

**Katherine A. Neale, M.Ed., J.D.**

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October 6, 1997

To: Parent  
Prescott Verrill, Jr., Superintendent  
P.O. Box S  
Livermore Falls, ME 04955  
549-3261

From: Katherine A. Neale, Hearing Officer

Subject: Hearing Decision #97.140, Parent v. SAD #36

This is to provide you with my decision in the Special Education Due Process Hearing involving Mother and SAD #36 on behalf of her child.

Either party may appeal this decision by filing a petition for review in Maine Superior Court or Federal District Court within thirty (30) days of receipt of this decision. The petition for review in Superior Court must be filed in the county in which the student resides or the county in which the Administrative Unit is located.

The Administrative Unit shall submit to the Commissioner of the Department of Education, with a copy to the Due Process Consultant, documentation that the Unit has either complied with this decision or that an appeal is pending. Such documentation shall be submitted no later than forty-five (45) days after the receipt of this decision.

The parent may request the Department of Education to review the Unit's compliance with this decision by filing a written complaint with the Commissioner of the Department of Education.

Any questions regarding this decision or the record of the hearing should be directed to: Due Process Coordinator, Division of Special Services, Department of Education, State House Station #23, Augusta, ME 04333.

cc: Eric Herlan, Attorney for School  
Matiana Glass, Director of Special Services  
A. Leigh Phillips, Due Process Consultant

**STATE OF MAINE**

## **SPECIAL EDUCATION DUE PROCESS HEARING**

October 6, 1997

### **Case # 97.140, Parent v. SAD #36**

Parent: Pro Se

School represented by: Eric Herlan, Esq.

Hearing Officer: Katherine A. Neale, M.Ed., J.D.

### **THIS HEARING WAS HELD AND THE DECISION WRITTEN PURSUANT TO TITLE 20-A, M.R.S.A., §7207 et. seq.; TITLE 20 USC, § 1415 et. seq.; AND IMPLEMENTING REGULATIONS.**

On July 28, 1997, the Department of Education received a request for a Due Process Hearing from the mother on behalf of her child (hereafter the student).

The pre-hearing was initially scheduled for August 20, 1997, but due to a long-scheduled vacation of the school's attorney and through mutual agreement of the parties, it was rescheduled to August 25, 1997 and held via a telephone conference call. Exhibits submitted by the parent are numbered P-101 through P-114; P-201; P-301 through P-304. Exhibits submitted by the school are numbered 000 through 253. A joint production is numbered J-A1 through J-A51 and J-1 through J-88. The hearing was held on September 8, 9 and 18, 1997 in Livermore Falls, ME.

### **I. PRELIMINARY STATEMENT**

The student (DOB ) is a x year old male, currently in the ninth grade. The student suffered neurological injury as an infant, affecting the student's development in a multitude of areas. The student has significant sensory motor problems, problems of language and communication, problems of learning and memory, and problems of executive skill and adaptive functioning. An extensive number of evaluations have been conducted over the years documenting the significant and pervasive nature of the student's developmental problems. Intelligence testing yields scores in the mild to moderate range of mental retardation with more developed social and adaptive skills and poorly developed academic skills.

## **II. ISSUES**

1. Whether the School failed to implement the Individualized Education Program as per the voice activated speller and/or computer, books on tape and Occupational Therapy?

2. Whether the current IEP is reasonably calculated to provide educational benefit in the least restrictive environment?

## **III. FINDINGS OF FACT**

1. Over the past three years the Pupil Evaluation Team (PET) has met 19 times around the student's program. In addition to the PET meetings, the parent and school personnel meet monthly on a regularly scheduled informal basis. A minimum of 26 evaluations and reports have been created within the past three years regarding the student's areas of needs.

