

State of Maine
Special Education Due Process Hearing Decision

Jay School Department v Parents, Case No. 02.291

REPRESENTING THE SCHOOL: Eric Herlan, Esq.
Drummond Woodsum & MacMahon

REPRESENTING THE PARENT: Parent appeared *pro se*

HEARING OFFICER: Carol B. Lenna

This hearing was held and the decision written pursuant to Title 20-A, MRSA, §7207-B et seq., and 20 USC §1415 et seq., and accompanying regulations.

The case involves the student, an xx-year-old student whose date of birth is xx/xx/xxxx. He resides with his parents who are residents of Jay, Maine. The student is eligible for special education services as a student with multiple disabilities. He functions in the moderate to severe range of mental retardation and has speech and language deficits. Adaptive Behavior Scale scores are in the 3.0 to 5.0 age level. Reading scores are in the kindergarten range. He has been educated in the Jay public schools for his entire school career, both in mainstream and special education classrooms with individual support.

The school and the family have had a longstanding disagreement about the student's IEP, specifically the amount of mainstreaming appropriate for him. A second underlying dispute centers around the family's access to his educational records. The parents have requested three due process hearings over the past 12 months. The first of these three hearings was dismissed by the hearing officer, without prejudice, because the parent failed to attend the hearing. The parents also failed to attend the second hearing; the hearing officer issued a summary judgment for the school finding the school's speech-language and physical therapy evaluations appropriate. The third hearing apparently did not occur either, although there was no evidence in the record of its disposition. This hearing is requested by the Jay School Department to have a final decision in the on-going disagreement about the student's IEP and the family's allegations about access to his educational records.

A prehearing conference was held in this matter on October 24, 2002. At that time the father¹ requested an extension of the hearing scheduled for October 31. The extension was granted and the hearing convened on November 12, 2002 in Livermore Falls, Maine. The school called four witnesses. The father testified on his own behalf, but did not call additional witnesses. 1266 documents were entered jointly into the record. Following is the decision in this matter.

¹The mother did not attend the prehearing conference or the hearing.

I. Preliminary Statement

The student is an xx-year-old student who presently attends the Jay High School. He is eligible for special education services as a student with multiple disabilities. Test scores place him in the moderate to severe range of mental retardation. He also has significant speech and language deficits. His academic performance is on the kindergarten to first grade level. His 2002-2003 IEP places him at the Jay High School where he receives special education instruction in a variety of settings including regular high school classes.

It is the school's position that the IEP is reasonably calculated to provide the student with a free appropriate public education. They argue that the IEP provides the student significant special education services to meet his instructional needs while affording him meaningful access to the general curriculum and interaction with his non-disabled peers.

The parents believe the IEP is defective in that it does not afford the student with adequate access to the general curriculum, is not provided in the least restrictive environment, does not contain measurable goals, and does not adequately define the modifications, and supplementary aids and services required for him to benefit from his education and extracurricular activities. The parties disagree about whether the school has offered the parents access to the student's educational records.

The hearing was brought by the Jay School Department to resolve these issues.

II. Issues

1. Is the student's current IEP, developed May 2002, reasonably calculated to provide him educational benefit in the least restrictive educational alternative?
2. Has the school violated the family's rights to access the student's educational records as described by special educational regulation or the Family Educational Rights and Privacy Act?

III. Findings of Fact

1. The student is an xx-year old who scores in the moderate to severe range of mental retardation. His parents recently petitioned for, and were awarded, guardianship by the court. (Exhibit 183, S-184)

