

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

July 5, 2005

Case No. 05.039H, Parents v. Dresden School Department.

REPRESENTING THE FAMILY:                      Student's Father

REPRESENTING THE SCHOOL:                      Eric R. Herlan, Esq.

HEARING OFFICER:                                      Peter H. Stewart, Esq.

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**INTRODUCTION**

This special education due process hearing has been conducted, and this decision has been written, pursuant to state and federal special education law, 20-A MRSA 7202 *et seq.* and 20 USC 1415 *et seq.*, and the regulations accompanying each.

The father and the mother, the parents of the student involved in this matter, filed a request for this special education due process hearing with the Maine Department of Education on April 26, 2005, seeking re-imbusement for tuition and travel expenses associated with the student's education in school year 2003-2004 when he attended the xx grade in the Richmond Middle School. The student (DOB: xx/xx/xxxx), lives with his parents in Dresden, Maine. He is eligible for special education services under the category of visual impairment.

The Town of Dresden operates the Dresden Elementary School; this school educates Dresden children from kindergarten through fifth grade. For middle school, which begins with the sixth grade, Dresden has contracted with Maine School Administrative District #16 to educate its children. Typically, Dresden school children graduate from the Dresden Elementary School after the fifth grade and then attend the Hall-Dale Middle School for their [sic] sixth, seventh and eighth grades. The student in

this case, however, went to the Richmond Middle School for his xx grade year.<sup>1</sup> The parents transported their son to and from the Richmond Middle School throughout the xx grade and, in January of 2004, received a bill from Richmond for the first semester's tuition. The parents paid this bill, as they paid the bill from Richmond for the second semester's tuition. Not until October of 2004, when the student was in the xx grade, did the parents contact the Dresden School Department, asserting that Dresden was responsible for paying for the student's xx grade tuition at Richmond because a Dresden Elementary School PET that met on March 25, 2003 reached "consensus" that the student should attend the Richmond Middle School for xx grade. The parents asked Dresden to reimburse them for the tuition and travel costs associated with the student's attendance at Richmond during school year 2003-2004. Dresden refused to reimburse the student's parents for those costs, responding that the parents, not the Dresden PET, chose to send the student to the Richmond Middle School and, therefore, the parents were responsible for any costs involved.

The pre-hearing conference was initially scheduled for May 19<sup>th</sup> and the hearing for May 26<sup>th</sup>. The school requested postponements of both, due to scheduling conflicts, and the family agreed. The pre-hearing conference was held on May 25, and the hearing was held on June 14, 2005. The parents presented one witness and entered exhibits identified as Parent's Exhibits 1 through 5 into the record. The school presented four witnesses and entered exhibits identified as School's Exhibits pages 1-136 into the record. The Dispute Resolution Request Form, filed by the parents on April 26, 2005 is also in evidence. The parties submitted written closing arguments, the last of which was received by the hearing officer on June 24. The decision in this matter is thereby due to be issued on or before July 9, 2005.

The decision in this matter follows.

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<sup>1</sup> While the student is continuing to attend the Richmond Middle School for his xx grade year, 2004-2005, the dispute in this case is limited to events relating to the student's xx grade year.

## **ISSUE**

The single issue to be resolved at this hearing is:

Did the pupil evaluation team (PET) that met on March 25, 2003 determine that the student should be placed in the Richmond Middle School for his xx grade year, school year 2003-2004?

## **FACTUAL FINDINGS**

1. The student, (DOB: xx/xx/xxxx) lives with his parents in Dresden, Maine. He is eligible for special education services under the category of visual impairment. His parents requested this hearing by filing a Dispute Resolution Request Form (DRRF) with the Maine Department of Education on April 26, 2005. (Testimony of Father; DRRF)
2. The Town of Dresden operates an elementary school for its children in kindergarten through the fifth grade. For middle school - sixth, seventh and eighth grades - Dresden children attend school pursuant to a contract between Dresden and the Maine School Administrative District #16, which educates them in the Hall-Dale Middle School. Under the contract Dresden is obligated to send all of its middle school students to MSAD #16 and to pay tuition at a per pupil rate set in the contract. Most Dresden parents are aware of this arrangement between Dresden and the Hall-Dale schools. There are two exceptions to the general rule that Dresden middle school students must attend Hall-Dale Middle School: when students are placed elsewhere by a PET/504 team or when the student goes elsewhere because the superintendents agree that it is in the best interests [sic] of the student to do so. Dresden parents may also choose to send their child to a school other than Hall-Dale; in that event, Dresden is not responsible for paying the tuition involved. (Testimony of Father, Atkinson, Masterson and Fessenden; Record, SE at 99)
3. On March 25, 2003, when the student was in the xx grade at the Dresden Elementary School, the Dresden Elementary School convened a pupil evaluation team (PET) meeting to consider the student's special education needs for xx grade. Nancy Cooper, Erika Atkinson, Barry Masterson, Marilyn Reed, (student),

