

STATE OF MAINE
SPECIAL EDUCATION DUE PROCESS HEARING

August 9, 2007

Case No. 07.111H, *South Portland School Department v. Parents*

Representing the School:	Eric R. Herlan, Esq.
Representing the Family:	The family appeared <i>pro se</i>
Hearing Officer:	Peter H. Stewart, Esq.

INTRODUCTION

This special education due process hearing has been conducted, and this decision written, pursuant to state and federal special education statutes¹ and the regulations accompanying each.

The student in this case is the student (D.O.B.: xx/xx/xxxx) who lives with his mother and stepfather in South Portland. He has attended South Portland schools since xx. He had difficulty for years in attending school regularly and was identified as eligible for special education services in the fall of 2005, his xx grade year, under the category of Emotional Disability.

On June 6, the school filed a request for a due process hearing, as required by the Maine Special Education Regulations 12.5(D) when a school denies a parental request for an independent educational evaluation at public expense. The school asserts here that the family is not entitled to another evaluation at public expense because the evaluation that has already been obtained by the school was (1) done by properly trained and qualified professionals who (2) administered valid and appropriate testing instruments and (3) prepared a report that complies with the standards set forth in state and federal special education regulations.² Consequently, the school argues that the psychological

¹ See, 20-A MRSA 7202 *et seq.* and 20 USC 1400 *et seq.*

² The federal regulation regarding independent educational evaluations is 34 C.F.R. 300.502. The MSER essentially mirror the federal requirements on this point.

evaluation it obtained in the spring of 2007 is appropriate under the law, and the family is not entitled to another one at public expense. The family argues that the current evaluation is not appropriate for two reasons. First, the family asserts that the evaluation is not appropriate because it is tainted with conflict of interest and bias caused by the fact that one of the evaluators, Dr. John Gmeiner, is married to Faye Gmeiner, an employee of the school who chaired the March 20 PET meeting and who is responsible for out-of-district placements made by the school. Second, the family claims that the evaluation is not appropriate because the evaluators did not review or consider the student's experience while at the Aucocisco School, which he attended from late March through the end of the school year in June of 2007.

A pre-hearing conference was held on June 27, 2007 and the hearing was conducted on July 6 & 13, 2007. The school submitted school exhibits 1-87 and presented four witnesses. The family submitted family exhibits 1-5 and presented three witnesses. The parties submitted written closing arguments, the last of which was received by the hearing officer on July 25, 2007. This decision is being issued on August 9, 2007.

ISSUE

The single issue to be resolved in this hearing is whether the psychological evaluation of the student conducted by South Portland School Department in the spring of 2007 is appropriate under the standards set forth in Maine special education law and regulations.

FINDINGS OF FACT

1. The student in this matter is the student (D.O.B.: xx/xx/xxxx). He lives with his mother and stepfather in South Portland and has attended schools there since xx. He was identified as eligible for special education services in the fall of 2005, early in his xx grade year, under the category of Emotional Disability, the primary symptom of which was his chronic difficulty in attending school. During his years in school, a series of strategies had been tried [sic] help the student attend

- school more regularly, and to provide him with an education, whether at school or in some other setting, that was often tutorial. None of these strategies worked particularly well. In the spring of 2007, the family had begun to look for other educational alternatives for their son. They identified the Aucocisco School, a small private day school in Cape Elizabeth with a focus on educating children with language-based learning disabilities, as a possible placement for the student and asked the school to convene a PET meeting to ask the school to place him there. (Testimony of mother)
2. Faye Gmeiner, a school staff member responsible for out-of-district placements, was the chair of the March 20, 2007 PET meeting. She had not been involved in earlier PET meetings about this student because out-of-district placement had not been a consideration in earlier years. At the PET, she explained the need for a current evaluation of the student prior to addressing the placement issue, with the proposed evaluation to focus on why the student could not attend school. After some discussion, the family agreed to the psychological evaluation and gave their written consent that day. The primary referring question was: why is the student not able to get to school and what are the functions of that behavior. The question of who would do the evaluation was also discussed. The student's mother expressed her concern that one of the evaluators mentioned, Dr. John Gmeiner, was married to Faye Gmeiner, questioning whether their relationship somehow amounted to a conflict of interest. Ms. Gmeiner did not agree on that point, explaining that she and her husband kept very clear boundaries and did not discuss each other's work in a situation such as this. (Testimony of mother, Faye Gmeiner; SE 62)
 3. Directly after the meeting, Judy True, then the school's special education director, named a three-person team of psychologists to do the evaluation. Team leader Dr. Scott Davidson was assigned to evaluate the psychosocial aspects of the student, Dr. John Gmeiner to do a functional analysis of the student's problem behavior and Dr. Susan Geincke to examine the student's cognitive abilities. The PET ordered the evaluation on March 20, the three psychologists began testing almost immediately, and the completed evaluation report was mailed to the family on

