

**Stephen G. Ulman
P.O. Box 687
Caribou, Me 04736**

October 21, 1997

TO: Supt. Of Schools, Mr. Lyons
Parents

FROM: Stephen G. Ulman
Hearing Officer

SUBJECT: Hearing Decision #97.157
Parents. v. SAD #22

This is to provide you with my decision in the Special Education Due Process Hearing on behalf of the students.

Either party may appeal this decision by filing a petition for review in Maine Superior Court or Federal District Court within 30 days of receipt of the 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 Educational and Cultural Services, 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 45 days after the completion of the order in this decision. The parent may request the Department 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 Consultant, Division of Special Education, Department of Education, State House Station 23, Augusta, Maine 04333.

cc: Eric Herlan, Esq.
A. Leigh Phillips, MDOE

Special Education Due Process

**Hearing Decision
"Parent. v. SAD #22**

October 21, 1997

CASE NO. #97.157

COUNSEL FOR THE PARENT: Parents represented themselves

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

HEARING OFFICER: Stephen G. Ulman

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

On September 2, 1997, the Department of Education received a request for a Due Process Hearing from the parents on behalf of their children. The family resides in Maine. The students are at home with one student attending a vocational school for ½ of the day.

The Pre-hearing Conference was conducted on September 16, 1997, by telephone conference call. The Hearing convened on September 23, 24, 30 and October 1,2,8 and 9, 1997, in Bangor. Three of the days were shortened days. All documents were entered into the record and numbered.

Twenty-one witnesses gave testimony at the hearing. At the request of the parents the Hearing was opened to the public. The Hearing was held open for submission of additional information until October 14th, at which time the record was closed.

I. Preliminary Statement

The students are residents of MSAD #22 with one student being held from school by the mother and the other student attending ½ of the day in a Vocational Program provided by MSAD #22 and other area schools. One student is at home the remainder of the day.

Both students began their public school education at the Winterport building which is part of MSAD #22. Both students were transferred at parents request to the Hampden Building in 1993 after an incident involving one student and time-out. They remained in Hampden with difficulty until the fall of 1996 when the student was transferred out of district to Brewer with the other student following in March of 1997. Neither student returned to Brewer for the 1997-98 school year and are awaiting the outcome of this Due Process Hearing to decide their 1997-98 placement.

II. Issues for the Hearing:

1. What is the Least Restrictive Educational (LRE) placements in which both students' current Individualized Education Programs (IEP) can be implemented?
2. Should the parents be reimbursed \$5000 for transportation costs incurred from March 1995 to June 1997?
3. Should both students be awarded compensatory education for school time lost between March 21, 1997 to May 1997, and March 1995 to March 1996?
4. What remedy, if any, should be ordered against MSAD #22 for any harm that may have occurred including doctor bills and other expenses incurred by the parents?

III. Findings of Fact

- Both the 11/20/92 and 11/24/93 IEP's for one student identify the exceptionality as Learning Disabled. PC 339, A 111
- One student was placed in the time-out room on 11/18/93 for about one hour by Principal Welch. SW 1
- One student was not an out of control student until just before the time-out instance. PW 16
- At 11/15/93, one student had not yet lost complete control and the school only wanted to use time-out room as place to cool off. SW 1, 120
- One student's classroom teacher, November 18, 1993, first saw the student sitting on another student's chest hitting the student's head against the floor. SW 4