(student's mother)[sic] Jean Brigance, and Denny Gallaudet attended the meeting. (student's father) did not attend the meeting. The minutes of the PET meeting describe discussions of the student's program needs for his xx grade year but do not contain any reference to any discussion of what school the student will [sic] go to for xx grade. When asked by Ms. Atkinson whether the student "would be ok at Hall-Dale", Nancy Cooper, the Dresden Elementary School principal who chaired the PET, answered affirmatively, stating that he would be fine there. The IEP developed by this PET describes the program the student will receive in xx grade - large print books, certain classroom and equipment modifications, consultation support, computer technology related to his visual impairment - but does not contain any reference to any discussion of where the student will [sic] attend school in the xx grade. None of the witnesses in this hearing who attended the PET meeting on March 25, 2003 recalled any discussion of the student's xx grade placement at that meeting. All testified that the PET did not discuss the topic of what school the student would attend in the xx grade. (Testimony of Atkinson, Masterson and Gallaudet; Record, SE, 85, 87- 91)

4. Dennison Gallaudet is currently the Superintendent of Schools for Richmond; on March 25, 2003 he was, in addition, the acting Director of Special Education for Richmond. He attended the PET meeting at the request of the student's family. Mr.[sic] Gallaudet came to the meeting believing that the decision for the student to attend the Richmond middle [sic] school [sic] had already been made and that he was there to help with the "transition planning" for the student. The student's placement was not discussed at this PET meeting. At the meeting, the student's mother, who did not testify at this hearing, told him that the student's family – his parents or grandparents – would pay the tuition for him to go to Richmond. The Richmond school sent the bill for the student's tuition to the family, one half in January 2004 after the first semester, [sic] one half after the second semester. (Testimony of Gallaudet)
5. The father is the student's father. He did not attend the PET meeting of March 25, 2003. The father asserts that that PET reached a consensus that the student should go to Richmond for xx grade and bases that assertion on the fact that

Mr.[sic] Gallaudet, the Richmond superintendent, attended the PET meeting. The father asked the Dresden Elementary School to invite Mr.[sic] Gallaudet to attend the meeting. Prior to October 12, 2004, the father did not discuss the question of who would pay the student's tuition at Richmond with anyone from Dresden. The father received a bill from Richmond in January 2004 for the student's tuition for the first part of school year 2003-2004 and received another bill from Richmond for the second half of the year. He paid those bills without challenging them and without presenting them to, or discussing them in any way with, the Dresden Elementary School [sic]. The father paid the bills from Richmond prior to the start of the student's xx grade year, though he had to borrow the funds to do so. On October 12, 2004, the father wrote a letter to the Dresden School Board in which he asked to be reimbursed for tuition and travel costs associated with the student's xx grade year at the Richmond Middle School. The father testified that he and the student's mother wanted him to go to the Richmond Middle School because 1) it was closer to their home and 2) the student could "get away from kids [from Dresden] and get a fresh start there." They reached this decision after the March 25 PET meeting. (Testimony of Father; Record, SE 51)

6. Erika Atkinson is a regular education teacher at the Dresden Elementary School who taught the student in the xx and xx grades. She attended the March 25, 2003 PET meeting. The PET did not discuss the student's placement at that meeting. Prior to the PET meeting, Ms. Atkinson believed that the student was going to Richmond for xx grade because, shortly after the 2003 Christmas vacation, the student began telling her that he was going to the Richmond Middle School "next year". (Testimony of Atkinson)
7. Barry Masterson is a regular education teacher at the Dresden Elementary School who taught the student social studies in xx grade. He attended the March 25, 2003 PET meeting. He had known for "a good portion of the year that [the student's father] wanted him to go to Richmond" because the father told him that on a frequent basis, both before and after the PET meeting. Mr. Masterson also testified that there was no discussion of the student's placement at the PET meeting. (Testimony of Masterson)

8. Karen Fessenden is the Director of Special Education for the Dresden Elementary School. All Dresden Elementary School graduates go to Hall-Dale Middle School in the xx grade, unless a PET or 504 team orders another placement, the superintendents approve a transfer, or the parents send the student to some other school. Dresden pays in all cases except when the parents make the choice for their child to attend a school other than Hall-Dale; in that case, the parents are responsible for paying the tuition. If the March 25 PET had made the decision for the student to attend Richmond Middle School, that decision would have been noted both in the PET minutes, particularly in the Determination section, and in the IEP itself. Because Hall-Dale is the “default’ placement for Dresden students, there is no placement notation in either the minutes or the IEP of a Dresden special education student who is going to attend xx grade there. (Testimony of Fessenden; Record, SE, 85-91)

