

**Special Education Due Process
Hearing Decision
Parents v. Ellsworth
August 28, 1997**

Case No. 97.126

COUNSEL FOR THE PARENT: James Munch, Esq.
Vafiades, Brontas & Kominsky

COUNSEL FOR THE SCHOOL: Eric Herlan, Esq.
Drummond, Woodsom & MacMahon

HEARING OFFICER: Carol B. Lenna

THIS HEARING WAS HELD AND THE DECISION WRITTEN PURSUANT TO TITLE 20-A, MRS.A § 7207, et. seq., 20 USC, § 1415 et. seq., AND IMPLEMENTING REGULATIONS.

On June 25, 1997, the Department of Education received a request for a Due Process Hearing from Father on behalf of his son. Father and his family reside in Ellsworth, Maine. Student is currently placed at the McLean Hospital, Acute Residential Unity, Belmont, Massachusetts.

The Pre-hearing Conference was conducted on July 16, 1997 by telephone conference call. The Hearing convened on July 30 and August 4 and 5 in Ellsworth. All documents were entered into the record as joint entries, numbered A-1 through A-4 and 1-271.

Fourteen witnesses gave testimony at the hearing. The parties waived oral closing statements and requested an opportunity to submit written summations. The record remained open until August 13 for that purpose.

Following is the decision in this matter.

I. Preliminary Statement

Student is a xx year old boy who is currently hospitalized at the McLean Hospital, Belmont, Massachusetts. He is diagnosed with Tourette Syndrome, Obsessive Compulsive Disorder, Attention Deficit Hyperactivity Disorder, and depressive symptoms. There is also a history of drug and alcohol abuse. He is identified as eligible for special education services under the category of "other health impaired." Student was admitted on January 20, 1997 to McLean by his parents after a suicide attempt. He remained there until February 21, 1997. He was discharged to his parents and resumed his school program at Ellsworth High School. A subsequent suicide attempt three weeks later led to his being readmitted to McLean on March 17, 1997. McLean staff have recommended that student be placed in a residential treatment center for long term placement.

It is the parent's position that student requires placement in a residential treatment center in order to benefit from his education. They argue that he has a pattern of suicidal and self-injurious behavior, that he is extremely depressed and impulsive and that the effects of his Tourette Syndrome are serious and frequent and have a severe impact on his ability to function. They argue that this, in addition to his Obsessive Compulsive Disorder and depression symptoms, significantly restrict his function in all areas including social and educational conduct. It is their contention that a 24-hour residential placement is the least restrictive environment in which student could benefit from his education.

The school agrees that student has complex and varied needs. It is their position, however, that the staff at McLean are recommending residential placement primarily to ensure student's safety and to minimize the risk of drug abuse and suicide attempts during less structured times. They argue that the intensive program proposed at Ellsworth High School can meet student's educational needs. They recognize his, and his family's, needs for additional services, but argue that these services are the responsibility of other agencies, specifically the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), not the Ellsworth Schools. They contend that any need for residential placement is to address non-educational or medical concerns.

II. Issues for the Hearing:

1. Is the current IEP proposed by the Ellsworth School Department reasonably calculated to provide student educational benefit in the least restrictive environment?
2. If not, does student require residential placement in order to meet his educational needs?
3. If not for educational reasons, does student require residential placement for other than educational reasons, and if so, do other state agencies share responsibility in this placement?

No procedural violations were claimed by the parents.