- May 3. A PET meeting was held on May 7 to discuss the report; this meeting continued on May 16, during which the family asked the school to provide an independent educational evaluation at public expense. The school denied this request on May 31 and filed a request for this due process hearing on June 6. (Testimony of Davidson, True, Faye Gmeiner; SE 1, 3- 22, 84-85)
4. Scott Davidson holds an Ed.D. in Counseling and Education, is certified by the Maine Board of Examiners of Psychologists and by the National Association of School Psychologists. He has been a consulting psychologist doing psychological evaluations for Maine schools since 1982. He was the evaluation team leader and primary writer of the evaluation report at issue here. His assignment was to evaluate the psychological aspects of the student. He administered a series of tests including the Behavior Assessment System for Children (BASC), the Minnesota Multiphasic Personality Inventory-Adolescent (MMPI-A), the Thematic Apperception Test (TAT), and Incomplete Sentence Blanks (ISB). He also interviewed the student, his parents and teachers and conducted a review of the student's school records. Dr. Davidson is qualified and trained to administer and interpret these tests, which are appropriate and valid instruments to use when examining the psychosocial domain of an adolescent with behaviors such as are presented by the student in this case. (Testimony of Davidson, SE 77-78)
 5. John Gmeiner holds a Ph.D. in Clinical Psychology, is a licensed psychologist and a certified school psychological services provider in Maine, and is also a nationally certified school psychologist. He has been a consulting psychologist performing psychological examinations and evaluations to Maine schools since 1984. Here, he was assigned to do a functional analysis of the student's problem behavior and administered a series of tests including the School Refusal Assessment Scale-Revised (SRAS-R), the Revised Children's Manifest Anxiety Scale (RCMAS), the Children's Depressive Inventory (CDI), and the Schedule for Affective Disorders and Schizophrenia for School-age Children Present and Lifetime (K-SADS-PL). Dr. Gmeiner is qualified and trained to administer and interpret these tests, which are appropriate and valid instruments to use to perform

- a functional analysis of the behaviors presented by the student. (Testimony of John Gmeiner, SE 80-81)
6. Susan Geincke holds a Ph.D. in School Psychology, is licensed in Maine as a clinical psychologist and a psychological examiner, and has been a consulting psychologist providing psychological evaluations and examinations to Maine schools since 1982. Her assignment on this team was to evaluate the student's cognitive ability. She administered the Stanford-Binet Intelligence Scale-Fifth Edition, a well-known and highly respected instrument used to determine cognitive ability. Dr. Geincke is qualified and trained to administer and interpret the Stanford-Binet test, which is a valid and appropriate instrument to use to determine the cognitive ability of the student. (Testimony of Davidson and John Gmeiner; SE 79)

DISCUSSION

Maine special education regulations³ state that the placement of a child eligible for special education services “shall be preceded by...[an] evaluation procedure which focuses on the student’s individual needs...This process is managed by the Pupil Evaluation Team...” 05-071, Ch 101, MSER 9.1. In the event that the parent of a student disagrees with the results of such an evaluation obtained by the school, the parent has “the right to obtain an independent educational evaluation of their child at public expense. However, the [school] may initiate a hearing to show that its evaluation is appropriate.” 05-071, Ch 101, MSER 12.5(C).⁴ If a school refuses to grant a parent’s request for an independent evaluation at public expense, the school is required to “immediately initiate a due process hearing to demonstrate that the evaluation conducted

³ A new version of the Maine Special Education Regulations became effective on August 3, 2007. As all the events involved in this matter, including the hearing itself, occurred during the period when the preceding version of the MSER was in effect, this decision is written under the standards contained in the “old” rule. However, after a cursory reading of the new version, it appears that the result would be the same under either version.