(Exhibit: Indices)

2. The student was comatose for two weeks as a newborn and had a left-side neurological delay. The student has a number of developmental disabilities that affect his vision, motor skills, language, communication skills, and ability to learn. The student has been extensively evaluated throughout the student's x years. In tests of intellectual functioning, the student consistently scores in the mild to moderate range of mental retardation. In a Neuropsychological Report dated February 20, 1996, Dr. Richard Doiron employed 15 techniques in the evaluation, including administering the WISC-3. The student had a full scale score of 46. Dr. Doiron testified that the student needs to begin to demonstrate preferences; needs more exposure to experiential learning; needs to be specifically taught how to relax. He sees the student as needing a small environment with people who know the student's capabilities and can help the student prepare for adulthood. Dr. Doiron's report contains three pages of valuable recommendations. (Exhibits: 108; Testimony: Parent; R. Doiron)

3. In a Psychological Evaluation report dated April 26, 1996, Dr. Nicholas Rehagen employed five evaluative techniques, including the WISC-3 (Full Scale Score 48). He emphasizes that "it will be important to focus on the most critical aspects and care be taken not to over-load [the student] with a too-aggressive academic program....Assisting (the student) in developing improved communication skills, assertive skills, and a sense of safety in group participation will serve him well....Ideally, a functionally based program will best suit [the student's] needs as we look to the future." Dr. Rehagen testified that in reviewing

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the student's IEP, he found it proportionately too high in academics and that the

student needs more skills and coping mechanisms for adult life. He believes the 9th grade science program is beyond the student's level of abilities and that the current math goal of three months gain in one year is reasonable given the student's abilities to acquire the information. Also in April 1996 (7th grade), the special education teacher, Deborah Dubord administered the Woodcock-Johnson Tests of Achievement - Revised. In the areas of Reading, Math and Written Language, the student had grade equivalents ranging from K.4 to 1.2. The student's highest scores were in Broad Knowledge where the student received a grade equivalent score of 5.2 in Science. (Exhibits: 093; 075A; 100; Testimony: N. Rehagen)

4. The PET met on May 28, 1996 to review the triennial assessments and develop the IEP for the 1996-97 school year. The minutes state that "[w]hile scores indicate growth in all areas, there continues to be significant deficits in both receptive and expressive language skills." The parent requested that the science and social studies texts be provided on tape for the student to use at home. Ms. Glass stated that the newly ordered science text included tapes, and would be available for the student. The special education teacher, Deborah Dubord, noted that much of the content would be above the student's level of understanding. The father stated that he was not interested in looking into the Jay Life Skills Program. The determinations from this meeting were that the student continued to be eligible for special services and a subsequent meeting would be held to review another assessment and to develop the 1996-97 IEP. (Exhibit: 039)

5. The PET met on June 6, 1996 to continue the review of assessments (Brigance) and to develop the 1996-97 IEP for the student. The minutes reflect that growth was made in reading and the team drafted new reading and written language goals at this meeting. Ms. Glass, Director of Special Services, recommended that the family explore the Life Management Skills Program at the Foster Vocational Center at Mt. Blue High School as an appropriate placement for the student's 8th grade year. The PET determinations reflect agreement on the goals and objectives for reading, written language, math and social skills; that the student will have support for the content areas; will have speech/language therapy and occupational therapy; twenty hours of reading and math for Extended School Year services; and another meeting would be scheduled to develop the remaining goals and objectives. (Exhibit: 036)

6. During the summer of 1996, the parent employed Barbara Melnick, Special Education Consultant, to conduct a records review and make program suggestions. Ms. Melnick makes a number of practical suggestions and recommended using the Brigance Inventory as a means of tracking progress for the student. (Exhibits: 080; Testimony: B. Melnick)

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7. On August 22, 1996, the PET met again to continue developing the 1996-97 IEP and to discuss the vocational assessment. The team accepted some of the suggestions from the Melnick report. The minutes indicate that the parent wanted the student to attend the Southern Maine Learning Center in Scarborough, ME, a private school for learning disabled students. The parent also stated that Crotchet Mountain Rehabilitation Center in Greenfield, NH (a rehabilitation facility for young people with traumatic brain injury and a residential program for multi-handicapped youth) could meet the student's needs. When Ms. Glass responded that the district had an appropriate program for the student, the parent notified the school that the student "would not be attending school at the Livermore Falls Middle School and would remain home until funding is provided for the school placement in Scarborough, Maine." The team reviewed the Occupational Therapy (OT) and Speech/Language goals and objectives. Neither provider was present at the meeting. The parent wanted to increase speech from 60 minutes of services per week to 90 minutes per week and to add a goal for spontaneous speech and interactive speech skills. No determination was made without the input from the provider. The minutes also indicate that the parent informed the school that she did not believe the Touch Math Program was appropriate for the student. The team made the following determinations: 1) a modified day consisting of two hours of tutoring in reading and math, lunch, exploratory activities and student activities time; 2) Speech and OT provided, and increased time and additional goal explored with speech therapist; 3) Employment Support Services to conduct a vocational assessment; 4) scheduling of monthly parent/school meetings; 5) amending the IEP to delete the goals and objectives related to Science and Social Studies "in order to accommodate the schedule requested by the parent." (Exhibit: 032)