2. The student's current IEP was developed at PET meetings held on May 6, and May 13, 2002, and modified on October 21, 2002. Both parents were in attendance at all three of the meetings. In preparation for the May meetings the school mailed the following items to the parent: PET meeting agendas, draft proposed IEP with draft goals and objectives, a blank IEP form for parents to recommend their own draft goals and objectives, and proposed class schedule for the student for the 2002-2003 school year. (Testimony McQuoid; Exhibits S.70, S.59, S.31, A.87, S.90-127)
3. Evaluations considered in the development of the IEP were: 1) Psychological evaluation conducted by H. Randall Grumpelt, Ph.D, June 2001; 2) Speech and language evaluation conducted by Lynne Ferrari, MACCC-SLP, November 2001; 3) Physical therapy evaluation conducted by Christine Cox, PT; 4) Assistive technology evaluation conducted by Libby Cohen, Ed.D, Deb Dimmick, MS, and Nancy Lightbody, MS; 5) Brigance evaluation conducted by Cyndy Paradis, August/September 2002; and 6) Occupational Therapy progress notes submitted by Melissa Plourde, OT. (Exhibits A.11, AA.51, AA.54, AA.58, and 183)
4. In their development of the IEP, team members reviewed evaluation results and progress from the previous year's IEP to determine present levels of educational performance and program needs. Amount and frequency of services necessary to meet the student's needs were identified and listed. Goals and objectives, with concomitant measurement criteria, for all service areas were reviewed and discussed. Implementation date for the IEP was August 27, 2002. All participants agreed with the IEP as written, except the parents, with the father in partial agreement. Minutes of the meetings describe a highly contentious attitude on the part of the student's mother. She stated often that she disagreed with the content of the IEP, but did not offer specific alternatives to the proposals under consideration. She was reminded of her due process rights throughout each of the meetings. (Testimony McQuoid, Collins; Exhibits S.74-75, S.59-68)
5. On August 21, 2001 the parent requested a due process hearing. Among other issues cited on the Dispute Resolution Request Form, the parent alleged that the school had failed to provide the student with a free appropriate public education, and had failed to provide access to student records in violation of law and regulations governing student records. There is no record that the family proceeded with the hearing request after the pre-hearing conference. (Exhibits P.69-P.96, P.64, A.16)
6. On October 21, 2002 the PET met to review the results and recommendations of the Brigance Diagnostic Employability Skills Inventory. Both parents attended the PET. Based on a discussion of the results and recommendations of the skills inventory, the IEP was modified. The student's mother disagreed with the changes made to the IEP and did not agree with

the findings of the skills inventory. The student's father abstained from voicing an opinion. (Exhibit A.115, A.69, A.70-72, A.73-75,)

7. The student's IEP describes the following special education and supportive services:
- Direct instructional services provided by a special education teacher for
440 minutes every 2 days for one semester, and 440 to 480 minutes every 2 days the other semester (the school is on a block schedule)
 - Occupational therapy consultation services provided to staff by an occupational therapist for 30 minutes each month
 - Physical therapy consultation services provided to staff by a physical therapist for 30 minutes each quarter
 - Speech/language services provided by a speech language pathologist to the student for 90 minutes each week and consultation services to staff provided 30 minutes each week
 - Extended school year services provided to the student for 30 hours

A discussion of the student's strengths notes that he has very good visual skills, is hard working and highly motivated to learn, has a good sense of order and a wonderful sense of humor. Hands-on learning is an area of strength. He relates well to peers, is personable, has an interest in science and has good computer skills. The IEP contains a lengthy discussion of the student's present levels of educational performance and an explanation of how all areas of the student's disabilities affect his involvement and progress in the general curriculum. This information is directly related to recent findings from both teacher progress notes and evaluation data.

A discussion of least-restrictive education alternatives appropriate to the student states that the student has the assistance of an individually assigned educational technician to facilitate his attendance in the public high school. He and the aide attend some regular classes. The aide also works with him in the special education classroom and assists him in participating in school-wide activities.

The IEP contains 23 pages of goals and objectives. There is a goal with concomitant objectives for each of the student's eight subject areas. In addition, there are goals and concomitant objectives for physical therapy, fine motor and self-care, and speech and language therapy. Transition planning around the student's stated vision to "have friends and have a job" upon leaving high school became part of the IEP in August 2001. Referrals were made to the Department of Behavioral and Developmental Services and Vocational Rehabilitation Services on behalf of the student².

² Both the Transition Plan in the IEP and PET minutes note that a representative from BDS attended a PET on

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behalf of the student but was dismissed by the parent. Information regarding the services of other agencies have been provided to the parent, but not accessed at this time.