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- The student's teacher lifted the student and was hit in the abdomen by the student. SW 4
- The student's teacher sent a student to the office to get the principal and resource room teacher. SW 4
- The first three teachers on the scene November 18, were all trained in Crisis Intervention and used the correct holds. SW 4
- Non Violent Physical Crisis Intervention Program (NVCi) training was attended by the building principal, two Special Education teachers and the classroom teachers. SW 1
- Mr. Welch and Mr. Costello took the student from the classroom. SW 4
- In 1993 there were no educational rules or guidelines dealing with time-out spaces. SW 1
- Time-out room at Smith School was designed per order of PET for another student. PC 292 - PC 307, PW 2, SW 1
- Time-out room was constructed and used in accordance with its design and intent. PC 292 - PC 307, PW 2
- At the time the student was placed in time-out room the student was ranting and raging and out of control. PW 2, PW 15, SW 4
- The time-out room was the safest and best method of restraint for the student at the time and under the circumstances that existed. PW 2
- The school principal asked the school custodian for help calming and moving the student down the hall to the time-out room. PW 4, PC 292-307
- The principal of Smith School took the student to the floor and then was on his knees straddling the student and holding the student down. PW 4
- The student appeared more calm and less upset once the student was put into the time-out room. PW 4
- The principal eventually left the time-out area when the student calmed down and left the custodian to watch while lunch was brought to the student, who ate in the time-out room. PW 4, PW 2
- The afternoon following time-out, the student helped the custodian for most of the afternoon. PW 4
- Ms. Maroseta, the social worker, was scheduled to begin working with the student after 1993 Thanksgiving. SW 1, 122
- Record of behavior issues begin in March 1992 and continue in Sept. of 1992. PC 342, P"C 343, PW 16, Exhibit 128, E 129, 130, 131
- The school tried to reach the mother at home on the day of the 11/18/93 incident and could not, this was reported to the mother on 11/24/93, PET meeting and she did not question the attempt. SW 1, 108, PC 292-307
- The State of Maine has no sq. ft. standard for time-out areas. PW 11, PC 65

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- The May 27, 1994, "Continuum of Behavioral Intervention Plan" describes a time-out area at Chapter VI, BI-6. A 106, PW 6, PW 2, SW 1
- The "Act to Define Time-out Areas" which was enacted about four years after the incident with the student, is supportive of the manner in which the student's time-out was handled. PW 2, PC 65
- The Sept. 30, 1994, Maine Department of Education (MDOE) suggested guidelines, which came out about one year after the incident with the student, were followed, even though they were not yet in place. PW 2, PH 1, SW 1
- The Supt. of MSAD #22 has investigated the time-out incident at Smith School in Winterport and found no laws were violated. PW 2, PC 292-307
- At the 11/24/93 PET, mother did not appear upset about the time-out room. SW 1
- MSAD #22 now has a policy in place dealing with restraint and movement to quiet area. SW 1, 101
- Teachers have a legal right to restrain and remove children from areas of encounters. PC 73
- The lights were never turned off in the time-out room during the 11/18/93 incident. PW 4
- The door has always been the same low 3 ½ feet tall. It never went to top of the frame. PW 4, SW 4
- Principal Welch did not relay the mother breaking down the time-out door with a long handled sledge hammer and would have had it happened. SW 1
- Father was not at the November 24, 1993, PET meeting. SW 4, PC 332
- Out of control children should be taken where they were safe and the other children were also safe. SW 4
- The term "Box" and "The Box (student)" came from the mother PW 10
- Father was not in or around the building Nov. 24, 1993. SW 1
- Three daughters and one son have graduated, or currently attend MSAD #22 despite parents distrust of system. PW 2
- The student was liked by many Brewer students. PW 1
- The student exhibits lack of respect for authority. PW 1, PC 261
- The student exhibits refusal to follow classroom and school rules. PW 1
- The student exhibits inappropriate language. PW 1, PC 261
- The student can not go to Hampden School because the student has fear of what can happen there. PW 1, PW 15
- The student could not eat after PET at Hampden because of anxiety. PW 1
- The student also had anxiety after PET meeting at Brewer. PW 1
- The mother, Special Ed Director, and student worked together at Sept. PET in Hampden. PW 1

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- PW 1 has a special friendship with the student and the student's family. PW 1

- A criminal trespass notice was issued against the student's parents in April 1995 in favor of school. PW 2, PW 99-100
- Parents entered school building and classrooms without following school rules. PW 2, PH 116, SW 2
- Parents confronted other children in a public and visible manor on school property during the school day prior to the trespass order. PW 2, PH 117, PH 118
- The trespass order has been lifted prior to the 1997-98 school year. PW 2
- Parents have been rude, disruptive, and have frightened and intimidated school personnel. PW 2
- No teacher has expressed to the Supt. a feeling that they can not work with the students. PW 2
- Parents have made many allegations against school. PW 2
- MSAD #22 has in the past and currently continue to offer both students, Free and Appropriate Public Education (FAPE). PW 2
- The person in charge of transportation for Hampden felt she was being harassed by the mother. PH 110
- Investigations by the school administration of reports that school personnel were shooting at the family house and beating children did not find any foundation. PW 6
- The family and the school have and continue to successfully work together to educate three other family children. PW 6
- Things can be worked out so the kids can be educated by MSAD # 22. PW 6, PW 7
- The student had a good 5th grade year in the Hampden School System. PW 7
- The student was not frightened in school during the student's 5th grade. PW 7
- Mother would yell to the student's 5th grade teacher while the teacher was off work jogging and tell her things about other teachers. PW 7
- A teacher felt that mother was harassing her. PW 7, PW 6
- Even when mother is angry with the school she is able to attend school meetings and participate. PW 8
- The student can't go back to MSAD #22 because the student is scared. PW 13
- Mother feels her family is being harassed by the school. PW 6
- Mother reported to the principal of McGraw School that the school secretary and teachers drove by the family house and shot out windows. PW 6

