

STATE OF MAINE
SPECIAL EDUCATION DUE PROCESS HEARING

November 7, 2003

Case #03.100H, Parents v. Falmouth

REPRESENTING THE FAMILY: Richard L. O'Meara, Esq.

REPRESENTING THE SCHOOL: Eric Herlan, Esq.

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

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

This hearing was requested on July 31, 2002, by Parents, on behalf of their son. Student's date of birth is xx/xx/xxxx. He resides with his parents at Falmouth, Maine. Student is eligible for special education services under the category of Multiple Disabilities (OHI due to ADHD, Specific Learning Disability, Emotional Disability). He is currently a student at the Aucocisco School in South Portland, Maine, having been unilaterally placed there by his parents at the beginning of the 2002-2003 school year.

The parties met in a pre-hearing conference in Portland on September 9, 2003, in order to exchange documents and witness lists and to clarify the issues for hearing. A series of hearing dates commenced in Portland on September 22, 2003 and continued on September 23, 2003, September 29, 2003 and October 7, 2003. The family entered 130 pages of documents into the record and the Falmouth School Department entered 278 pages of documents into the record. Fourteen witnesses testified. Final written arguments were received on October 15, 2003 and the record was closed on that date.

I. Preliminary Statement

This case involves a xx year-old male student who is eligible for special education services under the category of Multiple Disabilities (OHI due to ADHD, Specific Learning Disability, Emotional Disability). He is currently attending school at the Aucocisco School, a private, special purpose day school for leaning [sic] disabled students in South Portland, Maine. His attendance at Aucocisco was the result of a unilateral placement made by his parents at the beginning of the 2002-2003 school year. This is his second year at the school.

The family requested this hearing. They contend that the I.E.P. proposed by the Falmouth School Department for the 2002-2003 school year was not appropriate, that the unilateral private school placement was appropriate and that they are entitled to

reimbursement for costs associated with that placement. They further contend that the I.E.P. proposed for the current school year, 2003-2004, is likewise not appropriate and that Aucocisco continues to be an appropriate placement for Student and they request continued funding for his placement there. In addition, they request reimbursement for an independent educational evaluation conducted by Dr. Richard Doiron.

The school denies these contentions. They argue that both I.E.P.'s were reasonably calculated to provide educational benefit in the least restrictive environment, and that the Aucocisco placement is an inappropriate one. They also deny responsibility for funding the Doiron evaluation.

II. Issue to be Decided by the Hearing

- **Was the I.E.P. proposed by the Falmouth School Department for the 2002-2003 school year reasonably calculated to provide educational benefit in the least restrictive educational setting?**
- **If the placement and program for the 2002-2003 school year was not reasonably calculated to provide educational benefit in the least restrictive educational setting, was the Aucocisco School an appropriate placement? If Aucocisco was a proper choice of placement, is the family entitled to reimbursement of the costs associated with that placement?**
- **Is the I.E.P. proposed for the 2003-2004 school year reasonably calculated to provide Student with educational benefit in the least restrictive educational setting?**
- **If the placement and program for the 2003-2004 school year is not reasonably calculated to provide educational benefit in the least restrictive educational setting, does Student require placement at the Aucocisco School in order to make educational progress?**
- **Shall the Falmouth School District be required to reimburse the family for the costs associated with an independent neuropsychological evaluation conducted by Dr. Richard Doiron?**

III. Findings of Fact

1. Student's date of birth is xx/xx/xxxx and he is currently xx years old. (Exhibit: Due Process Request Form)
2. Student was identified as eligible for special education services while in xx grade (1996-1997 school year). His eligibility category at that time was Other Health Impaired (O.H.I) due to a diagnosis of A.D.H.D. (Testimony: Mother; Exhibits: S188-190)