8. The PET met on October 3, 1996 to review the Speech/Language goals and the vocational assessment. The team agreed to use portions of the Brigance Inventory to track progress. The vocational assessment was completed and indicated an interest in animal care, housekeeping, and laundry services. The parent dismissed the results or usefulness of the inventory for developing a high school program for the student. Following this meeting, the Director of Special Education sent a letter to the parent detailing the school's position regarding the student's need for a full school day and a program focused on functional life skills. (Exhibits: 031A; 000)

9. The PET met on November 4, 1996 to discuss extending the student's school day to a full day, a functional life skills program and a transition plan. The parent refused to change the student's program to a full day and adamantly refused to consider a functional life skills program. (Exhibit: 031G)

10. The PET met again on November 13, 1996 to review the draft IEP containing a life skills component. The parent rejected any inclusion of life skill programming. The parent also expressed dissatisfaction with the school's limited use of the Brigance Inventory. (Exhibit: 031D)

11. The PET met on December 17, 1996 at the parent's request to review the Occupational Therapy services in the IEP. Previously, the parent had requested that Erica Englemann, OT, communicate with Dr. Bradford Smith, Optometrist, who regularly sees the student for vision therapy and who had just conducted a progress evaluation. The minutes indicate that the OT and special education teacher were in agreement with Dr. Smith's recommendations and Ms. Melnick's recommendations, and that the student's program already included these recommendations. The parent was clearly unhappy with the program and there was little to no trust of the school personnel being able to implement the recommendations. (Exhibit: J-83; J-87; P-201; Testimony: Erica Englemann)

12. On November 22, 1996, a mediation was held pursuant to the parent's request for a due process hearing. The parties mutually agreed that the school would hire an educational consultant to help them design a program to meet the student's needs. It was agreed that the new program would be in place by mid-February and the consultant would continue to work with staff in the implementation of the program. The school hired Jo-Anne Dee, Special Education Consultant. (Exhibit: J-63)

13. "Books on tape" as an assistive device first appears in the 1994-95 IEP and is included in all subsequent IEPs. "Voice activated word speller" as an assistive device first appears in the 1996-97 IEP and is removed from the 1997-98 IEP following discussions at the August 25, 1997 PET meeting. (Exhibits: 001A-I; 001-031; J-A31; J-A27)

14. The PET met on January 27, 1997 to review Jo-Anne Dee's findings following a review of the records and two days of observations. The minutes reflect the parent's dissatisfaction with the IEP development process and her desire to have Ms. Dee and the Special Education Director develop a whole new IEP prior to the next PET meeting. The parent also expressed displeasure with the Occupational Therapist's perception of the student's visual ability. Parent wants direct OT services, including sensory integration (Exhibit: J-80; Testimony: J. Dee; parent; E. Englemann)

15. The PET met again on February 4, 1997 to continue the OT discussion with the therapist present. Following insistence from the parent, the team determines that the OT will maintain regular contact with Dr. Smith

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(optometrist) for his recommendations regarding the student's visual perception/motor needs. (Exhibit: J-76)

16. The PET met on February 24, 1997 to review the observation report submitted by the OT; begin revision work on the IEP; and review the results of the S.N.O.W. (Strengths, Needs, Opportunities & Worries) meeting regarding transition planning. The determinations include: Ms. Dee developing a learning profile along with strategies; pre-teaching for industrial arts; and exploring specific modifications for the computer class. (Exhibit: J-67)

17. The PET met on March 17, 1997 to address the learning profile and to complete the revision of the IEP. Ms. Dee, Ms. Glass and the parent met for a work session that morning prior to the PET meeting. The PET incorporated all the changes developed during the morning meeting. (Exhibit: J-50)

