by 12/15/99.
  - Rewrite the cover sheet of student's IEP to indicate his correct placement, as per footnote 1 above.
  - Rewrite student's IEP to list social skills training as a supportive service and to indicate the frequency and duration of service and the professional(s) responsible.
  - Discuss possible models for adding a staffing component to student's IEP and rewrite IEP as appropriate.

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<sup>4</sup> The district should note that I am referring here to an integrated program *in addition to* direct services in social skills training.

In order to accomplish the above tasks, all of those professionals who might have information to contribute should be invited to the PET meeting.

2. Proof of compliance with this order shall be submitted to the Due Process Coordinator and the hearing officer by 12/30/99.

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

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Date