State of Maine
Disposition of Special Education Due Process Hearing Request
Parent v. Lewiston School Department, Case No. 03.045X

REPRESENTING THE PARENT:	Roxanne Doyer, Advocate
REPRESENTING THE SCHOOL:	Eric Herlan, Esq. Drummond Woodsum & MacMahon
HEARING OFFICER:	Carol B. Lenna

A special education due process hearing was requested by the parent on behalf of her daughter, (hereinafter "student"), pursuant to Title 20-A, MRSA, §7207-B et seq., and 20 USC §1415 et seq., and accompanying regulations. This hearing is dismissed.

The mother (hereinafter "parent") filed a request for a due process hearing against the Lewiston School Department on April 9, 2003. She and her daughter were residents of the Lewiston school district until late in February 2003, when they moved to a neighboring district. The student was enrolled in school in that district in early March 2003. The parent is seeking remedy for Lewiston's act of holding a PET meeting regarding her daughter's eligibility for special education services after she no longer lived in the district.

Prior to the date set for the pre-hearing conference the school requested in writing, with copies to the parent and parent advocate, that the hearing be dismissed. They argued that the hearing should be dismissed, regardless of the parent's actual residency at the time of the meeting, because the school had a contractual agreement with the family to hold such a meeting. The district and the parent entered into a mediated agreement as described in Section 13 of Maine Special Education Regulations. The district felt it was bound to proceed with the meeting in accordance with that agreement.

Soon after receiving a copy of this letter from the school's attorney, the parent challenged the appointment of the hearing officer and requested the hearing officer disqualify herself on grounds of bias. She alleged a violation of the Maine Administrative Procedures Act, specifically §9055 of Title 5 MRSA, and Section 13.6B of Maine Special Education Regulations (MSER). This challenge stemmed from the parent's belief that correspondence from the school's attorney to the hearing officer constituted prohibited communication, and her charge that the hearing officer had been unduly biased by receipt of this information.

The hearing officer notified the parties by memorandum, dated April 16, 2003, that there was preliminary consideration by the hearing officer to dismiss the hearing since the parent no longer lived in the district against which the hearing was filed. The parties were instructed to meet with the hearing officer on April 28, 2003, to address the following:

- Since the family no longer resides in Lewiston, why is the parent entitled to a due process hearing against the Lewiston School District?
- Because the school fulfilled its contractual obligation, as described in a mediated agreement between the parties to hold a PET, should the hearing be dismissed regardless of the parent's residency?
- Based on the parent's claim of bias, should the hearing officer disqualify herself from deciding matters in this hearing?

Attending this meeting were the parent, her advocate, the school's director of special education and the school's attorney. Each party was given an equal opportunity to present oral argument and any written documentation they thought germane to these issues. Each party was given an opportunity to ask questions of each other. A verbatim record of the meeting was made.

At the conclusion of the meeting the hearing officer informed the parent that she saw no reason to disqualify herself in this matter. There is no basis for a claim of bias, and there have been no *ex parte* communications between the hearing officer and any representative of either party. All correspondence reviewed by the hearing officer was copied to the opposing party; all correspondence generated by the hearing officer was mailed to all parties. No decisions were made based on any facts unknown to the other party, or without both parties having an opportunity to speak to the issues under consideration.

The parties were also informed at the conclusion of the April 28 meeting that the hearing officer would make a final decision whether the hearing would go forward, and notify the parties in writing of that decision. The parties were notified by memorandum on April 30, 2003, that the hearing was being dismissed. The respective arguments and positions of the parties are summarized below, along with a discussion of the decision to dismiss.

Based on the information presented at the meeting the following facts are not in dispute:

1. On October 22, 2002, the parent and the school entered into a mediated agreement, pursuant to MSER, Section 13.4, in which the school agreed to complete certain evaluations of the student and convene a PET meeting to consider the results of those evaluations. The evaluations were completed in January 2003.

2. The parent and student moved from the district in late February 2003. The student was enrolled in a new school on March 3, 2003, and educational records were requested by that school on that date.
3. Lewiston convened a PET on March 11, 2003. The members present reviewed recent evaluations and determined that the student did not meet eligibility criteria as a student in need of special education. The parent was not in attendance at the meeting. Minutes, summarizing the discussion and determinations of this meeting were mailed to the parent, on March 19. 2003.
4. On April 9, 2003 the parent filed a request for a due process hearing against the Lewiston School Department.