18. The PET met again on March 26, 1997 to discuss the student's inclusion in social studies and science classes. The team's determinations included: the student would start attending school for a full day; he would receive regular education science and social studies instruction with assistance; the parent would review the classroom modifications with the regular education teacher not at this meeting; Ms. Dee would observe both classes; parent would receive copies of the text chapters and regular communication to facilitate her working with the student at home. Following this meeting, the student did participate in the science class but not the social studies class "because of the stay-put affect resulting from the due process." (Exhibits: J-25; J-1)

19. The PET met on May 20, 1997 to address the following: teacher's end of the year progress report; Ms. Dee's progress report; proposed 1997-98 class schedule for 9th grade; transition and rehabilitation services. The parent stated at the meeting that she wanted a voice activated computer system for the student. The school requested that Jo-Anne Dee investigate the necessity for the student to have of a voice activated computer in order to benefit from his education. In the End of the Year Progress Report, May 1997, Ms. Dubord notes that the Brigance results were obtained using prompts and visual cues. The student achieved the following grade level results: Readiness - 1.8; Word Recognition - 1.0; Word Analysis - 1.0; Math - 1.0; Graphs/Maps - 3.0; Spelling/Writing - Primer. Regarding Reading, Ms. Dubord states, "This year's focus on using the Distar program has provided [the student] with repetitive, predictable exercises.... Words are just now being created from sounds and letters practiced (the, see, mad...). The student has also been working with a collection of functional and basic sight words in groups of four." The report notes progress in other areas including the student's articulation, compensation skills in

math, using the computer and social interactions. (Exhibits: J-1; J-A13; Testimony: D. Dubord)

20. On August 16, 1997, Ms. Dee lettered the school the results of her investigation and concluded that “[t]raining would be difficult and would take time as (the student) tries to work out voice and articulation problems and adjustments. For [the student] to learn the program as it was described to me could be very frustrating and burdensome.” (Exhibit: J-A45; Testimony: J. Dee)

21. The PET met on August 25, 1997 to review and update the IEP, review the OT evaluation, review the report on the voice activated computer, and review the results of the summer program. The PET determined that OT services would be on a consultation basis with the special education teacher implementing the objectives; the student would have access to the voice activated computer program through resource services; speech and language services would continue at 60 minutes per week and objectives were revised to reflect the growth the student had made. Erica Engelmann, OT, testified that she agreed with the 7/24/97 Molly Arnold OT evaluation that direct OT services were no longer necessary for the student to benefit from the student’s education and that the special education teachers and gym teacher could implement the objectives through consultation. The parent wants direct OT services. It appears that the school did not provide access to the voice activated computer. (Exhibit: J-A27; Testimony: E. Engelmann; Parent)

#### **IV. CONCLUSIONS**

The Individuals with Disabilities Education Act (IDEA) requires that the local school unit provide students identified as disabled with a “free appropriate public education.” [20 U.S.C.A. §1412 (2) (B)] IDEA provides little guidance as to what constitutes an appropriate program. The United States Supreme Court in Board of Education v. Rowley, 102 S. Ct. 3034 (1982) concluded that the law imposes a two-fold obligation on the school in developing an appropriate program: the program developed must meet the procedural requirements of the law and regulations; and the program developed must be reasonably calculated to provide the student with educational benefit. [Rowley, 102 S. Ct. at 3051] The Court concluded that IDEA does not require schools to maximize a student’s potential in developing the IEP. [Rowley, 102 S. Ct. at 3049]

In addressing the first prong of the Rowley test, the Court ruled that the procedural requirements of IDEA are as important as the substantive requirements of the law. The 1st Circuit Court of Appeals (Maine is in this Circuit) noted that a school’s program may be found in violation of the law on procedural grounds when the “procedural inadequacies compromised the pupil’s right to an

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appropriate education, seriously hampered the parent's opportunity to participate in the formation process, or caused a deprivation of educational benefits." [Roland M. v. Concord School Dept., 910 F.2d 983, 984 (1st Cir. 1990)]

However, it should be noted that where the school's procedural violation has been technical and non-prejudicial, it may not, per se, defeat an individualized educational program. [Doe by Doe v. Defendant ], 16 EHLR 930 (6th Cir. 1990)] Relief is also not available where the due process violation does not cause harm. [Myles S. v. Montgomery County Board of Education, 20 IDELR 237 (M.D.Ala. 1993)]