3. Student began Falmouth Middle School at the beginning of the 1999-2000 school year. During this year, he became uncooperative at home and began engaging in inappropriate behavior and language at school. Following one incident, he received a three-day library suspension. He also engaged in a self-destructive act at this time, laying [sic] in the road and not moving out of the way of cars. Although Student's behavior was a concern, he had no Behavior Plan although he did meet with the Behavioral Specialist for 20 minutes per week. (Testimony: Mother; Exhibits: S146-153)
4. During the 2000-2001 school year, Student's behavior continued to be challenging. His I.E.P. for that year was very similar to his xx grade I.E.P., although time with the Behavioral Specialist had been increased to 30 minutes per week. Homework completion was a problem and he had great difficulty with written work. He also had difficulty with math since the math teacher would not permit him to use a calculator, even though it was specified in Student's I.E.P. that he be able to use a calculator for computation work. Student's grades were mostly D's and C's that year. (Testimony: Mother; Exhibits: S98, 108-115)
5. During his xx grade year, an I.E.P. dated 5/29/01 included the following services: 460 minutes a week direct instruction in both the resource room and the regular classroom, 120 minutes per week of direct instruction with the behavior specialist, 30 minutes per week social work counseling, social work services for the family and social work consult. Although the I.E.P. for that year states that a behavior plan was attached, there is no evidence that a behavior plan had ever been developed. During that year, Student began working with Ed Tech Scott Keyser in the resource room. They worked mainly on homework completion and Mr. Keyser provided much needed support to Student. (Testimony: Mother, L. Wing; Exhibits: 98-104)
6. During 2001-2002 school year, Student exhibited a significant level of disruptive behavior, problems with work completion, resistance to attending school and refusing to do homework. He failed a number of his classes. He also exhibited some suicidal ideation. As a result of his emerging emotional issues, Student began taking Paxil. (Testimony: Mother; Exhibits: P75-78)
7. During Spring 2002, Student engaged in sexually harassing behavior towards a female student and received an in-school suspension. During his in-school suspension, Student wrote and illustrated a sexually explicit essay, while being supervised by Scott Keyser and for which he was disciplined. During this school year, it was Student's understanding that he would be exempted from the M.E.A.'s since his I.E.P indicated that he would be exempt. However, he was subsequently informed that he would have to complete the testing and exhibited significant distress about this. He remained home from school on the M.E.A. testing day but when he returned to school, he was told he needed to take a makeup examination. His special education teacher told him not to worry, and to

- just put his name and whatever else he wanted on the answer sheets. Student completed the answer sheets using sexual language and profanity. As a result of this incident, he was suspended and was referred for a risk assessment. Dr. George Shekart conducted this assessment on April 10, 2002 and concluded that Student presented no risk of engaging in actions of a destructive and hurtful nature. He suggested that Student's poor decision making and socially inappropriate behavior is [sic] likely due to a poor sense of self and a need to develop strength of character or identity. Student subsequently returned to Falmouth Middle School. (Testimony: P. Crowell, Mother, S. Keyser, K. Marquis-Girard, L Wing; Exhibits: S95-97, S100, S230, S225)
8. During this period of time, Student also engaged in some physically harmful behavior at home, such as self-mutilation, tongue biting leading to bleeding, and biting pieces off the inside of his mouth. He also stated that he wanted to kill himself. (Testimony: Mother)
 9. Following these incidents, Social Worker Nancy Dix recommended that Student attend counseling. The parents met with a Clinical Social Worker for two sessions and he recommended that they get Student into a proper educational setting, then deal with setting up therapy. He recommended the Aucocisco School. Student's pediatrician also recommended Aucocisco. (Testimony: Mother)
 10. A P.E.T. meeting was held on June 3, 2002 in order to develop an I.E.P. for Student's xx year at Falmouth High School. At this meeting, the family submitted a list of parental concerns relating to Student both academically and socially/emotionally. The academic concerns included reading, writing, spelling and math computation problems, and it was noted that these are areas of great embarrassment for Student. Non-academic concerns included disengagement from learning, organizational issues, time management, keyboarding, social cue difficulty, low self esteem, anxiety, secondary depression and behavioral issues. The family requested that Student's I.E.P. include remediation, social skills training, counseling, small classes, a Functional Behavior Assessment followed by development of a new Behavior Plan, a technology evaluation and an eligibility category change to Multiple Disabilities, due to his learning disabilities and emotional disabilities. (Testimony: Mother; Exhibits: S81)
 11. At the June 3, 2002 P.E.T. meeting, the team determined that Student's triennial reevaluation would be moved forward and a psychological evaluation and psychiatric evaluation would be completed. The family signed a consent form for testing that would include academics, cognitive ability and functional behavior, a psychiatric evaluation, classroom observation and an assistive technology evaluation. (Testimony: Father; Exhibits: S89-92)
 12. The I.E.P. prepared at this meeting included 400 minutes per week of direct instruction in the resource room and regular classroom, 30 minutes per week of

social work counseling and 2 sessions per month of social work consult. A list of modifications and accommodations included access to various technology, preferential seating, alternative testing, if necessary, and books on tape. This I.E.P. included one goal: “[Student] will increase his success of managing his anxiety from a level of having difficulty starting and completing work and/or refusal to work, to a level of looking at options and choosing a strategy to help him start/stay on task 80% of the time as measured by teacher observation and data collection.” The short-term objectives included anxiety management, improving on task performance and asking for assistance without prompting. This goal was the same as one of the previous year’s goals. That I.E.P. was not graded, so it is not possible to assess whether Student had made progress towards the goal. When asked why the I.E.P. was not grades [sic], Ms. Dix replied, “I am not very good at writing goals.” There were no academic goals or behavior management goals, nor was there a behavior plan presented at this time. (Testimony: N. Dix; Exhibits: S78-80, S82-85, S102)