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- Mother reported to the McGraw School Principal that one of the teachers hit one of her children. PW 6

- The student even though the student had no confrontation with the school. PW 13
- The 11/24/93 PET developed an IEP which moved the student from Winterport to Hampden. SW 1, 107-111
- Father approves of ½ day at UTC for the student. PW 13
- Tutoring for the ½ day non-vocational part of student's would be beneficial. PW 13
- The student has been suspended from school on several occasions since Winterport. PW 15
- The student feels an acceptable educational program would be Vocation Program in AM, academics by tutor in vocational building in PM, and full access to all extra-curricular activities. PW 15
- Mr. Scott, PA. cleared the student for gym on 9/26/96. PR 9
- Mother has lost her temper at school and swore at MSAD #22 personnel. PW 16
- The student can be tutored at the Bangor Library and that is ok with mom. PW 16
- Mother and family need counseling as per A 75. PW 16, A 75
- Mother is able to initiate and carry on a civil and friendly conversation with the special ed director for MSAD #22. (observation before hearing) 10/1/97.
- The student did well in Hampden in 1994 and received Student of the Month Award. PC 291, SW 1
- The student had no issues during the fall of 6th grade year. Dec. 6 & 8 mother asked for PET's on all their children and said no physical intervention with any of their children and the school agreed to comply by notifying police and parents of any out of control situations. SW 1
- Brewer agreed to provide the family and MSAD #22 a cooling off period and the student would have a new school in student's 9th grade year at Hampden Academy. SW 2
- The student made a quick positive adjustment to Brewer. Student was quiet and student's behavior was acceptable. SW 2
- The other child was placed in Brewer by order of the Maine Commissioner of Education in his letter of March 5, 1997. R 103, SW 2
- In all five adults reported to Mr. Priest on 3/2/97 incident at Brewer. SW 2
- "I'm sure the student was not pounded in the ground" at Brewer. SW 2
- School employees have a responsibility to manage students' behavior until they are safely home. SW 2

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- The fight the student had at Brewer was initiated because of things kids said to both students. SW 2
- One student attacked an 8th grade teacher before the police arrived and escorted the student inside. SW 2

- The student's version of the incident was very different from the 5 adults present. SW 2
- Brewer explained what had happened to the family and they disagreed with the school's rendition of the incident. SW 2
- Brewer had an ongoing problem with mother coming to meetings agreeing and then a day or two later changing her mind. SW 2
- On June 6, 1997, when the student would not comply with ed tech the student swore, cleared the desk and would not comply with the Brewer Middle School Principal's orders. SW 2
- Mother made several contacts of Brewer School committee members and school employees in which mother misrepresented the facts of the March 21, 1997 incident. SW 2
- Mother's perceptions are not accurate, she doesn't listen to all the data, she locks onto her version and does not hear the real story. SW 2
- Brewer School Department has encouraged mother to have an advocate to help mother process. SW 2
- Mother does not always listen to or take her advocates' advice. SW 2
- Neither student can come back to Brewer and Brewer is adamant about this because of the time it takes to deal with the parents. SW 2, PCC 23
- The student has been a victim here, the student's needs are intensive. SW 2
- Mother complained about an ed tech who was hired by Brewer on 4/2/97 to work with her child and who mother said shot at her house, disrobed publicly, burned a car, and took illegal drugs. SW 2, PC 171
- Sending the students somewhere else will not solve the problem because mother needs to deal with her problem first. SW 2
- Mother does not want to resolve this, she needs this conflict. SW 2
- The problem that Brewer School Department had with the family were the same as the problems that MSAD #22 had with the family. SW 2
- Mother believes her inaccurate perceptions to be true. SW 2, PW 16
- Supt. Lyons testified he did not talk to father during lunch break on 10/1/97. PW 2
- The first part of the Brewer School year went well for the student. SW 3
- The March 21, 1997, incident included the secretary being afraid and intimidated by the student verbally swearing and giving her the finger. SW 3