In addressing the second prong or the issue of "educational benefit," the Supreme Court stated that for a student with a primarily mainstream program, the standard is likely met if the program "is reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." [Rowley, 102 S. Ct. at 3049, 3051 n. 28] It is clear from the law that the standard is more than minimal benefit or slight academic gains. The First Circuit Court of Appeals has also made it clear that educational benefit would require "demonstrable improvement." [Roland M., 910 F.2d at 991]

In the present case, the parent alleges that due to the school's procedural violations of failing to implement parts of the IEP, and an IEP not calculated to provide educational benefit, the student has been denied an appropriate education. In analyzing the first prong of Rowley, the parent alleges specific procedural violations regarding the school's failure to implement the IEP as per the voice activated word speller and/or computer, the books on tape for the regular education science class, and the Occupational Therapy. The IEP identifies the voice activated speller and the books on tape as two of six items under the section, Assistive Devices Needed.

Maine Special Education Regulations, Section 2.2 defines Assistive Technology Device as "any item, piece of equipment, or product system...that is used to increase, maintain, or improve the functional capabilities of children with disabilities." The voice activated word speller is a small item with a key pad and screen readily purchased at Radio Shack and when a word is typed in, the device "voices" the word. A review of the record indicates that this item is not necessary for the student to increase, maintain or improve the student's functional capabilities. The End of the Year Progress Report, May 1997 includes the results of the Brigance test and notes that the scores reflect modification in delivery and response, i.e. prompts and visual cues were used with the student during the testing. The relevant test results indicate the following grade levels: Word Recognition - 1.0; Word Analysis - 1.0; Spelling/Writing - Primer. The test evaluator and special education teacher, Ms. Dubord notes, "This year's focus  
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on using the Distar program has provided [the student] with repetitive, predictable exercises....Words are just now being created from sounds and letters practiced (the, see, mad ...). (The student) has also been working with a collection of functional and basic sight words in groups of four.” Arguably, the voice activated word speller may be an additional reinforcement tool for the student’s expanding primer spelling vocabulary, and possibly fun to use as a diversion from the reading/writing program. However, it is not found to be necessary in order for the student to increase, maintain, or improve his functional capabilities, especially given the repetition inherent in the Distar program. Failure to use every assistive device listed on the IEP does not rise to the level of a violation, and in this case has not caused the student harm.

Regarding the voice activated computer program, while it is true that the school failed to provide this device following the PET determination to do so, the evidence clearly indicates that this is not necessary for the student to benefit from the student’s education and would in fact be frustrating and burdensome, especially given the student’s articulation problems.

The IEP also identifies books on tape under assistive devices. The PET minutes reflect some discussion regarding providing the science text on tape. The parent requested the tapes for the student to use at home. As was noted during the hearing, these are typically used for blind students. The student began participating in the 8th grade science on March 31, 1997 when the class was studying the elements and properties of the periodic table, followed by reproduction. Ms. Dubord’s End of the Year Progress Report indicates that he did quit well with modified quizzes and tests. She notes in her report that, “[the student] is held responsible for a very limited amount of information. The challenge remains to provide a modified curriculum for the student’s level of ability while keeping (the student) in contact with (the student’s) peers.” Given that the student is developmentally a concrete, experiential learner, passively listening to a 8th grade conceptually oriented text book is not found to be necessary for the student to increase, maintain, or improve the student’s functional capabilities. Failure to provide the book on tapes has not caused the student harm.

Regarding Occupational Therapy, the evidence indicates that prior to the August 25, 1997 PET determination to provide consultation services instead of direct services, the goals and objectives in the IEP were being implemented by Erica Engelmann, OT. While the parent is not in agreement with the Molly Arnold, OT evaluation recommending consultation services, the PET did follow the requisite procedures prior to its determination.