- Modifications, and supplementary aids and services necessary for the student to participate in regular classrooms are: oral testing, modification of test format, testing in the resource room, reading test to student, using lower-readability materials, modification of length of written assignments, assistance in organization, dictation of written work to the educational technician, modified grading and homework assignments, and the attendance of an individually assigned aide to attend all classes with the student. (Testimony McQuoid; Exhibits A.87, A.88, A.89-90, A.91-111, A.113)
8. The most recent psychological evaluation, conducted by H. Randall Grumpelt, Ph.D., was completed in June 2001. The evaluator was chosen by the parent. This independent educational evaluation was provided at public expense. The evaluation included the administration of standardized assessments and observation of the student in his educational program. Results obtained on the Wechsler Intelligence Scale for Children – 3rd Edition (WISC-III) yielded a Full Scale IQ score below 40. The evaluator noted that “[t]here was no indication from this intellectual assessment that suggests that [the student] has a specific learning disability that is significantly below his general intellectual functioning”. Results obtained on the Test of Nonverbal Intelligence-Second Edition (TONI-2), a test that is a language free measure of abstract/figural problem solving, show the student performed at the 0.5 percentile rank. The evaluator determined that these results put the student “roughly at the 50th percentile for children between 5.0 and 5.11 years of age. Results from the Peabody Picture Vocabulary Test-Revised (PPVT-R) gave the student a standard equivalent score of 40, an age equivalent score of 4.6 years. The student’s performance on the Woodcock Reading Mastery Test-Revised (WRMT-R) showed reading skills in the mid to late kindergarten range. The evaluator concluded that the student functions “in the lower part of the Moderate Retardation or upper level of the Severely Retarded range of Mental Deficiency”. The evaluator also stated in his report that research data offers the view that if a retarded child had higher scores on certain WISC-subtests, “then success in academic type programming was possible and more likely. This pattern difference unfortunately does not characterize [the student’s] WISC-III scores”. (Exhibit 183-204)
 9. In August and September 2002 the student was given the Brigance Diagnostic Employability Skills Inventory, a criterion-referenced evaluation that assesses basic skills necessary to obtain an entry-level job and for successful independent living. The assessment covers reading, basic math skills and safety knowledge. Results showed that the student “has yet to master many of the basic skills necessary to apply for and retain employment. [His] basic reading and math skills are such that they may greatly impact his independent success without some type of supportive assistance.” The student “does not have knowledge of basic interviewing skills nor the basic skills needed to be successful in most work settings. [He] is performing at his

- ability level. He worked diligently on the evaluation and took it seriously.” The evaluator recommended that the student receive an intensive program of individual or small group instruction that emphasizes functional and basic life skills along with a career preparation course that exposes the student to a variety of pre-employment opportunities. (Exhibit A.11)
10. On November 15, 2001 the student participated in an assistive technology evaluation. The evaluation included a review of documents including other recent evaluations, a review of the student’s IEP and PET meeting minutes, interviews with key school staff and the parents, an observation of the student in the classroom and assistive technology trials. The evaluation team made a number of recommendations to enhance the student’s program. These recommendations included both assistive technology hardware and software programs. The evaluation team observed that the student’s placement in the regular English class “may not be optimal” because he “may be unable to keep up with the pace and content of material in general education classrooms.” (Exhibit AA.58-66)
 11. A physical therapy evaluation was completed on December 4, 2001. Scores on the Bruininks-Oseretsky Test of Motor Proficiency reflected deficits in Gross Motor abilities. A “functional activities” checklist was completed and showed that the student is very functional in the high school and is able to access the school independently. Most range-of-motion values were within normal limits. The evaluator recommended continued physical therapy consultation to the student’s high school staff. She later recommended the student also be enrolled in the regular education class “PE Aide” as another means of keeping the student’s activity levels up and maintaining stretching activities. (Exhibit AA.54-56; Testimony McQuoid)
 12. A speech-language evaluation was completed on November 27, 2001. Results showed that the student’s standard scores on receptive and expressive vocabulary tests placed him in age equivalents of 5.4 years to 6.6 years. The student’s speech is understood with moderate difficulty. The evaluator noted that the student has difficulty with abstract vocabulary and instruction must be broken down to simple levels. The evaluator recommended continued direct speech-language services as well as speech-language consultation to staff. She further recommended his speech-language goals be coordinated with his transition needs. “Continued work vocabulary, concepts, functional syntactic structures (Ex. Asking questions), and increasing intelligibility of frequently needed words is suggested.” (Exhibit 51-53)
 13. The student is currently enrolled in the following mainstream classes: physical education elective/PE aide, basic physics/chemistry, Cooking American Style, and Individual Reading. In addition, he receives the following classes in the special education classroom: math, World of Work, and