III. Findings of Fact

1. Student is diagnosed with Tourette Syndrome, Obsessive Compulsive Disorder, and Attention Deficit Hyperactivity Disorder. His symptoms include “moderately severe multiple tics, obsessive compulsive symptoms, inattention, distractibility and depression” (Documents 39, 112, 117, 208-209, 210-214)
2. The most recent educational testing, completed in January, 1995, reported that student scored in the average range of intellectual functioning on the Wechsler Intelligence Scale for Children – III with a Performance Score of 111, a Verbal Score of 91 and a Full Scale Score of 100. Using the results of the Woodcock-Johnson Psycho educational Battery-Revised the evaluator concluded that “achievement test scores suggest that [student] has solidly average reading, writing and arithmetic skills with good balance between basic conceptual skills.” (158-161)
3. During the 1996-97 school year student’s IEP placed him in regular 10th grade classes in the Ellsworth High School with special education support for test tasking and study hall. He passed all courses in the first quarter except English. Other scores ranged from 94 in Algebra to 70 in Civics. He was given “incomplete” for the balance of the year. (Testimony : Geel, Carros; 94)
4. On January 20, 1997 student’s parents admitted him to McLean Psychiatric Hospital in Belmont, Massachusetts, after a suicide attempt by an overdose of 18-20 Dramamine

pills. Admission notes stated, "He describes his precipitants as follows: (1) He visited with his mother over the weekend....who...was saying upsetting comments about his father, which he felt weren't true. Additionally,....she had, according to the patient, threatened not to take him to school in the morning....(2) The patient is undergoing a risperidone taper....Reportedly, that has resulted in some increase in the patient's tics, particularly his spitting tics....(3) The third precipitant in this patient is just feeling depressed at the chronicity and severity of his tics and Tourette's illness..." Student was discharged to his parent's home on February 21, 1997, and returned to school the following week. (Testimony: Parent, Skaletsky; 95, 217-219, 220-223, 80)

5. The PET met on February 28, 1997, and developed a new IEP for student upon his return to Ellsworth High School. The plan called for student to attend the resource room two hours per day for his academic subjects of algebra, biology, and English with expectations that he would gradually be reintegrated into his regular classes. the family resumed therapy with a local counselor. (Testimony: Parent, Geel; 82-88)

6. In a letter dated March 3, 1997 McLean staff recommended that, in addition to educational services in a self-contained classroom student have individual therapy one time per week, family therapy one time per week, art therapy one time per week, and recreational therapy with a recreational coach one time per week. The family applied for Medicaid assistance to fund a daily recreational coach to assist student in developing positive activities for after school hours. Medicaid funding was not forthcoming and the recreational coach did not materialize. (Testimony: Parent, Carros, Geel; 81)

7. On March 17, 1997, student's parents again placed him at the McLean Psychiatric Hospital after a second suicide attempt by overdose on an unknown quantity of Dramamine pills. (Testimony: Parent; 74)

8. In a letter to the school, dated March 28, 1997, McLean recommended to the school that student be placed in a residential treatment center upon discharge from McLean "given the complexity of his diagnostic concerns, the very serious and impulsive nature of his suicidal behavior, and the poor judgment [he] exhibits when overwhelmed by his tics..." On April 2, the PET met to discuss student's special education status. The parents requested that the school act on McLean's recommendations at the PET meeting. The PET made no decision on placement, but did agree to further evaluation to assess the request. (69-71, 72-73)

9. On April 4, 1997, while at McLean student again took an overdose of Dramamine pills. Treatment notes, dated April 7, stated that he took the Dramamine "in an effort to

'get high' because he was under so much pressure... [O]n the weekend of 3/29 one of his friends in Maine was killed in an automobile accident.... [A] peer on the unit sustained injuries secondary to inadvertently setting herself on fire." (Testimony: Skaletsky; 58)

10. The school contracted with W. Shuttleworth to conduct a psychological evaluation of student at McLean. Mr. Shuttleworth met with E on April 12, 1997. His report stated that student is "lacking resiliency that is essential in coping with daily life", but that he has a more that adequate ability to perform in school. He concluded that student's "Tourette's symptoms are of a moderate nature and significantly impair his capacity to cope and to relate to his peers. [Student] is very depressed and must be regarded as suicidal". Mr. Shuttleworth recommended that student be "placed in a residential or treatment setting for other than educational reasons...to provide for a 24 hour supportive, safe, and therapeutic program... [T]his recommendation resides in his mental health issues. " (Testimony: Shuttleworth; 39-42)