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- The student had threatened to kick a teacher's ass. SW 3
- The student pushed a teacher a number of times and spit on the teacher. SW 3
- The two teachers held the student down while the custodian went into the school and called the police. SW 3

- The student denied having spit, pushed or hit when later questioned by the police. SW 3
- The teachers did not hit, beat, punch or pound the student's head on the ground. SW 3
- The student was the aggressor. SW 3
- The June 6, 1997, after the student returned from suspension, there was an incident with spilling soda, the student refused to talk to the principal or stop walking around the building. SW 3
- Mother will sue people who try to hold her child accountable for the child's actions, and therefore many educational technicians at Brewer will not deal with the student in conflict. SW 3
- The June 6th incident began when the student hit the bottom of a soda can another student was drinking, spilling soda on the other student who then threw soda on the student. The student then pushed the other student hard against the wall. SW 3
- Both students can not return to Brewer school because of the physical and/or verbal assault of teachers and staff. SW 3
- Mother pressed protection from harassment charges and then did not come to the hearing which resulted in five Brewer staff spending two days waiting in court in Belfast. SW 3
- The student has three Brewer staff who the student has threatened to "kick their ass". SW 3
- The student asked Brewer staff if the student would be beat up at Brewer Middle School like the student's sibling. SW 3
- The student needs a full-time ed tech and no unsupervised time. SW 3
- The student has a fear of returning to MSAD #22. SW 3
- Brewer would be a hostile environment to learning for both students because of past experience. SW 3
- The MSAD #22 School systems could ultimately hire an ed tech for the student if necessary. SW 3
- I have never grabbed or beaten a student as accused by mother at exhibit 10. SW 4
- The student attended school less than 20 days during the 1995-96 school year. SW 1
- MSAD #22 made several attempts to redo the student's IEP. SW 1

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- Mother reported to the Sp Ed Director that the Supt. #22 had placed \$50,000 bounty on her child. SW 1
- The student's proposed program will be a vocational program ½ day plus tutoring for Math, Written Language and Reading. SW 1
- A full-time ed tech will be hired for the student. SW 1

- The school (MSAD #22) is ready, willing, and able to provide the student a beneficial education at Hampden Academy. SW 1
- The student can access extra-curriculum activity at MSAD #22. SW 1
- The student needs counseling. SW 1
- Parental issues need to be resolved independent of both students' issues. SW 1
- The issues at Brewer were the same as at MSAD #22 prior to the transfer to Brewer. SW 1
- MSAD #22 can provide an appropriate program for the student. SW 1
- Mother requested that the student's total day in school be tape recorded and the school felt that inappropriate. SW 1
- Once the student's school is identified, counseling will be started at 2 hours/week. SW 1 Z-1 & 2
- Mother needs counseling. SW 1
- The family needs at least one hour of counseling per week. SW 1
- The student needs at least one hour counseling/week. SW 1
- There needs to be a plan to relieve the fear of teachers by the children and fear of the parents by teachers. SW 1
- Include mother and father at some point in the hiring of the ed tech. SW 1
- Need to talk to school children and convince them to put this aside. SW 1
- The student is a very capable student. PW 1
- The extent of the student special services at Brewer School Dept. was to special education study halls. A 51-53, PW 1, A 59
- The student has weaknesses in verbal expression and reading. A 59, PW 1
- On all occasions when parents requested permission to enter school grounds they were heard by the Supt., and the requests were approved. PW 2, PH 40-52
- Parents were permitted to drive on school grounds to deliver or pick-up their children. PW 2, PH 96
- Parents requested a protection from harassment against the Supt. of MSAD #22, but the courts dismissed the action. PH 88, PW 2
- Had parental counseling taken place early on, mediation could have worked. PW 2