- American Government. Two study periods, transitional study and developmental study, are also built into the student's schedule for additional educational support by special education staff. (Exhibit S.10, Testimony Collins, McQuoid)
14. A number of individuals, including the student's regular education English teacher, have expressed concern that the regular English class does not afford the student meaningful participation. (Exhibits AA.182, AA.66, AA.33-34, S.177; Testimony Iannucci, Rehagen)
 15. During the 2001 and 2002 calendar years the school responded to the parent's request to review educational records and offered the parents numerous opportunities for a guided review. On two occasions the student's full record through September 20, 2002, was copied and provided to the parent at no cost. Since September all educational records related to the student have been mailed to the parent at no cost. (Testimony Collins; Exhibits A.1-3, B.11, A.4, A.9, A.21, A.22, A.38, A.39, A.40, A.45, A.47, A.55, A.58, A.59, A.62, A.64, A.68, A.76, A.77, A. 85, S.5, S.26, S.27, S.128, S.165, S. 182, S.195, 418, AA.178-180, AA. 112-175)
 16. Grades and progress toward meeting objectives in his IEP during [sic] 2001-2002 school year show the student is making gains. The home/school notebook from 8/31/01 through 11/15/01, 5/31/01 through 6/14/01, 2/28/02 through 6/6/02 and 8/28/02 through 9/17/02 shows almost daily exchanges between the student's teachers and his father regarding observed examples of success and developmental growth exhibited by the student. The tone and content of these contacts indicate a positive, cooperative relationship between the student's teaching staff and the father. (Exhibit 002, 003-022, 050-104, 105-116, A.24-37, S.12)

IV. Conclusions

Is the student's current IEP reasonably calculated to provide him educational benefit in the least restrictive educational alternative?

The Individuals with Disabilities Education Act (IDEA) requires that the school provide students identified as disabled with a "free appropriate public education" which is described in the student's "individualized education program" (IEP). *20 USC §1412(a)(1)(A), §1413 (a)(1), §1414(d)(A)*

In its reasoning of whether a school has met its obligation to provide a "free appropriate public education" the United States Supreme Court found that

a “free appropriate public education” consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State’s educational standards, approximate the grade levels used in the State’s regular education, and comport with the child’s IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a “free appropriate public education” as defined by the Act.

Board of Education v. Rowley, 553 IDELR 656, 662 (1982)

The 2002-2003 IEP proposed for the student by the Jay School Department describes the educational instruction that is specially designed to meet the unique needs of this student, and describes the services necessary to permit him to benefit from that instruction. The services described in this plan are being provided at public expense and under public supervision. The student receives these services in accordance with the principle of least restrictive educational alternative, obtaining all of his special education and related services in a public high school with age appropriate peers.

While the parents do not bring this hearing, they have repeatedly made known their position that the student’s IEP (both the present IEP and past plans) does not comply with law and regulations. The parents challenge the IEP on the grounds that it does not provide the student with access to the general curriculum and does not place the student in the least restrictive educational alternative. Specifically, they note that the student was not enrolled in the course selections they requested for the school year, and that the content of some of his courses will be taught in the special education classroom, not in the regular classroom. It is their argument that the student is therefore being excluded from the general curriculum and, would be able to access all of the classes required of non-disabled students in the regular classroom but for proper modifications and supplementary aids and services, This position is not only a misunderstanding of the statute, but ignores the evaluation data and opinions of the professionals who work with the student.

Evidence describes the student who is the subject of this hearing as a student with significant disabilities. His parents were awarded guardianship of the student last month when he reached the age of 18. Tests of cognitive functioning put him in the moderate to severe range of mental retardation. Standard scores on language tests show his expressive and receptive language are in the kindergarten to first grade level. His speech is understood with moderate difficulty. His reading skills are in the mid, to late, kindergarten level. Results of an employability skills inventory show

his basic skills are such that they may greatly impact his ability to live and work independently without some type of supportive assistance.

IDEA and the companion state law governing education for children with disabilities make it clear that schools have an explicit obligation to address the needs of these students. Each student's needs must be considered individually, and an individual plan for their education be designed and written in the Individual Education Program (IEP). The recent IEP developed by the school for the student was done over three Pupil Evaluation Team (PET) meetings. At each of these meetings the team included an administrator from the school, the student's special education teacher, a representative of his regular teaching staff, and other professionals who work with the student. Participants had access to recent evaluation data and reports of the student's progress over recent months. The team joined in discussions of lengthy reviews of this information.