11. In a letter dated April 21, student's Case Manager at Mclean, C. Skaletsky, wrote to the Maine Professional Claims Review office (Medicaid), Department of Human Services, on student's behalf. In this letter she described the impulsive nature of student's suicide attempts and his depression. She concluded, "Given the complexity of [student]'s diagnostic concerns, the very serious and impulsive nature of his suicidal behavior, and the poor judgment [student] exhibits when overwhelmed by his tics, it is the recommendation of [student]'s treatment team at McLean that he transition to a residential treatment program upon his discharge from McLean.¹" She went on to say, "Clearly, [student] needs the structure of a residential treatment facility to help maintain his safety, while he works on issues of self esteem and learns alternative ways of coping with the stress inherent in his psychiatric illness." (199-200)

12. In a letter to the Maine Professional Claims Review office dated April 29, student's family physician wrote, "It has become painfully evident to all of the professionals treating [student]... that [student] is too ill at this point to return to his home. They all feel that he needs a residential treatment program....[H]e needs a very structured environment in which he can feel safe and deal with the many issues that he has stemming from his Tourette's Syndrome. Returning him to his home would likely only result in another crisis and hospitalization." (35)

¹ In a letter addressed to "Hearing Officer" dated June 10, 1997, Ms. Skaletsky makes this same statement.

13. Student's parents completed an application to Sweetser on April 25, 1997. When asked to identify student's "problem behaviors" they identified: "suicide attempts, TS, OCD, ADD and ADHD, drug abuse, and depression". (43-57)

14. Sometime in the spring student's parents contacted regional representatives of the Maine Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) to discuss the possibility of funding for residential services from that agency. They were told that the agency does not have fund to support residential treatment, that the department's focus is on early intervention. They did offer reimbursement to the family to travel to McLean to visit student. (Testimony: Parent)

15. A letter from student's local therapist, dated May 9, 1997, to "Whom It May Concern:" stated that she has "continued to be in frequent contact with [student]'s parents and to monitor his progress at McLean." It was her opinion "that [student] will benefit from a closely supervised and structured environment in which he can continue to explore the symptoms of his neurobiological disorder and to learn healthy coping skills. There is a need for ongoing family therapy with both sets of parents. [student] is very bright, articulate young man and with the appropriate environment and improved family interaction and support, I believe his prognosis is good." (D. 38)

16. The PET met on May 14 to review the Shuttleworth evaluation. McLean records were brought to the meeting by student's parents. The decision was made to adjourn and reconvene as soon as possible to give members time to review materials. The team reconvened on May 22 to discuss all current information, develop a new IEP and make placement determinations upon student's discharge from McLean. The new IEP proposed a program which placed student in Ellsworth High School. Initially, student would receive instruction in a self-contained resource room, with gradual transition into regular classes accompanied by a full time technician. The school described proposed strategies to address student's needs for safety and emotional support while in school. The parents stated that this plan did not address student's mental health needs; student required a 24 hour residential program. The IEP was unacceptable to them. The team was unable to reach consensus. The parents were provided with due process information. (Testimony: Parent, Geel; 20-22, 23-31, 32-34)

17. Phone logs of T. White, school administrator, from May 12-May 22 list numerous attempts to make contact with DMHMRSAS regional staff on student's behalf. (19)

18. A letter from the Director of Special Education, dated June 10, 1997, was sent to student's parents to clarify the program being proposed by the school. The letter stated that the school would fund consultations with student's regular counselors, provide in-service training on student's disorders for all appropriate staff, support the development of a peer support group, develop a program of recreational therapy, coordinate arrangements for student's participation in a drug counseling program, and provide coordination of school and after school activities with any other agencies working with student. (Testimony: Carros; 16-18)