## **DISCUSSION**

The single question to be answered in this proceeding is whether the March 25, 2003 PET meeting made a determination that the student should attend the Richmond Middle School for his xx grade year, school year 2003-2004. This is an entirely factual question.<sup>2</sup> The family asserts that the March 25 PET reached a consensus on that issue and determined that the student should attend Richmond Middle School, and not Hall-Dale Middle School, the school which all of Dresden’s middle school students attend.<sup>3</sup> The school disagrees and contends that no such determination was made by the PET, asserting that the question of what school the student would attend for his xx grade was never even discussed at the March 25 meeting. For the reasons set forth below, the hearing officer finds that the evidence presented at the hearing provides

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<sup>2</sup> There are no legal issues presented here. The parties agree that if the PET made such a determination, the school is responsible for the tuition costs and travel expense sought as a remedy by the parents.

<sup>3</sup> Under certain conditions, Dresden middle school students can attend schools other than Hall-Dale. For example, a PET can order a placement elsewhere, or superintendents can approve another school they believe if [sic]it is in the best interests [sic]of the student to do so. Of course, parents also have the right to enroll a child in another school; in that case, the parents become responsible for the tuition and associated costs.

no support for the position advanced by the parents. Rather, the evidence overwhelmingly supports the school's position in this matter. Therefore, the hearing officer concludes that the PET did not determine that the student should attend the Richmond Middle School for his xx grade [sic]. The hearing officer finds that the student is attending Richmond Middle School as a result of a decision made by his parents, and not by the PET that met on March 25, 2003.

The best evidence of what decisions were made by a particular PET is the IEP developed by that PET. In this case, a review of the IEP does not reveal any language reflecting a PET "consensus" that the student will [sic] attend the Richmond Middle School for xx grade. Indeed, the IEP is silent as to the school in which the student will receive his xx grade education. Further, the minutes of the PET meeting do not reflect any discussion about the school the student will attend. The written IEP is the document that records the legally enforceable commitments made by the school in the context of developing an appropriate program for an eligible student. In this case, the IEP contains nothing that could possibly be construed to reflect a PET determination that the student here should attend the Richmond Middle School. The parent's assertion that the PET reached consensus on this issue is simply not supported by the relevant written record in this case.

It would be possible for the hearing officer to resolve this case at this point, having found that, because the IEP contains absolutely no reference to the school the student would attend, the parent's assertion that the PET reached consensus on the Richmond Middle School is unsupported by any evidence in the record. However, it should be noted that the witnesses in this hearing who did attend the PET<sup>4</sup> at issue gave consistent and un-contradicted testimony that the question of what school the student would attend was never discussed at the March 25 meeting.<sup>5</sup> In essence, the witnesses testified that school staff members knew that the student's parents had, prior to the March 25 PET meeting, already decided he was going to attend the Richmond Middle School

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<sup>4</sup> The student's father, the only witness presented by the family, did not attend the March 25 PET. The student's mother attended the PET but did not testify at the hearing.

<sup>5</sup> The only mention of the issue occurred when Erika Atkinson asked Nancy Cooper, the principal of the Dresden Elementary School who chaired the PET meeting, whether the student "would be ok at Hall-Dale?" to which Ms. Cooper replied, "Yes..."

for xx grade. Both before and after March 25, the student's father told Mr. Masterson that the student was going to Richmond; on several occasions, the student himself told his xx grade teacher, Ms. Atkinson, that he was going to Richmond next year. Prior to the PET meeting, the student's father asked the school to invite the superintendent of the Richmond schools to attend the meeting. The superintendent appeared at the meeting believing that the decision for the student to attend the Richmond Middle School had already been made and that his role at the PET was to help prepare a "transition plan" for the student, from the Dresden Elementary School to the Richmond Middle School. Based on this consistent and un rebutted testimony, the hearing officer finds that the March 25 PET never even discussed, and therefore could not have resolved, the question of what school the student was going to attend for his xx grade year.<sup>6</sup>

The testimony and the actions of the student's father provide further support for the conclusion that the decision for the student to attend Richmond was made by the parents and not by the PET. In response to a question from the hearing officer as to why he thought the PET had reached consensus on the Richmond Middle School for the student, the father said. "...because the Richmond superintendent was at the PET." However, it was the father himself who was responsible for Mr.[sic] Gallaudet's presence at the PET. Prior to the PET meeting, the father contacted the Dresden School and requested that Mr.[sic] Gallaudet, be invited to the meeting. The hearing officer concludes that this request simply re-enforces [sic] the statements made to the school staff by the father – and the student – that the student would be going to Richmond for xx grade. Further, at the PET meeting, the student's mother told Mr.[sic]Gallaudet that the family – the parents and/or the grandparents - would be paying the tuition costs associated with the student's attendance at Richmond.<sup>7</sup> When Richmond billed the