⁴ MSER 12.5(C) goes on to say, “If the final decision is that the evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense.”

by the [school] is appropriate.” MSER 12.5(D) and 34 C.F.R. 300.502(b)(2). See also, MSER 9.19.

The Maine Special Education Regulations set forth the requirements that an evaluation must meet in order to be considered appropriate:

1. The evaluator must be appropriately trained and licensed to administer and interpret the test instrument (MSER, 9.7);
2. The evaluator must not be an employee of the school requesting the evaluation (MSER 9.19);
3. The instrument or test used for the evaluation must be appropriate and valid to assess the area of concern identified in the referral by the PET (MSER 9.2, 9.5); and
4. The evaluation report must describe the evaluation instrument used, state and summarize the results and diagnostic impressions obtained and make specific recommendations necessary to accommodate the student’s special education needs. (MSER 9.13)

After consideration of the evidence presented in this matter, the hearing officer concludes that the psychological evaluation of the student done by the team of three psychologists in the spring of 2007 is appropriate under the standards articulated in the Maine Special Education Regulations, 05-071, Ch 101 and relevant Maine hearing officer decisions interpreting those regulations. The basis for that conclusion is discussed below.

The first question is whether the evaluators are appropriately trained, licensed and otherwise qualified to administer and interpret the test instruments they used to evaluate the student. After consideration of the evidence presented at the hearing, it is clear to this hearing officer that the evaluators are both highly and appropriately qualified to perform the psychological evaluation requested by the PET. All three hold doctoral degrees earned in the 1980s, all three are licensed psychologists in Maine and each has approximately two decades of clinical experience since, including private practice and extensive work as consulting psychologists to Maine schools. Dr. Davidson has an Ed. D. in counseling and Educational Psychology, has been doing psychological evaluations for schools in Maine since 1982, and is certified by the Maine Board of Examiners of Psychologists and by the National Association of School Psychologists. Dr. Gmeiner

holds a Ph.D. in Clinical Psychology, is a licensed psychologist and a certified school psychological services provider in Maine, and is a nationally certified school psychologist. He has been providing psychological services, including psychological examinations and evaluations, to schools in Maine since 1984. Dr. Geincke holds a Ph.D. in School Psychology, is licensed in Maine as a clinical psychologist and psychological examiner, and has provided such services to schools in Maine since 1982. Drs. Davidson, Gmeiner and Geincke have provided their services to the South Portland School Department on a consulting basis since 1989, 1993 and 1992 respectively. It is difficult to imagine a more appropriately qualified or more highly experienced panel to perform the psychological evaluation of the student that the PET requested. The hearing officer concludes that the qualifications, licensure and training that these professionals possess meet, and far exceed, the requirements of the MSER.

The next question is whether the tests administered in the course of the evaluation were “appropriate and valid” instruments to explore the primary referral question developed by the PET on March 20, 2007: why is the student not able to get to school and what are the functions of that behavior? Again, the evidence compels an affirmative answer. Dr. Gmeiner, who did a functional analysis of the student’s problem behavior, administered a series of assessment instruments: the School Refusal Assessment Scale-Revised (SRAS-R) both Child and Parent versions, the Revised Children’s Manifest Anxiety Scale (RCMAS), the Children’s Depressive Inventory (CDI), and the Schedule for Affective Disorders and Schizophrenia for School-age Children Present and Lifetime (K-SADS-PL). These tests are useful, indeed are directly relevant, when investigating the reasons for a student’s refusal to attend school regularly. Dr. Geincke administered the Stanford Binet Intelligence Scale-Fifth Edition, a well-known and respected instrument to describe a student’s cognitive ability. Dr. Davidson was responsible for the evaluation of the student’s psychosocial development as it related to the school attendance issues he presented. Dr. Davidson administered a series of tests including the Behavior Assessment System for Children (BASC) Self and Parent Report Forms, the Minnesota Multiphasic Personality Inventory-Adolescent (MMPI-A), the Thematic Apperception Test (TAT), and Incomplete Sentence Blanks (ISB). He also interviewed the student, his parents and his teachers, and conducted a review of the student’s school