The student's completed IEP complies with the elements required by regulation. It includes a "statement of the student's present level of educational performance including how the student's disability affects the student's involvement and progress in the general curriculum; [a] statement of measurable annual goals, including...short-term objectives...to enable the student to be involved in and progress in the general curriculum and [to meet] each of the student's other educational needs...; [a] section describing the specific special education and supportive services...to be provided...and a statement of the program modifications or supports...that will be provided to the student..." The "dates of initiation, frequency, location and duration of the special education and supportive services" are clearly given and reflect the amount of service recommended by evaluative data and professional staff. *Maine Special Education Regulations*, §10.2

The parents attended each of the IEP meetings. The behavior of the student's mother was often acrimonious, and she rarely agreed with the items being recommended in the plan. However, a review of the discussions of these meetings shows that while the parents voiced disagreement, they did not offer specific educational alternatives to the proposals put forth by the school. The school "provided the parents with prior written notice of the school's proposals" and informed the parents repeatedly of their right to "seek resolution of any disagreements by initiating an impartial due process hearing". *MSER* §8.11 . The parents did not present any of their grievances to a hearing officer for resolution³.

On page two of the IEP there is a thorough discussion of the student's present levels of performance, and the impact his disabilities and concomitant educational needs have on his ability to access and be involved in the general curriculum. The PET determined, and the IEP describes, the services necessary for the student to be involved in, and progress in, the general curriculum. Annual goals and their measurable objectives for all areas of the curriculum are included. The student

³ The parents did in fact file for a due process hearing in August 2002. There is no documentation in the record to indicate that the parents followed through with the request, however.

receives part of his instruction in the special education classroom, and to the extent appropriate, in the regular mainstream with the support of an educational technician. Modifications and other supplementary aids and services are listed. Consideration was given to the student's strength as a hands-on learner and his placement in basic physics/chemistry labs, cooking, and PE aide [sic] classes were chosen as a result. While the curriculum in the mainstream classes is greatly modified for the student, evidence suggests that he derives meaningful benefit from most of those classes.

The exception is the English class. The curriculum in this class is modified to an extent that it bears little resemblance to the general curriculum being taught in 11th grade English. The student cannot, and is not, expected to perform at the same academic level as other students in the class. Observations by the English teacher and the school's psychologist are compelling in their arguments that the student derives little from his placement in the English class, and in fact misses out on more beneficial instruction as a result of his placement there. There is little, if any, observed interaction with non-disabled peers. There is little language or peer modeling observed to occur. He is unable to participate in the classroom discussions or to perform work at a level remotely approaching the requirements of the curriculum. This opinion was borne out by the observations conducted as part of the Assistive Technology evaluation, and the remarks by the student's previous speech and language consultant.

The parents argue that he has been excluded from the general curriculum, because he has not been enrolled in certain classes attended by his non-disabled peers. Regulations do not direct the school to simply place disabled students on the same track as non-disabled students. In fact, the law expressly forbids it. *El Paso Independent Sch. Dist. v. Robert W.* 898 F.Supp. 442 (W.D.Tex. 1995) (Student must be getting meaningful educational benefit without regard to what his peers are doing.) It is incumbent upon the PET to develop an IEP that contains a "statement of the student's present level of educational performance including how the student's disability affects the student's involvement and progress in the general curriculum". The focus of the student's IEP must be on the special education and related needs that reflect that statement. Involvement in the general curriculum must grow out of those decisions. If the student's needs are such that the content of a regular class cannot be made relevant to the student, involvement in the general curriculum must be modified to meet the student's needs, including removing the student to special classes when that is in the best interest of the student. *Daniel R v State Board of Education*, 874 F.2d 1036, 1045 (5th Cir.1989) (School need not place a disabled child in regular education if education in a regular classroom cannot meet the unique needs of that child.)

The parents clearly are concerned with the degree to which the IEP addresses the student's "involvement and progress in the general curriculum". The IEP does address this matter, and strikes something of a balance that complies with both the language and intent of the law and the needs of this student who has significant needs for educational intervention.

The parents argue that the IEP does not contain the specific services and supports that the student will receive for his extracurricular participation. There is no obligation for the IEP to contain such detailed information. Regulations require that the IEP has “a statement of the program modifications *or* supports for school personnel that will be provided to the student...to participate in extracurricular and other nonacademic activities...” *MSER*§10.2(C)(2) (Emphasis added.) The IEP contains such a statement. The student is encouraged and supported to participate in extracurricular activities. He participates in ‘year book’ with adult support for the entire time he is involved. He expects to participate on the track team in the spring as he has in years past. Again, as stated in the IEP he will have adult assistance and support in this extracurricular activity.