13. On June 5, 2002, Lillian Wing, Behavior Specialist, conducted a classroom observation of Student. Ms. Wing noted that Student was unable to attend to the classroom discussion and did no work unless the teacher was assisting him, in addition to trying to pull another student off task by talking to him. As she stated, “[Student] appeared to have great difficulty following along with and doing the classroom’s activity. It appeared that he was looking for the teacher to help assist him to function appropriately in the classroom.” She recommended continual monitoring to ensure that Student is not distracting to himself and/or others as well as to assist him in doing the assigned work. Ms. Wing recommended that a Behavior Plan with consistent rewards and consequences be developed. (Exhibits: S76-77)
14. On the last day of the 2001-2002 school year, student boarded the school bus for home and, when on the bus, turned to the staff, teachers and parents gathered in front of the school and made an obscene gesture at them. He was removed from the bus by Kathy Marquis-Girard, Assistant Principal, and his father was called. When his father left to take him home, Ms. Marquis-Girard told the father that she would need to get back to him about disciplinary action. However, there was no further contact with the family regarding this incident. (Testimony: Father, K. Marquis-Girard)
15. A copy of the June 3, 2002 I.E.P. was mailed to the family on or about August 15, 2002. Because they were traveling at the time, the family did not review this I.E.P. until August 23, 2002. The I.E.P. received at this time included a Behavior Intervention Plan in addition to the I.E.P. developed on June 3, 2002. This Behavior Plan noted that “[Student] has met with the Behavior Specialist twice a week last year and met with the Ed. Tech. every day for 45 minutes to do work, process the day, and talk. This provided him a lot of individual time. Because this is not available to him this year he will need a daily check-in to see where he is at emotionally as well as sporadic times when he is feeling overwhelmed.”

- The Plan also included a Work Completion section, specifying that “[Student] is to go to the Resource Room first [at the end of the day] and have the assignments checked. If all was done then he is allowed to go home. If not then he stays until the work is complete and/or when the teacher has to leave. This would be modified assignments. Failure of [Student] to check in would mean a lunch detention that day.” (Testimony: Father; Exhibits: S86-87)
16. The family met with Aucocisco School Director Melnick on August 27, 2002 and an academic screening was completed. It was determined that Student fit the Aucocisco profile, with his primary issue being learning disabilities. He also had identified behavior problems, more likely due to frustration with learning and immaturity rather than mental illness. (Testimony: B. Melnick, Father)
 17. On August 29, 2002, the family notified the Falmouth School Department that they would be enrolling Student in the Aucocisco School in South Portland for the 2002-2003 school year. In a letter dated August 29, 2002, they stated that they considered the I.E.P. to be inappropriate, that it “does not seem to be the plan that we discussed at his last P.E.T....The punitive work completion plan was not discussed at the P.E.T. [sic] Student began attending Aucocisco on September 4, 2002, although the family did not sign a contract or pay tuition until September 13, 2002. He attended throughout the entire 2002-2003 school year. (Testimony: Father; Exhibits: S75)
 18. The Aucocisco School is a private special purpose school, licensed by the State of Maine. It is designed for students who have problems in the areas of learning and attention, rather than students whose primary issues are mental health related. The school provides intensive remediation and supports the development of compensatory skills. (Testimony: B. Melnick)
 19. A P.E.T. meeting was held on September 11, 2002. At this meeting, the team discussed Student’s behaviors at the end of the 2001-2002 school year and the status of the various assessments that were being conducted. The family agreed that the testing could go on as scheduled and as agreed to in the June 6, 2002 consent form that they had signed. They also stated that Dr. Richard Doiron had recently completed a neuropsychological evaluation of Student and they would send the school a list of tests that Dr. Doiron used in order to avoid repetition. The team decided to reconvene after the other testing has [sic] been completed. (Exhibits: S69-70)
 20. Dr. Richard Doiron conducted a neuropsychological evaluation of [Student] on August 7, 2002 and September 10, 2002. In a report dated September 16, 2002, Dr. Doiron presented his findings. The techniques employed were the WISC-III, Children’s Memory Scale, Halsted-Reitan Neuropsychological Test Battery, Sensory-Perceptual and Lateral Dominance Examinations, Aphasia Screening Test, WIAT-II, Rey-Osterrieth’s Complex Figures Test, Verbal Fluency Test, Millon Adolescent Personality Inventory, Clinical Interviews, Self-Administered