records. These tests, particularly when combined with the evaluative instruments administered by the two other panel members, produce relevant information and valuable insights into the set of situations or events that might cause the student to be so averse to attending school. The hearing officer finds that the tests and other evaluative instruments used by the evaluation team were valid and appropriate, given the nature of the referring question.⁵

Finally, MSER 9.13 sets out certain items that the evaluation report itself must contain to be considered appropriate: the report must describe the various evaluation tests used, must state and summarize the results and diagnostic impressions obtained by the evaluators, and must make specific recommendations necessary to accommodate the student's special education needs. There is no question that this report contains all of those elements and, on this third requirement, the hearing officer finds the report in full compliance with the relevant regulatory criteria. Therefore, after consideration of all the evidence presented at the hearing, the hearing officer concludes that the evaluation of the student that the school obtained in the spring of 2007 is appropriate under state special education law and regulations.⁶ Consequently, the parents of the student are not entitled to another educational evaluation at public expense.

⁵ No convincing evidence in opposition to this conclusion was presented at the hearing. The family's contention that the Gmeiner marriage renders the evaluation inappropriate is simply unsupported by the evidence. First, the student's mother gave her consent to the evaluation after discussing the conflict of interest issue at the PET meeting. Further, the content and conclusions of Dr. Gmeiner's report reveal no bias whatsoever against the family; indeed, his part of the evaluation largely supports the family's concerns about the student.

The family's claim that the exclusion of the student's experience at the Aucocisco School renders the evaluation inappropriate is off the mark. The PET asked the evaluators to explore why the student did not attend the South Portland schools; the family was part of that PET and, again, consented to that evaluation. While the student's experience at Aucocisco appeared to be positive and encouraging, it did not need to be examined by the evaluators to answer the questions posed by the PET. In fact, this argument seems more relevant to a discussion about placement than to a challenge of this evaluation.

⁶ See, *Westbrook v. Parent*, (SEA ME 7/24/03, Lenna) and *MSAD #17 v. Parent* (SEA ME 8/15/03, Lenna).

ORDER

After consideration of the evidence presented in this due process hearing, the hearing officer concludes that the school carried its burden to show that the psychological evaluation it conducted in March of 2007 met the standards set forth for such evaluations by state and federal special education regulations. Therefore, the family is not entitled to an independent evaluation at public expense.

Peter H. Stewart, Esq.
Hearing Officer

Date

WITNESSES

School: Scott Davidson, Ed. D. in Counseling and School Psychology,
Licensed Psychologist, Consultant to South Portland schools

John Gmeiner, Ph. D. in Clinical Psychology, Licensed
Psychologist, Consultant to South Portland Schools

Faye Gmeiner, M.S. in Special Education, Special Education Out-
of-District Co-coordinator, South Portland School Department

Judith True, B.S, in Exceptionality, M.S., in School
Administration, Director of Special Education, South Portland
School Department, 2005-2007

Family: Mother of student

Rachel Knight, M.S. in Exceptionality, Special Education
Teacher/Tutor; Teacher at the Aucocisco School

Barbara Melnick, B .S. and M.S. in Special Education, Director,
Aucocisco School

DOCUMENTS

School: School Exhibits 1-87

Family: Family Exhibits 1, 2, 3 and 5 (2 compact discs of 3/20/07 PET
meeting) Exhibit 4 offered, but upon objection excluded from
evidence