The parents assert that the goals in the IEP are completely incapable of objective measurement, and that the modifications, supplementary aids and services are vague and incomplete. Regulations require that annual goals be “measurable” and then leave the school to determine “how the student’s progress toward the annual goals...will be measured”. *MSER*§10.2(B)(G) Likewise regulations do not direct the school to describe in detail the methodologies and interventions that will be employed to support the student to benefit from his education, but rather to provide a “statement of program modifications”. *Id.* (C) It is clear from the objectives detailed under each annual goal that the teachers will have ample information upon which to judge the degree to which the student has mastered the stated goals. Similarly, the IEP contains the twelve modifications that will be employed throughout the student’s program to address his specific needs and learning deficits. Beyond that, the school is given significant latitude to carry out the day-to-day implementation of the IEP. “The primary responsibility for formulating the education to be accorded a handicapped child, and for choosing the educational method most suitable to the child’s needs, was left by the Act to...local education agencies...” *Rowley* at 670.

There was no evidence upon which to conclude that the school has failed in its obligation to provide the student with a free appropriate public education in the least restrictive educational alternative. Cumulative evidence supports the school’s position that the student has made some progress, and should continue to do so with the current IEP.

Of greater concern, however, is the possible direction of the student’s program in the near future. Part of the rationale cited by the parents in their challenge to the current IEP was their continued concern that the student have the required number of credits available to graduate with his class in the spring of 2004. The student will not have “reached 20 years of age at the start of that school year”, and has the right to continue his education through the end of the 2004-2005 school year. *MSER* §3.1. There was no evidence to suggest that this student should graduate with the non-

disabled students in his class, and much to suggest that he should not. Most of the students of the Jay High School class of 2004 will never face the same challenges this student will face.

The purpose of special education is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living”. 34 CFR §300.1(a) There was no convincing evidence put forward to support his being deprived of his right to continued education. There was, however, compelling testimony from Dr. Rehagen that there was little time left in special education for the student to gain the skills necessary to support the student’s desire to live as independent a lifestyle as possible in his adult years. Dr. Rehagen’s testimony supported by other documents in the record make a persuasive argument that the remaining time available to the student, as an eligible student under state and federal special education laws, should be focused on realistic instruction to that end.

It is unfortunate that the school and the parents are at such odds in this case, and that the student’s mother is so convinced that the school does not have the student’s best interest at heart. A review of the evidence makes it clear that the school staff have genuine concern and regard for this student, and wish to work cooperatively with the parents on his behalf. They appear to have made a concerted effort to do so.

Has the school violated the family’s rights to access the student’s educational records as described by special educational regulation or the Family Educational Rights and Privacy Act?

Summarizing parents’ rights to access and view student records under the Family Educational Rights and Privacy Act, State Regulations instruct that each “school shall permit parents...to inspect and review any education records relating to their student... The school shall comply with a request for access without unnecessary delay and before any meeting regarding an Individualized Education Program or any due process hearing relating to the identification, evaluation, or placement of the student, and in no case more than 45 days after the request is made”. *MSER §15.3* The student’s mother has repeatedly accused the school of failing to comply with her rights to access and review her son’s educational records. The record is replete with numerous requests by her to view the student’s educational records. There are, however, even more numerous responses by the school offering the parents timely access to the records based on those requests. During the 2002 calendar year from January through September the school offered the dates of February 6, February 14, March 4, April 5, April 9, April 25, May 14, August 15, August 19, August 20, August 21, September 9, September 11, September 16, September 17, and September 24. On two of those occasions the parent reviewed the records with the Director of Special Education in attendance. In addition, once in January 2001 and again in

September 2002 the school provided a complete set of all records to the parents free of charge. Since September 2002 all copies of any educational record kept on the student by the school have been copied and mailed to the parents at no cost.

The parents' claim that the school failed to respond to the mother's requests to view records is not corroborated by the evidence presented. It is not possible to conclude that the school has failed to respond to the family's requests for access to the student's records over the past year, or that the school has failed to allow ample opportunity for the family to review those records. The parent's claims of missing records were not specific and not substantiated.

V. Order

No instructions are ordered in conjunction with this decision.

Carol B. Lenna
Hearing Officer