19. In a letter dated June 10², addressed to the Department of Education "Attention Hearing Officer", student's Case Manager from McLean, Ms. Skaletsky, summarized student's hospitalization and treatment at McLean and reiterated the staff recommendation that student be placed in a residential treatment center. "Clearly, [student] needs the structure of a residential treatment facility to help maintain his safety, while he works on issues of self esteem and learns alternative ways of coping with the stress inherent in his psychiatric illness. It is the opinion of the treatment team that [student] would be at significant risk of suicide/self injury were he returned to the community," (201-203)

20. In a second letter to the Maine Professional Claims Review Office, dated June 10, 1997, Ms. Skaletsky states "[student]'s judgment is very poor, evidenced by multiple examples of polysubstance abuse [at McLean]... [I]t is the treatment team's recommendation that [student] transition to a long term placement where he continue to work on coping skills which will enable him to manage the multiple stressors inherent in his complicated diagnostic issues and family dynamics. Ideally, this residential program will be located in closer proximity to his family, so that family work can occur more frequently." (231-231)

21. Student's educational program at McLean is individualized. The focus is not traditional academics but focuses on the patient's psychological and emotional needs. Student has been tutored in math and has been assigned journal writing. They have used a drug abuse curriculum for reading/writing assignments. Educational staff supported the recommendation for student to be placed in a residential treatment center so that he could have an educational component as part of an overall treatment plan. They stated that student has difficulty maintaining academic focus and attention because of the stress and depression associated with his Tourette and OCD symptoms. The Head Teacher at McLean wrote, "There are times... when [student] becomes

² A second copy of this letter appears in the record at 228-230. The letters are identical with the following exception. The copy at 229 does not include the paragraph which states there is an attached letter from student's "head teacher [at McLean] which describes the negative impact of [his] diagnostic issues on his educational experience." Both letters are dated June 10.

overwhelmed with his Tourette's and his other learning disabilities.³ At such times he will isolate from others or recreate an already well-worn path of engaging in high risk behaviors that can become life threatening." (Testimony: Geismar, Callanan; 204)

22. On June 19, 1997, the school's attorney wrote to the Assistant Attorney General assigned to DMHMRSAS, C. Leighton, requesting assistance from that department, on student's behalf, in resolving issues around student's program and placement. The letter stated, "It is Ellsworth's strongly held view that any need that may be found in this case for the student to remain in a residential program to address his safety and mental health issues remains the responsibility of DMHMRSAS, and cannot be shifted to a local school unit simply because the student also has special education needs." A copy of this letter was sent to the Commissioner of Education and the Assistant Attorney General assigned to the Department of Education. (13-15).

23. On June 19, the Superintendent of the Ellsworth School Department wrote to the Commissioner of Education requesting assistance in resolving issues of interagency responsibility for student's program and placement. In this letter the Superintendent stated, "We are available to participate in any process that may be required to resolve this matter, but are also willing to carry the issue further if DMHMRSAS is unwilling to develop a fair resolution of the problem." (12)

24. On June 30 the school's attorney again wrote to Assistant Attorney General Leighton informing him that dispute around the programming and placement of student was unresolved and the parents were moving ahead with a due process hearing. (9-10)

25. On July 10, 1997 school's attorney wrote to the Assistant Attorney General for Health and Institutional Care summarizing a phone discussion between the two of them regarding issues surrounding DMHMRSAS involvement in student's programming and placement. The letter stated that the school "continues to be frustrated with the difficulty of accessing in any meaningful way a process for obtaining answers to these issues." The letter stated that the school was under the impression that a meeting at the regional level was planned to discuss the possibility of service options for student from that department. (Testimony: Carros; 1)

³ Educational testing does not support a diagnosis of "learning disability" The parties stipulated that E does not meet the regulatory definition of "learning disabled".