Student Profile, Parent Interview, Parent And School Questionnaires and a review of previous testing and evaluations. On the WISC-III, Student obtained a Verbal IQ of 102, Performance IQ of 96 and Full Scale of 99. His Index Scores were at an expected level, except for a score of 86 in Processing Speed. Dr. Doiron noted that Student's WISC-III scores were lower than in the past, probably due to being under extreme stress. His scores on the Children's Memory Test show problems in the initial acquisition of visual information. Student's academic achievement scores included 91 in Composite Reading, 101 in Math Reasoning, 78 in Numerical Operations, 88 in Composite Math, 65 in Spelling, 73 in Written Expression and 64 in Composite Written Language. Personality testing showed significant concerns in the areas of self-concept and academic confidence. Dr. Doiron recommended immediate feedback about performance, experiential learning and coaching and life space counseling to help Student identify appropriate peer and authority situations. In particular, Dr. Doiron stated that "[it] will be important not to not as much discipline him for social infractions, but rather to use such situations as teaching experiences for him." Dr. Doiron opined that the relationship between Student's learning and attentional problems and his behavior at Falmouth Middle School were likely due to his extreme social sensitivity and the fact that he could no longer mask his academic differences. He therefore became a show-off and engaged in inappropriate behavior. His anxiety also leads to that type of behavior and placing emphasis on such behavior, in the form of attention, would just lead to an increase in the problem behaviors. Falmouth has too many triggers of anxiety and Dr. Doiron believed that Student was not yet ready to face that atmosphere. He did state that he could potentially be transitioned back to Falmouth but that a successful transition would depend on making him a partner in the process, identifying a person from the school who would regularly visit him at Aucocisco and form a bond with him and begin the transition by having Student enroll in one or two course[sic] as [sic] Falmouth High School, preferably courses in his areas of strength. (Testimony: D. Doiron; Exhibits, S46-68)

21. A P.E.T. meeting was held on October 28, 2003. The family reported on Student's progress at Aucocisco, which they considered to be very good. The team read Dr. Doiron's report and the family gave consent to proceed with Dr. Blattner's psychiatric evaluation.¹ The team agreed to reconvene upon completion of Dr. Blattner's evaluation. (Exhibits: S43-44)

22. At Dr. Blattner's request, the staff at Aucocisco completed a School Update Form about Student.² Student was described by his teachers as bright with a good

¹ Although consent was given at this meeting for the Blattner assessment, it appears that the family subsequently requested that the school delay the assessment until they had an opportunity to speak with their attorney about it. New consent to proceed with the assessment was subsequently given in November 2002. Dr. Blattner, however, did not begin the assessment process until January 2003. (Testimony: P. Crowell, F. Blattner, Father)

² It is unclear who completed this form or when it was completed, since it is unsigned and undated.

- vocabulary, highly anxious, easily distracted and easily off task. (Testimony: B. Melnick, F. Blattner; Exhibits: S274)
23. During February 2003, Student began feeling overwhelmed by his academic work and started meeting regularly with Aucocisco social worker David Chattelbash. At one session, Student confided to Mr. Chattelbash that he believed that the Falmouth teachers see him as sexually deviant and he expressed incredible anger towards them and towards some of the Falmouth students. Mr. Chattelbash expressed concern that Falmouth had failed to address this issue. He does not, however, believe that Student is so emotionally needy that he requires a day treatment program. Rather, Student can eventually be transitioned back, most likely to Falmouth High School, but only with a well planned and executed program of desensitization. (Testimony: D. Chattelbash)
 24. Francine Blattner, M.D., conducted a psychiatric assessment of Student in January 2003, and presented her findings in a report dated March 10, 2003. Student's diagnoses included separation anxiety disorder, generalized anxiety disorder, social anxiety disorder, adjustment disorder with mixed anxiety and depressed mood, and ADHD. Dr. Blattner's school-related recommendations included remediation, accommodations and modifications that take into account "ADHD challenges/cognitive weaknesses and strengths and developmental/emotional needs." (Testimony: F. Blattner; Exhibits: 32-39)
 25. A P.E.T. meeting was held on March 20, 2003, with Dr. Doiron and Dr. Blattner in attendance. Dr. Doiron reviewed his findings and recommendations and noted that he believes that Student is emotionally very fragile and has elevated levels of depression, anxiety and anger. Dr. Blattner reviewed her findings and recommendations, which were not inconsistent with those of Dr. Doiron. The team determined that Student has multiple disabilities, including an emotional disability, learning disabilities and ADHD (OHI). (Exhibits: 29-30)
 26. The team met on April 10, 2003, and draft [sic] goals in writing, math and work organization and completion were presented. Increased work production would also be added to the I.E.P. It was stated that goals would "be written in more measurable terms." Ms. Melnick noted that staff at Aucocisco has not seen Student exhibit any sexually explicit behavior nor demonstrations of anger and anxiety through his writing. The family noted that Student had begun meeting with Counselor Chattelbash and that he "knows he needs help." Dr. Blattner raised the possibility of a more restrictive, day treatment placement and it was suggested that the family visit the Maine Mental Health Collaborative School, Sweetser Day Treatment and/or Spurwink Day Treatment. (Testimony: Father; Exhibits: S21-23)
 27. A P.E.T. meeting was held on May 22, 2003. The family reported on their visits to Spurwink and the Collaborative School. They believed that day treatment was not appropriate for Student. Ms. Melnick reported that Student's social and