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- Mother appeared content and vindicated when news article came out. PW 9
- The student was terrified by the cleaning man's presence at the school. PW 13
- School year went well through May of 1993 and the plan was working. SW 1
- In the fall of 1993-94 school year the student began using inappropriate language and behavior at school. SW 1, 127-131

- The student received detention for using bad language, not jumping over wheel chair. SW 1
- The student was suspended 4/5/95. PH 118, 74, SW 1
- Any student who swears at a teacher is suspended for 3 days. A student who receives a second suspension must meet with Supt. before reinstated. SW 1
- The student said "I didn't give a fuck what I did" and was suspended and told me I should "go to the office and play with myself". SW 1, PH 118, 80
- The MSAD #22 offered tutoring during the suspension time. SW 1, PC 253, PH 115
- Mr. Porter and Mr. Lyons wrote to the family notifying them that the student should be in school. PC 256, PC 245, SW 1
- At the May 15, 1995, PET, the student was reclassified as behaviorally impaired and educational growth was noted. SW 1, 60A, 75, 81
- Behavior plan was developed and attached to IEP, 7/17/95, and agreed to and then changed 9/6/95. SW 1, 46, 20, 55
- Brewer offered tutoring following the student's suspension from school because of the 3/21/97 incident. SW 2
- In my 15 years at Brewer I can't remember a faculty member being assaulted at the K-8 level. SW 2
- The student had a period of time when the student made aggressive comments and frightened other kids. SW 2
- Tutoring was offered from the beginning and actually started some time later because mother did not agree. SW 2
- Tutoring actually started the week of 4/28/97. SW 2
- The goal of the tutoring at Brewer was to help the student finish the 8th grade year and the student did very well and completed the student's 8th grade work. SW 2
- The student was first identified under speech and language, but also had behavior plan. SW 1
- The student has a significant language processing problem which created social problems. SW 1
- The student's intelligence is low to very low average. SW 1, R-3 to R-5, R 173, R 187

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- The student's IEP is written and appropriate and calculated to be of benefit. SW 1, R 1 to R 6
- The student missed 35 out of 66 days while at MSAD #22, prior to transfer in March 97 to Brewer. SW 1
- The student never broke a leg at school. SW 1
- Mother accused the school of breaking her child's leg, but no record of any emergency was ever made by the school and the school believes the student's leg was never broken. SW 1

- Cleaning person Oct. 16, mother called central office 10/17 and person did not work after that. SW 1
- Brewer School Department is unwilling to accept the student because of prior experience. PCC 23
- When the student arrived at Brewer School Dept. the student was frightened and defensive. PW 3
- Brewer staff worked to develop a trust. PW 3
- The student did not get into any fights at Brewer School Department. PW 3
- The student had a one on one aid in Brewer School Dept. PW 3
- For student trust is bottom line. PW3
- The student entered Brewer School Depart. after four months of being at home. PW 3
- The student had a fight with a student at school and was sent home from MSAD #22, Nov. 14, 1996. PW 7, PW 8

ISSUES # 2

- Exhibit #59 - 7/17/95 calls for reimbursement of 22 cents per mile for transporting the student. PW 16
- Exhibit #48 - 9/95 IEP removes transportation costs. PW 16
- All IEP except July 1995 indicate that the school will provide and pay for transportation. SW 1
- From July 1995 until Sept. 6, 1995, (pg 48) the parents were to transport and be paid .22 cents a mile. SW 1
- At PC 232 the school ok'd the transportation payment for the period July 1995, September 6, 1995. SW 1, PC 232
- The school is not aware of any time that free transportation was not available to both students. SW 1
- Brewer School Dept. did not pay transportation or provide transportation to the students. SW 2

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- The PET minutes of June 15, 1997, call for MSAD #22 to pay for transportation if placement is outside MSAD #22. SW 2
- All transportation for both students, except for two days, have been paid by MSAD #22 until May 15, 1996. SW 1 Pg. 92, 62, 48, 12, 4 Pg. 186, 159, 130, 131, 119, 120
- MSAD #22 did not provide transportation for the students from May 1996 until Sept. 1997. SW 1
- The student was ordered to Brewer by the Maine Commissioner of Education in March 1997. SW 1