26. The Children's Team Leader, Regional Officer of DMHMRSAS testified that she had been aware of student's case for about six weeks. She stated that her office currently had no plan to provide service assistance to student and that this time no meetings to discuss student's programming and placement needs was scheduled. She was unaware of the "Interim Interagency Agreement" signed by the Commissioners of Education, Human Services, MHMRSAS and Labor. She stated that her agency could participate in funding a plan which included residential placement as part of a plan to transition a client from a hospital-based to a community-based program, but that no such plan currently existed on student's behalf. (Testimony: Passero)

27. The "Interim Interagency Agreement for Resolving Claims...Sought...under § 1413" was signed by the Commissioners of the Departments of Education, Human Services, MHMRSAS, and Labor in September 1996. The "Overview" section of this document states that the Departments...."are currently working toward an agreement or agreements that will establish general principles for cooperation and collaboration and specific procedures for the provision and payment of services to persons who are clients of two or more of the departments. It is the general goal of the named departments to work cooperatively among each other, and with school administrative units at an early stage in the development of a services plan for special education students who are identified as clients of one or more of the departments." (Emphasis added.) The document then goes on to describe the process whereby schools may make "a claim for reimbursement from one or more of the [named] departments." This claim "must relate solely to educational services identified in the IEP that the student is entitled to receive from the school..." (A 1-4)

IV. Conclusions

Schools must assure that all students with disabilities have a "free appropriate public education". 20 USC § 1412 (1). This education, to the maximum extent appropriate, must be provided in the least restrictive environment with children who are not disabled 20 USC §1412 (5) (B). A student should be moved out of the regular education setting in his local school "only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. " 20 USC §1412(5) (B). When a residential treatment center is being considered, "[t]he placement of a student...shall be based in part on an evaluation by a certified school psychologist or school psychological examiner and the documentation that the student's *special education needs* cannot be met in a less restrictive setting." Maine Special Education Regulations, Section 9.14 (Emphasis added.)

Since being identified as a special education student, student has received a majority of his education in regular classrooms with minimal modifications and supportive assistance. During 9th grade and the first quarter of his 10th grade years student was passing most of his subjects with an individualized education plan that required little special education intervention. Evidence supported the parent's claim that student struggled with his neurological disorders and at times did not do well in school, but overall it is clear that he did benefit educationally.

The school's program is defined as appropriate if the school has complied with the procedural guarantees set forth in law, and has provided an individually designed instructional program which is reasonably calculated to provide educational benefit to the student. Board of Education v. Rowley, 102 S. Ct. 3034, 3051 (1982) When student left Ellsworth High School in January 1997, he had a program in place which met this standard.

It is difficult, however, to assess the appropriateness of the school's proposed IEP using the Rowley standard. student has been a patient in a psychiatric hospital almost full time for the past 8 months. student's parents, and staff at McLean Hospital argue that he no longer has the capacity to benefit from a public school placement given the deterioration of his condition since being at McLean. Since March 1997 the staff of the McLean Hospital have insisted that the complexity of student's psychiatric issues and their concerns about the serious and impulsive nature of his suicidal behavior support a recommendation for a "highly structured therapeutic residential program...to manage the multiple stressors inherent in his struggle with Tourette's Syndrome, and the compounding complications of his other diagnostic issues." (Skaletsky 214) The school's expert witness, Mr. Shuttleworth, reached the same conclusion in April stating that student was "very depressed and must be regarded as suicidal". Evidence supports the parents position that student uses poor judgment when overwhelmed by his tics and has shown little progress in his ability to cope with the factors associated with his previous suicide gestures.

The school makes an equally valid argument that these recommendations are not educationally driven. Neither McLean staff nor Mr. Shuttleworth recommended this placement in order to meet student's special education needs. But, the school agrees that maintaining student's safety in and out of school is still a major concern.

The program proposed by the school appears to be well thought out with support for student's educational needs and responsive to his diagnosed neurological disorders. However, at this time, there is no way to determine if stress and depression will render student incapable of taking advantage of the program because of his impulsive suicidal behavior. student's actions during the period between his first and second hospitalization support the parents' concern that this is a real possibility and puts student at grave risk.

Without structured therapeutic intervention there is every reason to believe that student is likely to continue impulsive suicidal gestures, continue in drug abuse activities especially dangerous to someone with his medication needs, and fail to develop the “healthy coping strategies” necessary for his well-being.