- emotional issues were being addressed using anxiety self-assessment tools. She also reported that Student was working on all xxx core courses, with third quarter grades ranging from 85 to 95. Ms. Melnick submitted the Aucocisco staff's recommended goals and objectives for the 2003-2004 school year, including goals in mood improvement, decreasing anxiety and increasing social skills. She also submitted Student's present levels of performance in reading speed and fluency, written expression, math and homework completion. She noted that Student was participating in a Homework Club. Dr. Blattner questioned the intensity of the social/emotional intervention Student is [sic] receiving, and noted his need "to feel empowered to feel more competency." Mrs. Gammon, Falmouth High School Special Education Teacher, reported on her visit to Aucocisco and stated that during her visit Student was given a Red Card, a negative reinforcer, for using a word he wasn't supposed to use. She also noted that the students in the writing class were working as a group on one of the W.I.A.T. writing prompts, pointing out that she believed this to be either an inappropriate testing situation or inappropriate test practice. Dr. Doiron reported that Student had matured over the year, but was tense and on guard during his (Dr. Doiron's) visit to Aucocisco. Dr. Doiron suggested medical treatment for Student's ADHD. (Testimony: Father, B. Melnick, F. Blattner, Linda Gammon, Dr. Doiron; Exhibits: S18-19)
28. Student's final grades for the 2002-2003 school year ranged from 87 to 95. He did have one in-school suspension during the year. The staff considered Student to have made some good progress in reduction of anxiety, study habits and behavioral issues. During his first semester, he did engage in silly, frequently inappropriate, behavior. During the second half of the year, however, his behavior did improve. (Testimony: B. Melnick; Exhibits: P17)
29. A P.E.T. meeting was held on June 19, 2003. The team reviewed a draft I.E.P. and it was determined that Student has a learning disability in writing. Dr. Blattner saw Student's anxiety as the major emotional factor interfering with his education and saw a need for consistency around interactions with him. Lou McIntosh, the family's advocate, suggested that a relationship with the Maine Mental Health Collaborative School begin while Student was still at Aucocisco. (Testimony: F. Blattner, L. McIntosh; Exhibits: S5-7)
30. An I.E.P. developed during the course of the four previous P.E.T. meetings was sent to the family on June 23, 2003. This I.E.P. included 5 hours per day of direct instruction in the Learning Center and regular education classrooms, consideration of the Portland Arts and Technology High School as a part-time placement, 120 minutes per week of social work services, psychological counseling, with the amount to be determined after consultation with the Collaborative School Outreach Services, family counseling, O.T. consults and staffing consults. The I.E.P. included goals in assignment completion, social/emotional issues, appropriate communication and conflict resolution, written and spoken language and math computation. Ed Tech support was included, if found to be necessary. The primary placement was the Falmouth

- High School Day Treatment Program. The I.E.P. also indicated that Student would “begin working with the Maine Mental Health Collaborative School during summer of 2003,” meet with Dr. J. Sarmanian, Falmouth counselor, to begin transitioning to Falmouth High School and receive tutorial services to address writing and pre-reading for fall of 2003 English requirements. A list of accommodations and modifications was included. (Exhibits: S5-17)
31. In a letter to the family, dated June 20, 2003, Polly Crowell urged the family not to reject the I.E.P. but to begin working with Dr. John Stewart, of the Maine Mental Health Collaborative School, and Dr. Jack Sarmanian, Falmouth social worker, during the summer, in order to facilitate fall reintegration. However, as Dr. Sarmanian testified, there was no reintegration plan, although “if he decided to come, we would have developed a reintegration plan.[sic] Ms. Crowell further stated, “the details of classes, PATHS, ed. Tech. Usage, scheduling, etc. can all be worked out before school begins.” (Testimony: P. Crowell; Exhibits: S3)
32. In a letter from the family to Ms. Crowell, dated June 28, 2003, the family rejected the proposed I.E.P., noting that is “is impossibly vague,” in academic areas, in the specificity of behavioral interventions and in the measurability of goals and objectives. Furthermore, they rejected the proposed placement of Student in a self-contained day treatment program within Falmouth High School. They conveyed their intention to keep Student at Aucocisco for the 2003-2004 school year and suggested that the team “develop a realistic plan for reintegrating [Student] into a public school by the fall of 2004, as recommended by Dr. Doiron.” (Testimony: Father; Exhibits: S1-2)
33. The family filed for Due Process on July 31, 2003. (Exhibits: Due Process Request)
34. The amounts paid by the family through August 30, 2003, relative to Student’s placement at the Aucocisco School are as follows: Tuition and Charges for the 2002-2003 school year, \$20,430.00; Tuition and Charges for the 2003-2004 school year, \$2188.50; Social Work Services, \$525.00; Mileage, \$2124.22. The family is also seeking reimbursement for the cost of Dr. Doiron’s neuropsychological evaluation and visit to Aucocisco, \$1600.00. (Exhibits: P1)