ISSUES # 3

- When anyone attempts to stop a MSAD #22 bus a report is made. PW 5
- The student's mother called the Maine State Police on 5/2/95 to report lights out on the "Higgins" and was informed that MSP had just inspected the bus and all lights were working. PH 109, PW 5
- The bus company has never had any problems with the student on the bus. PW 5
- April 1995 mother complained to the Supt. that the Bus Co. boxed her in. PW 5
- School busses box cars in quite often. PW 5
- If a child is put off the bus a written form is sent to parents. PW 5
- Both the 11/20/92 and 11/24/93, IEP's describe MSAD #22 as providing all transportation. PC 339, A 112
- Some parents are allowed to stop the school bus in violation of bus rules and load their children, but not this family. PW 12, PW 13
- The children came home from school and reported peers were chanting that mother was "pistol packing momma". PW 13
- Parents believed PET minutes and IEP were the same thing. PW 13
- After parents filled suit against the school they "started in on me". PW 15
- Mother withdrew the student from school and did not allow the student back until the Commissioner allowed the student to go to Brewer in March. PW 16
- Mother questions the accuracy of the dates and information of several school documents. PW 16
- Mother feels she is in a power struggle with #22 and the state. PW 16
- On April 26, 1994, the MSAD #22 granted the family a request for all children to be transferred to Hampden. SW 1

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ISSUE #4

- English is the primary first language spoken in the family home. SW 1
- Mother has had help from social worker and legal counsel plus help from WINGS. SW 1
- Most of the difficulty happens when mother goes away and thinks about things rather than her not being able to read things. SW 1
- The staff often goes over information with mother to be certain she understands. SW 1

- On April 26, 1994, the MSAD #22 granted a family request that all children be transferred to Hampden. SW 1
- Sept. 1997 until payment transportation (C-1-6) has been provided by MSAD #33. SW 1

III. Conclusions

Issue # 1. This Due Process Hearing was unusual in many ways. It involved two children, was open to the public, and the issue of educational programming was not in contention. The issue that most dominated the hearing was determining the least restrictive environment in which the agreed to IEP's could be implemented. More specifically, does mother's "anger" toward and the students' fear of attending MSAD #22 make it impossible for the boys to benefit from an education delivered in MSAD #22?

In testimony during the hearing or in written documents entered as exhibits, mother tells us she believes:

1. There is a \$50,000 bounty on her child placed there by the Supt. of MSAD #22.
2. That MSAD #22 teachers and students are constantly harassing her family both on campus and off campus.
3. That all MSAD #22 teachers should be fired.
4. That the student broke a leg at school, and the school never notified her and made the student play in gym class against doctor's orders.
5. That she broke a time-out room door at the Winterport School with (various versions of the story) an ax, long handled sledge hammer, on Wednesday, on Saturday, in the presence of the principal and mother's daughter, just the principal. That the principal stood back and just watched, that the principal came too close and she almost "cut off his privates" with the ax.

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6. Mother also tells us she was attacked by a student in a wheel chair at Hampden School following the student's suspension and that mother was run up against the door and her back was hurt.
7. Mother believes several Brewer teachers assaulted her child.
8. That mother is locked into a power struggle with MSAD #22.

One has only to read mother's 53 page hand written 'Diary or true Story about my son', to understand how far her perception of events varies from the facts supported by the preponderance of the evidence.

The preponderance of the evidence indicates that there is no \$50,000 bounty on her child, but rather the Supt. of MSAD #22 has spent an enormous amount of time and energy in searching for an appropriate and beneficial education placement for this family, beginning several years ago with the transfer of the children from Winterport to Hampden and most recently with the 1996-97 school year placement at Brewer School Dept.

Charges of harassment of the family by school personnel was a constant theme throughout the hearing, however, when the preponderance of evidence is examined it is clear that if any harassment has taken place it has been mother harassing teachers. Credible testimony was given which described mother driving by an off duty teacher who was at home and out jogging and yelling accusations about another teacher. Although much was said about teachers harassing the family at the Bangor Mall and evidence to support the claims was repeatedly requested, none was ever presented by the family.

More recently several Brewer School Department personnel spent much time preparing to answer assault charges brought against them as a result of the student's out of control behavior in spring of 1997. They also went to Belfast to answer a request by the family for a protection order only to have the family not come to the hearing. Much educational time, energy and money have been spent in searching for a workable solution to this situation.