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<sup>6</sup> It is clear to the hearing officer that the reason the PET did not discuss this question was that, at the time of the PET, the family had already decided that the student would be going to Richmond for xx grade, and had already made that decision known to school staff members. Because the parents had already decided the student would attend Richmond, it was unnecessary for the PET to discuss that issue.

<sup>7</sup> First, the testimony that the student's mother stated that the family would be responsible for the student's tuition at Richmond was un-contradicted at the hearing; therefore, the hearing officer accepts the testimony recounted by the superintendent as fact. Second, this statement to the Richmond superintendent establishes that the family knew prior to



parents and not the school for the student's tuition, the family paid the bill without ever contacting Dresden about it or questioning Richmond about it.<sup>8</sup> The bill for the student's xx grade tuition at Richmond was paid in full prior to the start of the xx grade. All this indicates that the family believed it was responsible for paying their son's tuition at Richmond. The first time the student's father contacted Dresden about the Richmond tuition bill was in October of 2004, when he sent a letter to the Dresden School Board seeking re-imbusement for tuition costs and travel expenses associated with his son's xx grade year at Richmond. The Dresden School Board denied the father's request. Based on this pattern of behavior, the hearing officer concludes that the family understood it was responsible for the student's tuition at Richmond when they chose to send him there for xx grade, and indeed discussed the payment of the tuition with the Richmond superintendent at the PET.<sup>9</sup>

Finally, the father's own unambiguous testimony fatally wounds his argument. In response to a series of questions posed by the hearing officer, the father candidly testified that, "We [the student's parents] wanted him to go to Richmond...because the Richmond school is closer to home...and he could get away from some of the kids at Dresden and get a fresh start at Richmond...we decided he would go there..." While the hearing officer finds that this testimony reflects the sincere and thoughtful concerns of the student's parents, the testimony also makes it clear demonstrates [sic] that the student's parents, and not the PET, decided he would attend the Richmond Middle School.

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the student's enrollment at Richmond that it was responsible for the tuition there, thus severely undermining the father's testimony at the hearing to the effect that he thought he could pick any school for his son and Dresden would pay the tuition. This testimony also undermines the family's main argument that the PET determined the student should attend Richmond. If that were true, then Dresden, and not the family, would have been obligated to pay the tuition.

<sup>8</sup> This fact casts doubt upon the father's testimony at the hearing that he thought Dresden would pay his son's tuition at Richmond, and that when he received the first semester bill from Richmond in January of 2004, he was "absolutely floored". Had the father actually been so "floored" by the bill, it is reasonable to think that he would have at least discussed the bill with Dresden or Richmond before paying it.

<sup>9</sup> The family's attempt to obtain re-imbusement for the student's xx grade tuition seem [sic] to the hearing officer to be in the nature of an afterthought that did not arise until long after the bill had already been paid.

For the reasons set forth above, the hearing officer rejects the arguments advanced by the parents and concludes that the PET that met on March 25, 2003 did not determine that the student should attend the Richmond Middle School for his xx grade year. The student was placed at Richmond by his parents so that he might have a “fresh start” in middle school, as stated by his father at the hearing.<sup>10</sup> Consequently, the family is not entitled to any re-imbusement for tuition costs or travel expenses associated with the student’s xx grade year at Richmond.

**ORDER**

For the reasons set forth above, the family’s claim for re-imbusement for tuition costs and travel expenses associated with the student’s attendance at the Richmond Middle School during school year 2003-2004 is denied.

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Peter H. Stewart  
Hearing Officer

Date

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<sup>10</sup> While not strictly necessary, because the issue in this proceeding is factual in nature, the hearing officer also concludes that none [sic] the school’s actions in this matter violated any of the provisions of state or federal special education law.

## **WITNESS LIST**

### **FOR THE FAMILY:**

Father of the student

### **FOR THE SCHOOL:**

Erika Atkinson, Regular Education Teacher, Dresden Elementary School

Karen Fessenden, Director of Special Education, Dresden Elementary School

Dennison Gallaudet, Superintendent, Richmond School Department

Barry Masterson, Regular Education Teacher, Dresden Elementary School

## **DOCUMENTS**

Parent's Exhibits 1-5

School Exhibits, pages 1-136

Dispute Resolution Request Form, dated April 26, 2005