IV. Conclusions

- **Was the I.E.P. proposed by the Falmouth School Department for the 2002-2003 school year reasonably calculated to provide educational benefit in the least restrictive educational setting?**
- **If the placement and program for the 2002-2003 school year was not reasonably calculated to provide educational benefit in the least restrictive educational setting, was the Aucocisco School an appropriate placement? If**

Aucocisco was a proper choice of placement, is the Family entitled to reimbursement of the costs associated with that placement?

Congress, in the I.D.E.A., 20 U.S.C. §1412(a)(1), and the United States Supreme Court, in *Hendrik Hudson Central School District v. Rowley*, 458 U.S. 176, 202-203 (1982), established a two prong standard for determining whether a local school unit is offering an appropriate program for student. The first is procedural and the second is substantive. First, has the school complied with the procedures set forth in the act? Second, is the individualized education program reasonably calculated to enable the student to receive education benefit?

The first issue in this case relate [sic] to the substantive prong of Rowley, whether Student's 2002-2003 school year I.E.P. is designed to deliver special education and related services that are reasonably calculated to provide Student with educational benefit in the least restrictive environment. *Rowley* at 200, 203, 207; *Roland M. v. Concord School Committee*, 910 F.2d 983, 992 (1st Cir. 1990); *Lenn v. Portland School Committee*, 998 F.2d 1083, 1086 (1st Cir. 1993). The law and precedent emphasize "appropriate," which does not mean "best" or "optimal." Rather, Student must be afforded the opportunity to make some measurable educational benefit, some measurable progress. In the words of the First Circuit, the program must be directed towards "the achievement of effective results – demonstrable improvement in the educational and personal skills identified as special needs – as a consequence of implementing the proposed I.E.P." *Town of Burlington v. Dep't of Educ. Comm. of Massachusetts*, 736 F.2d 773, 788 (1st Cir. 1984, *aff'd* 471 U.S. 359 (1985)).

In order to evaluate the proposed program and placement for the 2002-2003 school year, a number of factors must be reviewed. The first is whether the proposed program met all of student's unique needs through specially designed direct educational services and appropriate related services and supports. The I.E.P. that was forwarded to the family in mid-August 2002 was, at best, vague and, at worst, very incomplete. There was only one goal, in the area of anxiety reduction, and even that goal was identical to one of the three goals in the prior year I.E.P. The amount of direct instruction proposed was less than what Student had received at the middle school, despite the fact that he still had significant academic weaknesses. The Behavior Plan that was part of the I.E.P. made particular note of the high level of support Student had gotten from his xx grade ed tech, than proposed a vague "daily check-in to see where he is at emotionally."

Simply stating that the detailed service package would be developed after the evaluations were completed is insufficient. If a complete, and detailed, I.E.P. was dependant on input from evaluations, those evaluations should have been completed during the spring. Student's academic and behavioral issues were not new. Dr. Sheckart's risk assessment was completed on April 10, 2002. There was time to schedule and complete appropriate evaluations prior to the completion of the school year.

The I.D.E.A. mandates that, "at the beginning of the school year, each local educational agency must have in effect an I.E.P. for each student with a disability." 20 U.S.C.

§1414(d)(2)(A). Furthermore, this I.E.P. must be in the form of a written document. *Burilovich v. Lincoln Consolidated Schools*, 208 F.3d 560 (6th Cir. 2000)³ In this case, Falmouth provided a written document but it was woefully incomplete and was not made complete, and legally compliant, by statements that the details would be worked out after school began in the fall. How could the family reasonably assess whether they believed that Student's proposed xx year program would work for him if they did not have a clear idea of exactly what it was that the program would consist of?

In addition to being incomplete, the I.E.P. was lacking in goals. With only one goal, regarding anxiety, the I.E.P. failed to address any of Student's academic needs, particularly those in written language. Nor were there any goals that addressed his homework completion and work production needs, or his behavioral issues.

In its final written argument, the school itself argues that appropriateness is judged solely from the perspective of the P.E.T. at the time the program was offered, citing *Roland M.* at 992. Consequently, judging this I.E.P. from what it consisted of at the time it was offered, it is held that the I.E.P. proposed for the 2002-2003 school year was not reasonably calculated to provide educational benefit in the least restrictive environment.