The therapeutic support network to keep him safe simply does not exist in the community nor does there appear any capacity at this time to develop such a network for him. For this reason, it is not feasible for student to return to the community and to participate in the proposed program at the Ellsworth High School.⁴ His need for safety from his “impulsive suicidal behavior” and his need to develop healthy, alternative ways of coping with the stress associated with his Tourette’s symptoms outweigh his need to be in the less restrictive setting of a public high school. Therefore, student can only receive a free appropriate public education at this time by being placed in the therapeutic milieu of a residential treatment center, even though the primary reason for that placement is not to meet his educational needs, but his mental health needs.

Student has a fundamental right to a free appropriate public education which is at no cost to his family. While his mental health needs fall within the statutory scope and obligations of the DMHMRSAS, Maine law does not give a hearing officer the authority to mandate the participation of other agencies in the funding of a placement for a disabled child. Therefore, the school must bear the burden of placing student in a residential treatment center, and use other means to compel the participation of other state agencies in this placement effort.

“Each State plan shall... set forth policies and procedures for developing and implementing interagency agreements between the State educational agency and other State and local agencies to define the financial responsibility of each agency for providing children with disabilities with free appropriate public education and resolve interagency disputes, including procedures under which local educational agencies may initiate proceedings under the agreement in order to secure reimbursement from other agencies or otherwise implement the provisions of the agreement...” 20 USC § 1415 (a) (13).

⁴ The school, through Mr. Shuttleworth, makes a convincing, philosophical argument for returning student to the public high school in conjunction with a highly structured, therapeutic community based network of services. No evidence was presented, however, that the capacity, the commitment, or the resources currently exist in the region to support such a network. Student is simply too vulnerable at this time to risk the possibility of failure. It should be a long term goal, however.

State and Federal special education laws “may not be construed to limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the state.” 34 CFR § 300.600. “

In September 1995 the US District Court determined that the State of Maine was not in compliance with 20 USC § 1415 (a) (13) and ordered the State to establish policies and procedures for developing and implementing interagency agreements in compliance with this Section. Ciresoli v. MSAD 22, 901 F Supp. 378 (D. Me 1995) An “Interim Interagency Agreement”⁵ was signed in September 1996 by the Commissioners of the Departments of Education, Mental Health, Human Services and Labor. This document states that the departments “will establish general principles for cooperation and collaboration and specific procedures for the provision and payment of services to persons who are clients of two or more of the departments.” It goes on to state that it is the “general goal of thedepartments to work cooperatively...with school[s],” and that the agreement is “designed to meet the requirements of...[Section] 1415...” (A 2-4) No substantive language which defines the “general principles for collaboration” which exist among the departments is written in the agreement.

In February 1997 “The Children’s Cabinet”, a state level interdepartmental coordinating committee, published a description of a Regional Children’s Cabinet system. This document describes an interagency case review process for the planning and delivery of services to children using regionally based teams. During the spring of 1997 both the school and the parents made contact with the regional office of DMHMRSAS. Neither were apprised of this regional system nor invited to participate in any planning effort on student’s behalf. At the hearing Ms. Passero, the regional representative of DMHMRSAS, made it clear that her agency considered student a potential client of the agency and that his disability profile was within the statutory scope of services which could be provided by her agency. However, she went on to say that currently there were no meetings scheduled to discuss student’s service needs and that she was not aware of any specific meeting to develop a plan to address his needs in the community. Case Management services which could assist in putting together the array of services which might be required by student was contracted to a local agency, but there was currently a waiting list for these services. She could not predict when such services might be available.