As a direct result of these inaccurate perceptions, mother has on several occasions, kept both students from school, from tutoring and from riding the bus. When the time of school suspension is added to the school time missed because of parental issues, it is apparent that both students have missed a great deal of school time and in fact only one student is currently in school and then for only one half of the day.

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Both students believe that people are shooting guns at their house and that these people are MSAD #22 school personnel. They feel teachers are being confrontational with them both on school grounds and at the Bangor Mall. Both students are very frightened to return to Hampden or any MSAD #22 schools.

The preponderance of the evidence indicates that school personnel are not shooting, harassing or in any other way endangering the safety or well being of the family children. In fact, several of the family children are now, and have for many years, attended and one has even graduated from MSAD #22 schools. None the less these fears are very real and must be dealt with before the students can return to MSAD #22 schools and benefit.

The parents have requested an out of district placement to address their “anger” towards the school and the students’ fear of school. Although attractive because it’s quick and simple to accomplish, it has been tried and it didn’t work. The 1996-97 year at the Brewer School Department included some very real successes for both students, however, it ended in court actions and suspension. Brewer School Department refuses to take the students back and there is little hope that another district would have success following MSAD #22’s and Brewer’s experiences. What is needed is a change in the family’s perception of the facts which more accurately represent how they are being treated by school personnel from all districts.

Issue #2 addresses reimbursing the family for transportation costs associated with the out of district placement at Brewer. The school argues that the placement at Brewer was not required to address special educational needs and was not therefore a special educational placement. The point is not just special education, but also a beneficial education. Without a change in the then current placement, the students would not benefit from the education because their mother was so “angry” at the school that the family home environment spawned fear and distrust of MSAD #22 and influenced the students’ perception of reality. Both students demonstrate this fear and distrust in many ways; by telling us they believe that school personnel have fired shots at their house, that the school personnel made one student participate in gym with a broken leg against doctor’s orders, that teachers constantly harass them at the Bangor Mall, that the teachers are unreasonably strict and pick on them at school and many other expressions of fear. The preponderance of evidence does not support the fears with fact, but the fear is none the less real. The students go to school ready for flight and to fight. They refuse to take their jackets off and quickly turn verbal exchanges into physical confrontations. Because of this behavior they needed special educational programming in order to benefit from their education, including, but not limited to changes in the school placement. (LRE) The

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decision to address this problem by placing out of district was the PET’s to make. The method of transfer (be it superintendent agreement, commissioner’s transfer or whatever)is not the important issue but that this transfer was done to accomplish educational benefit. Although these transfers were made outside the PET process, they were made by school officials, either locally or by acting through their superiors and in the PET process the school administration has the final say subject only to due process. The responsibility for the education of the students remains with their district of residence regardless of how the out of district placement is technically accomplished. To that end MSAD #22 is responsible for the transportation cost to Brewer and they are calculated as follows: round trip distance from home to Brewer school x two trips/day x school days attended by one or both students x .22 cents.

Issues 3 & 4 deal with compensatory education and reimbursement for doctors' bills and other expenses. There certainly have been many lost school days for both students and no doubt other expenses as a result of the family's ongoing dispute with the school. The record clearly shows that the school has repeatedly attempted to alter educational programming and placement in a good faith attempt to provide a meaningful education to both students. PET meetings have been scheduled in a timely manner and appropriate IEP's have been developed by MSAD #22. The school has done its best to provide both students with a free and appropriate education in the least restrictive education environment possible.

IV. Order

Issue #1 MSAD #22, PET will meet within 15 days and develop new IEP's for both students. Each IEP will offer programming/counseling designed to reduce both students' fear of attending school and mother's need to better sort the real from the imagined as it relates to her interactions with the various school settings and personnel. This programming/counseling will be undertaken at the maximum frequency calculated by the PET to accomplish change as quickly as possible. Until such time as the PET determines that both students' fears of school have reduced to a level at which it is reasonable to begin reintegration into school, the students will remain in off campus tutoring at or above the rate established by state regulation. The student may remain in the vocational program at the PET's discretion. If the students fail to participate in the IEP's established by the PET's the school will enforce the State of Maine Statutes on truancy.

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Issue #2 MSAD #22 will reimburse the family for the cost of transportation as per calculation formula found in the conclusions of this order.

Issue #3 & 4 No order is given.