In analyzing the second prong of Rowley, we look to whether there was educational benefit. The parent's letter of complaint alleges a number of acts and omissions on the school's part which she believes have resulted in an inappropriate program and no educational benefit. The allegations are as follows: despite identifying the student as Multi-handicapped on the student's IEP, the school treats and programs for the student as mentally retarded only; failure to provide the service recommendations in the evaluations, e.g. helping the student understand and compensate for the student's disabilities, instruction based on pre-teach/teach/reteach; failure to inform staff of the extent of the student's visual perception/motor deficits, i.e. the Extended School Year instructor; failure to allow the student to attend mainstream social studies and science; failure to replace the "Present Level of Educational Performance" with a version preferred by the parent; failure to provide direct Occupational Therapy and Physical Therapy services; failure to provide consistent communication between school and home; failure to have the Educational Technician in attendance at the PET meetings; failure to provide other modes of response options. Several of these items are being implemented by the school, but not to the parent's satisfaction. The parent believes that the appropriate program would be a specialized learning disabilities and neurological injury program. In the end, the analysis must be whether or not there is educational benefit from the program provided by this public school. For a student with a primarily mainstreamed program, the Courts require demonstrable improvement, passing marks and grade promotion, and not minimal benefit or slight academic gains. While the PET has attempted to provide the maximum amount of mainstreaming in the student's program, it is arguably not a "primarily mainstreamed program" given the amount of 1:1 services. The student's current program is very restrictive.

Progress for the student is noted in small, incremental steps. Dr. Nicholas Rehagen notes in his Psychological Evaluation report dated April 26, 1996, that the student "has shown growth (through raw score comparisons) over the years." Ms. Smith's Speech and Language evaluation report in April 1996 notes that it is evident that [the student] has made growth in expressive vocabulary. A comparison of the student's Language Processing Test from 1993 shows growth in all six areas tested. Despite Ms. Smith's acknowledgment that there continues to be significant deficits in both receptive and expressive language skills, she notes that test scores indicate growth in all areas and "the amount of language the student uses has increased a great deal." Ms. Dubord's 1995-96 Progress Report notes that the student often responds accurately to comprehension questions at a 3rd or 4th grade level passage when the story is exciting and of interest to the student. The Occupational Therapy Progress Note dated May 28, 1996 notes that the student did not meet the goals set in the IEP, although the

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student did demonstrate a number of notable achievements. In her 1996-97 End of the Year Progress Report, Ms. Dubord notes slow, though inconsistent progress in the areas of reading and math, and greater progress in other non-

academic areas. The school is using the Distar program for the student's reading and math instruction. Distar is a very structured, progressive, kinesthetic program. Further, the school is using the Brigance test to measure the student's academic progress. While it appears from the record that the student is making slow progress and benefiting from the student's education, it is admittedly very limited progress. The parent is convinced that given the appropriate program with proper implementation, the student could make a year's growth in a year's time in academic areas. There is no evidence that this could be possible. The fact of the matter is that the student suffers from a number of developmental disabilities that, among other things, affect the student's vision, language, communication skills, and the ability to learn. The student has been in school for a minimum of nine years and is functioning around a first grade level in most academic areas. In the February, 1996 administering of the Kaufman Test of Educational Assessment, the student scored below first grade in all academic levels. It is time to take a new approach.

In examining the educational benefit to the mainstream science class, the evidence indicates that there is benefit to the student socializing with regular education peers and the student does, in fact, assimilate some of the content material (4/22/96 Woodcock-Johnson, Broad Knowledge in Science: Grade Equivalent 5.2). However, it is also evident from the record that the 8th grade curriculum had to be extensively modified for the student's level of ability to such an extent as to be barely recognizable. It was essentially parallel teaching by the Educational Technician in the science classroom. The student was not found to be significantly participating in the 8th grade science instruction. Mainstream academic instruction for the student is found to be of minimal benefit.

This is not to say that the student can not or will not learn. Everyone involved in the student's program clearly believes otherwise. However, given the student's age and the limited time available (four more years of public education), it is essential that the student's education include independent living skills and vocational skills, in addition to a reading and math program. As the student moves into young adulthood, the evaluators have consistently recommended similarly oriented programs for the student. Dr. Rehagen (4/26/96 report) states, "[I]t will be important to focus on the most critical aspects and care be taken not to over-load [the student] with a too-aggressive academic program....Ideally, a functionally based program will best suit [the student's] needs as we look to the future." Molly Arnold, Occupational Therapist at the University of New England states in her July 24, 1997 evaluation report, "Due to [the student's] age, relative strengths, and goals, a Vocational Technical School **#97.140 p.12**

Program should be considered." Erica Engelmann, OT, recommends in her August 22, 1997 Progress Note that a "Life Skills and/or prevocational program may also be helpful." In Dr. Doiron's testimony he stated that the student needs more exposure to experiential learning, as well as, the basic skills in a functional program. Jo-Anne Dee states in her consultation report dated March 16, 1997,

that the student needs a “life/survival skills program taught in a consistent, integrated and focused environment” and functional living skills.