The parent filed her request for hearing against Lewiston arguing that the meeting had been convened after she had notified the district that she had moved, was held without prior written notice to her and without her participation. She seeks to prevail at a hearing for the purpose of having the conclusions of that PET, as summarized in the minutes of that meeting, expunged from the student's educational record. It is her position that the minutes could prove prejudicial to the student's claim for special education eligibility in the current district. She argues that her due process rights are denied if she is not given the opportunity to present her evidence at a hearing.

The school argues that the Lewiston School Department was under an affirmative obligation to convene the PET meeting in question as a result of a binding agreement entered into by the parties in October 2002. They acknowledge that they were aware that the parent was contemplating a move, but had not had formal notification of that fact, and so continued efforts by telephone throughout the month of February to set up a time that was mutually convenient for the parent and school to convene the PET. They state that at one point in this period they were unclear if the parent was homeless, a circumstance she has struggled with over the past year. Unable to confirm a date, they assert that on February 28, 2003, they mailed a written notice to the parent notifying her that the PET would be convened on March 11, 2003, unless they heard otherwise from her. In addition, the school contacted the Department of Education to request advice on their obligation to fulfill the terms of the October agreement to hold a PET meeting. They were advised to convene the PET.

Special education regulations provide that parents may request a due process hearing when there is a disagreement regarding the identification, evaluation, placement or the provision of a free appropriate public education to a student. In this case the parent is asserting no claim against Lewiston. There is no allegation that Lewiston failed to evaluate, identify, place or provide a free appropriate public education for the student. In fact the only remedy that the parent requests is that the minutes of a PET meeting held by Lewiston after she moved be expunged from the student's record. Since the student's record is now maintained by the student's current district, even this request is no longer a claim against Lewiston. There is simply no outcome that a due process hearing could accomplish for the student.

Arguably, Lewiston should not have held the PET meeting without the parent, and certainly not after they had a request for the student's records from another district. However, it is clear that there were extenuating events that supported their decision to do so. The family has a history of homelessness, and the school had some indication that during the period they were attempting to set up the PET the family had become homeless again. The school had mailed a letter to the parent on February 28, 2003, stating their intent to convene the PET meeting on March 11, 2003, and invited the parent to request a change in the scheduled time if the date and time were inconvenient.[1] Finally, the school felt an obligation to fulfill the terms of the mediation agreement in which they had agreed to convene a PET to consider the results of certain evaluations of the student. In hindsight, it could be determined that the school's action was inappropriate, but it still remains that this meeting did not result in any binding decision for the student. A PET determination by one district that a student is not found eligible for special education services does not bind a subsequent district to make that determination.

The parent seems committed to the position that her daughter requires special education services, and should therefore be found eligible for services. She raises a concern that the PET in her present district may be swayed by the conclusions of the Lewiston PET. There is no way to know what the current school will make of that question. The parent has not asked the current district to consider the recent evaluations, nor has she requested that they consider the student's need for special education services. If the PET meets and they too determine that the student does not meet eligibility criteria as a student with a disability, she has recourse to file a due process hearing to question that decision. To the extent that she has concerns that the student's educational record contains information that is misleading, inaccurate or a violation of the student's privacy or other rights, she may request that the record be amended, and may exercise her due process rights under the Family Educational Rights and Privacy Act should the school disagree with her request.

The school's request for dismissal based on its argument that it had an affirmative obligation to fulfill its contractual obligations under the terms of a binding mediated agreement, regardless of the residency status of the parent, seems somewhat misguided. I agree, there were extenuating circumstances that pushed the school to convene the PET (as discussed above), but as a general rule mediated agreements do not reach beyond the district. Once a student has moved from that district, unless expressly stated in the agreement, the student's residence status changes, and the district's obligation to the student changes accordingly. A district is only obligated to the students whose parent [sic] reside within the school unit, or the adult students who reside within the unit.[2]

---

[1] The parent asserts that she never received this letter. There was no indication, however, that the school failed to mail it. Any conclusion in this matter is only to explain that the school had reason to believe that the parent was fully informed of their intent at the time the letter was mailed.

[2] There are specific exceptions to this rule, which will not be discussed here, as they do not apply in this case.

Because the parent no longer resides in Lewiston, there is no current claim against Lewiston regarding the identification, evaluation, placement or the provision of a free appropriate public education to the student. The special education due process hearing, Parent v. Lewiston, Case No. 03.045X, is therefore dismissed with prejudice.

Carol B. Lenna
Hearing Officer

Date