In order for reimbursement to be awarded, the Family must demonstrate that the Aucocisco School placement is "proper under the Act," meaning that the placement is "reasonably calculated to enable the child to receive educational benefit." *Florence County*, 510 U.S. at 11, citing *Rowley*, 458 U.S. 176.

Student's 2002-2003 school year grades were in the 85 to 95 range, although he admittedly continues to have significant academic challenges, particularly in written language production, math and work production. Student's work with David Chattelbash appears to be having a positive impact on Student and the behavioral incidents that have occurred are certainly much less serious than those that occurred at Falmouth Middle School. Although not a therapeutic environment, Aucocisco does appear to be providing an appropriate level of social/emotional support to Student.

However, it does not have to be proven that Student could achieve educational progress only in *this* setting, but only that the Falmouth I.E.P. and proposed placement were inappropriate to meet student's needs and the parental placement is able to address those needs. *Florence County* at 12-13. Nor does a family need to show that the parental placement is the least restrictive setting capable of meeting the student's needs. *See, e.g. Warren G. v. Cumberland County Sch. Dist.*, 190 F.3d 80, 84 (3rd Cir. 1999) ("[T]he test for the parents' private placement is that it is appropriate and not that it is perfect.")

And, Aucocisco is not a perfect placement. Student is placed out of his community in an educational setting that provides few of the extracurricular resources that a school like Falmouth High School can provide. He is likewise with a small peer group, although

³ The Sixth Circuit was very clear about the importance that must be placed on the requirement for a written I.E.P. when they stated that "[t]he written offer requirement should therefore be enforced rigorously." *Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 768 (6th Cir. 2001)

some might argue that for some students this is preferable. And, there is the troubling issue of whether Aucocisco staff is utilizing the W.I.A.T writing prompts in an unauthorized manner.

However, given that the I.E.P. proposed by the school for the 2002-2003 school year was inadequate, the family has clearly met the standard for showing that Aucocisco was an appropriate alternative placement for student. The placement is successfully addressing Student's academic, social/emotional and behavioral needs and Student is making progress in all of these areas.

The school further argues that the family violated the I.D.E.A. notice requirement, which states that parents are required to provide written notice to the school district ten business days before withdrawing their child from public school. 34 C.F.R. §300.403(d). Written notice was provided on August 29, 2003.⁴ Although Student began attending Aucocisco on September 4, 2003, the family did not officially enroll him, sign a contract and pay tuition until September 13, 2003. There was therefore no violation of the notice provision calling for denial of, or reduction in, reimbursement for reasonable costs associated with the placement of Student at the Aucocisco School for the 2002-2003 school year.

- **Is the I.E.P. proposed for the 2003-2004 school year reasonably calculated to provide Student with educational benefit in the least restrictive educational setting?**
- **If the placement and program for the 2003-2004 school year was not reasonably calculated to provide educational benefit in the least restrictive educational setting, does Student require placement at the Aucocisco School in order to make educational progress?**

It is true that the current I.E.P. is far superior to the one proposed for the 2002-2003 school year. It includes multiple goals addressing social/emotional, academic and work production issues. However, although it recognizes Student's significant social/emotional needs, it is very lacking in the very specificity that made the previous year's I.E.P. inappropriate.

It is not enough to simply say that the amount of psychological counseling that will be provided will be determined after consultation with the Maine Mental Health Collaborative Outreach Services. Four P.E.T. meetings were held in the spring of 2003. If this aspect of the I.E.P. was dependent on working something out with the Collaborative Outreach Services, then that should have been done prior to the development of the I.E.P. If it was necessary for Student and his family to participate with the Collaborative during the summer in order for the Collaborative to assess what types and levels of psychological services would be appropriate for the fall, that requirement should have been stressed to the family. If they then specifically chose not to participate, it at least would have been clear to them that they might be found to have

⁴ It should be noted that the I.E.P. was only mailed out to the family on August 15, 2003.

failed to cooperate in the P.E.T. process, with whatever repercussions might follow from that.

Ms. Crowell, in her June 20, 2003 letter to the family, basically stated that all the “details” of the program “can all be worked out before school begins.” That statement alone suggests that the I.E.P. sent to the family on June 23, 2003 was incomplete..[sic]

The service plan included in the I.E.P. is clearly insufficient. The I.D.E.A. requires the following:

The amount of services to be provided must be stated in the I.E.P., so that the level of the agency’s commitment of resources will be clear to parents and other I.E.P. team members. C.F.R. §300.347(a)(6). The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) in the I.E.P. in a manner that is clear to all who are involved in both the development and implementation of the I.E.P.