In conclusion, the student has benefited from parts of the student’s program and not from others, and it is time to provide a program that will enable the student to function independently in the adult world with appropriate job skills, social skills and self-determination skills. Functional reading, math and language skills are an important component to the student’s independence. The student needs to move away from the isolation and dependence of a 1:1 Ed. Tech. to a place where the student can learn independently in a small group. This means a placement at one of the area schools with a functional skills program for at least part of the student’s day, if not the whole day. The student’s program needs to build on the student’s areas of strength, including the student’s social skills, willingness to work, and execution of task oriented projects, e.g. the recycling duties. A social skills group with similarly situated peers could be an appropriate forum for increasing the student’s social skills; understanding the student’s strengths and limitations; learning how to make decisions and problem-solve; teaching stress reduction and how to relax; and learning how to demonstrate preferences. These are recommendations from the student’s evaluations and need to become part of his program. Currently, the student is primarily receiving one-on-one instruction throughout the day, thus reinforcing his dependency, and yet the student would be unable to function in the high school without this amount of intensive supervision. The student needs a functional skills program in order to become an independent learner.

The parent is an extremely active advocate for the student, which is laudable. However, it appears from the record that the parent also micro-manages the educational program, when it is the school’s responsibility to do so. The record is replete with evidence of parental requests/demands and the resulting frustrations when the school either, does not agree or just ignores the requests. Often the school acquiesces to the parent’s demands when it is clear the educators do not believe it is educationally appropriate. Extreme frustration is evident by both the parent and school personnel. The parent clearly does not trust the school and wants non-school professionals on-site directing and monitoring the school’s implementation of the program. While a professional with a neutral eye can be invaluable to school personnel, appropriate limits to the

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degree of involvement need to be in place. Another observation is that there are far too many PET meetings held each year for this student. It appears from the record to be due, in part, to an inability to run an efficient meeting. It should not take three to four long PET meetings over the course of many months to develop the IEP. Furthermore, there is a plethora of evaluative data on the student and the results do not significantly change from year to year. Obviously, tools for

measuring progress are necessary and desirable, but full standardized evaluative batteries do not appear necessary or useful on a yearly basis.

## **V. ORDER**

1. The school shall convene a PET meeting for the purpose of transitioning the student to a functional skills program by the next trimester or semester break (the next natural academic break). The team shall review the recommendations from every evaluation and report over the past two years. This needs to be done at least a week before the meeting so that everyone has an opportunity to prepare for the meeting and re-educate themselves about the student's unique educational needs. Reading and math goals shall remain a strong component to the student's program. Additionally, the program must address the student's needs for increasing social skills; understanding the student's strengths and limitations; learning how to make decisions independently and problem-solve; learning stress reduction and relaxation; and learning how to demonstrate preferences. The school needs to provide a program that will enable the student to function independently in the adult world with appropriate job skills, social skills, functional academic skills, and self-determination skills.

2. The school shall creatively maximize mainstream opportunities for the student to meaningfully interact with non-disabled peers. As the student will not be participating in a 9th grade regular education academic class pursuant to this Order, it would be best to explore meaningful non-academic (meaning core academic subjects, e.g. science, social studies, physics, etc.) opportunities, especially given the student's social skill strength.

### **Recommendations**

1. Continue using Jo-Anne Dee for consultation services.
2. The Special Education Director needs to get more information on how to facilitate an effective meeting. The USM Center for Continuing Education teaches a course in Facilitation and the two instructors, Dee Kelsey or Pam Plum, may be helpful in recommending other resources.
3. Investigate for possible use the "Character Counts" program used at Crotchet Mountain to teach social responsibility with ever increasing independent living skills. Contact person: Deborah Flanders, Crotchet Mountain Rehabilitation Center, Greenfield, NH (603) 547-3311.
4. Investigate for possible use Myrna Shure's program "I Can Problem Solve" recommended in Barbara Melnick's consultation report.