⁵ A memo from the Department of Education accompanying the agreement stated that the Commissioner “did not see it as an interim agreement.” (A 1)

Page two of the "Interim Agreement" gives specific procedures for a "claims resolution process". It states that schools may notify the "Department of Education of a claim for reimbursement from one or more of the departments. The claim... must relate solely to educational services identified in the IEP that the student is entitled to receive from the school under ... IDEA". This agreement does not appear to provide a mechanism to resolve interagency disputes around the provision of, or payment for, costs of a free appropriate public education to disabled students when the service is not solely an educational service. The case at issue involves a student who requires placement in a residential treatment center in order that he receive a free appropriate public education. This placement is not to meet his educational needs, per se, but his ability to benefit from an education is dependent upon his emotional stability. The claims resolution process described in the agreement would appear to deny the school a mechanism for addressing this problem. In addition, it appears to force schools and parents to go through a due process hearing to define "educational services" before any claim can be made. And finally, the agreement appears to limit the school's claim to those services the school is already obligated by law to provide to disabled students.

If it is the intent of the "Interim Agreement" that issues such as exist in this case can be resolved using this process, it has not proved a successful mechanism. In a letter dated June 19, 1997 the Superintendent of Schools for the Ellsworth School Department wrote to the Commissioner of the Department of Education notifying the Department of the "very serious need for other state agencies to become involved in the delivery of services (or funding) for a student... who presents a very high suicide risk outside of school, in addition to a serious substance abuse problem." The Superintendent makes clear that the school is "available to participate in any process that may be required to resolve this matter." The Superintendent received no response to that letter.

On June 19, June 30 and July 10, 1997 the school's attorney wrote to the Assistant Attorneys General for Health and Institutional Care in which he laid out the dispute regarding student's need for residential placement, the school's claim that DMHMRSAS had responsibility to student in this placement, and the school's wish to resolve the dispute without having to go to a due process hearing. He was not referred to the dispute process identified in the "Interim Agreement" and received no written response for pursuing any other resolution to this issue.⁶

Requests from the family and the school to the regional DMHMRSAS resulted in no

⁶ Both parties were led to believe from phone conversations with the assistant attorneys general that a regional meeting had been scheduled to discuss student's needs, and possible solutions to the current need for interagency cooperation. Both attorneys were surprised to learn from Ms. Passero's testimony that she was unaware of any specific plans being made on student's behalf. A meeting was planned to discuss regional planning needs, but student was not part of that agenda.

action by that department and no offer of assistance for interagency collaboration or funding. Requests by the school to resolve the issue at the state level resulted in no action. If the "Interim Interagency Agreement" is indeed the mechanism which is designed to meet the requirements of Section 1413, it has not served that purpose. The goal of working "cooperatively...with school administrative units at an early stage in the development of a services plan for special education students who care identified as clients of one or more of the departments" was not met. A process for "resolving claims for reimbursement of expenses for educational services ...that are brought against one or more of the departments..." was not offered to the school. The family and the school were pushed into a due process hearing to resolve issues which were not under contention. This has imposed a great cost of valuable time and money on both the school and parent, as well as a emotional toll on those who participated. All the while creating a situation where student remains in what all parties describe as a very inappropriate setting for him

This was never a dispute about student's educational needs,⁷ but a dispute about funding; not a dispute about student's ability to benefit from his educational program, but who would bear what costs so that he might benefit. It is, once again, the lack of a formal process at the state level for interagency planning and dispute resolution around funding and agency responsibility which has resulted in this conflict.

⁷ Student's parents and the McLean staff began to argue that student's need for residential placement was for educational reasons only after it became clear that funding was not forthcoming for this placement from other agencies. The original recommendation from McLean in March was that student receive therapeutic support for "the very serious and impulsive nature of his suicidal behavior". It was not until June that McLean began to argue that student should be placed residentially for educational reasons.

V. Order

1. The School shall convene the PET within 15 days of the receipt of this decision for the purpose of reviewing and revising as necessary goals and objectives to meet student's special education and related needs. Staff from McLean Hospital shall participate in order that student's therapeutic needs are identified in the IEP. Application to an appropriate residential treatment center shall be begun within 20 days of the receipt of this decision.

2. The Pet shall petition the regional children's cabinet to develop and fund a transition plan and service capability to meet student's special education and therapeutic needs in the community.

Carol B. Lenna
Hearing Officer