See C.F.R Part 300, App. A., 64 Fed. Reg. 12479 (Q&A 35)

In addition to the incomplete nature of the I.E.P., it is problematic that the I.E.P. proposed reintegrating Student back into Falmouth High School without a structured reintegration plan with a good chance of success. Although both Mr. Chattelbash and Dr. Doiron were of the opinion that Student could be successfully reintegrated back to public high school, they were very clear that any plan with a chance of success would have to be specifically tailored to Student’s unique needs and carefully executed. Yet, Dr. Sarmanian himself testified that there was no reintegration [to Falmouth High School] plan in place, but if Student came back they would develop one. This is a recipe for failure.

An additional concern is the proposed self-contained, day treatment placement. The school argues that the Aucocisco School is more restrictive than Falmouth High School. That is true, if one is referring to a mainstream program or even a resource room placement. However a full-time, or almost full-time, self-contained program in an arguably therapeutic focus is far more restrictive than an academic special purpose school.

There is simply no evidence that Student requires a day treatment setting, particularly since he is making progress in all of his areas of need while in a less restrictive setting. It is not persuasive for the school to argue that Student can do just fine at Falmouth High School, when what they are proposing is not a Falmouth High School placement with reasonable supports and services, but rather a restrictive, isolated therapeutic environment that appears to bear no relationship to the educational setting enjoyed by the other Falmouth High School special education students.

In conclusion, the I.E.P. proposed for the 2003-2004 school year is not reasonably calculated to provide educational benefit in the least restrictive environment and an Aucocisco School placement for the 2003-2004 school year is appropriate.

- **Shall the Falmouth School District be required to reimburse the family for the costs associated with an independent neuropsychological evaluation conducted by Dr. Richard Doiron?**

According to Maine Special Education Regulations, the question of reimbursement for a parentally obtained, individual educational evaluation will be determined by considering whether the school's evaluation was appropriate. The school must be permitted to conduct it's [sic] own evaluation first.⁵

In this case, the school was not given an opportunity to conduct its own psychological evaluation. At the June 3, 2003 P.E.T. meeting, the family informed the school that it was obtaining a [sic] independent evaluation from Dr. Doiron, consequently making it impossible for the school to conduct it's [sic] own evaluation. To do so would not only be duplicative, but would also produce invalid result [sic] due to practice effects.

The family argues that the burden is upon the school to either grant the family's request for an independent education evaluation or to immediately initiate a due process hearing to demonstrate that the evaluation conducted by the school is appropriate. M.S.E.R. §12.5 (1999) The problem with this argument is that the school was not permitted to do an evaluation. To argue that the school's *proposed assessment plan* is inadequate is not persuasive. A school has an absolute right to perform P.E.T. ordered evaluations with its own personnel. *Falmouth School Dept.*, 102 LRP 4426 (SEA Me. 4/24/00) (and cases cited therein) And this they were prevented from doing.

Falmouth is therefore not required to reimburse the family for the costs associated with the neuropsychological evaluation conducted by Dr. Richard Doiron.

⁶[sic]

VI. Order

1. The Falmouth School Department is ordered to reimburse the family for all reasonable expenses related to Student's placement at the Aucocisco School during the 2002-2003 school year. These expenses shall include tuition, fees, counseling and mileage.
2. The Falmouth School Department is ordered to reimburse the family for all expenses paid to date related to Student's placement at the Aucocisco School during the

⁵ If the parent of a student disagrees with the results of an evaluation conducted or obtained by the administrative unit, they have the right to obtain an independent educational evaluation of their child at public expense. However, the school administrative unit may initiate a hearing to show that is [sic] evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent evaluation, but not a [sic] public expense. M.S.E.R. §12.5(C) (1999)

current school year, 2003-2004. These expenses shall include tuition, fees, counseling and mileage.

3. Such reimbursement shall be made within thirty days after submission of copies of paid invoices for all claimed expenses, except for mileage, which shall be calculated at the current state rate.
4. A P.E.T. meeting shall be held within 30 school days of receipt of this decision in order to begin the process of developing a reintegration plan to transition Student back to Falmouth High School for the 2004-2005 school year. All appropriate providers shall be invited to the meeting, including but not limited to Dr. Richard Doiron, Dr. Francine Blattner and David Chattelbash. The team shall determine what evaluations, assessments or other information might be necessary in order to develop this plan and create a schedule for gathering such information in order to assure that the plan is developed, and activated, in a timely manner. A timely manner is such that there will be sufficient time to allow a smooth and successful reintegration into Falmouth High School at the start of the 2004-2005 school year.
5. Proof of compliance with this order shall be submitted to the hearing officer as well as to the Due Process Coordinator according to the various time frames in the order.

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

Date