

SPECIAL EDUCATION HEARING DECISION
CASE NO. 97.161
Parent v. Freeport

September 30, 1997

COUNSEL FOR THE PARENT: Richard O'Meara, Esq.
Murray Plumb and Murray

COUNSEL FOR THE SCHOOL: Peter Lowe, Esq.
Brann and Isaacson

HEARING OFFICER: Carol B. Lenna

An expedited hearing was held and this decision written pursuant to the Individuals with Disabilities Education Act Amendments of 1997, §615(k)(6)(A)(ii).

This hearing was requested by the mother on behalf of her child. The mother and her child are residents of Freeport, Maine. The student is a senior at Freeport High School.

The Hearing convened on Friday, September 26, 1997 at the Cumberland County District Court. Each party, beginning with the parent, was given 15 minutes to make an opening statement. Each party, beginning with the parent, was given two hours to present witnesses and documents into the record. Each party, beginning with the parent was given 15 minutes to make closing arguments. Eight witnesses gave testimony. The parent introduced eight documents into the record; the school introduced 24 documents.

The parties, through a telephone conference call, were informed of the hearing officer's ruling orally, and notified that the written decision would follow within five days. Following is the written decision in that matter.

I. Preliminary Statement

The student is a x year old senior at Freeport High School who is eligible for special education services under the category of "behavior impaired". The student current IEP places the student in regular education classes for all the student's subjects.

On Saturday, September 6, 1997, the student was observed to have a knife drawn during an argument with another young person at the skateboard park located in the parking lot of the high school. The following Monday morning the principal suspended the student. The school convened a PET on September 15, to consider if a relationship existed between the student's disability and the student drawing the knife during the argument. They determined that a relationship did exist. The school then removed the student to an interim alternative educational placement and ordered an updated psychological evaluation. The student was offered tutoring at the local public library for 2 and 1/2 hours per day.

The parent objected to this action and requested an expedited hearing to protest the school's action.

II. Issues for Hearing

1. Did the school act properly in its action to remove the student to an interim alternative educational setting for having a weapon in school?
2. Do Maine Special Education Regulations at Section 10.10 provide students greater protections in disciplinary matters and limit a school's ability to remove students under § 615(k)(1)?
3. Does the interim alternative educational setting presently being offered by the school meet requirements at §615(k)(3)(B)?

III. Findings of Fact

1. The student and another resident of Freeport got into an argument on Saturday, September 6, 1996, at approximately 3:30 p.m. in the skateboard park located in the parking lot of the Freeport High School. (Testimony: The student, Student 1, 2, and 3)
2. The student had in the student's possession a martial arts knife whose blade is in excess of 2 and 1/2 inches, which meets the legal definition of a "dangerous weapon". [18 USCA §930(g)(2)]. This knife was drawn from its sheath at some point during the argument. (Testimony: The student, Student 1, 2, and 3; Exhibit: S. 17)

3. The high school principal called the student into his office on Monday morning, September 8. The student was informed that the student was being suspended. The student's mother was notified, first by phone and later in writing, that the school was taking disciplinary action regarding the incident on Saturday, and that a PET was being convened within 10 days. (Testimony: Nason, Edwards; Exhibit: S-9)

5. The PET met on September 15, 1997. The student's mother signed a waiver of the 7-day notice. The PET determined that the student's behavior was a manifestation of the student's disability. The PET further determined that the student would receive a comprehensive psychological assessment and access counseling to address behavioral concerns, and ordered the student into an interim alternative educational program for up to 45 days. (Testimony: Nason; Exhibit: P-3)

6. The alternative educational setting ordered by the PET consists of 2 and 1/2 hours per day of tutoring services provided at the local public library. The tutor offers assistance in assignment completion for all but one of the student's current classes. Work assignments are coordinated by the special education staff. When work is completed the tutor delivers completed material to the individual teachers for grading. Tutoring began on September 9. Between September 9 and September 24, the student was absent from tutoring 12 days. (Testimony: Nason, Pelletier)

7. The student's current IEP places the student in regular education for all the student's academic classes. Currently the IEP contains no behavioral services. The only behavioral intervention listed states that "[c]onflict resolution and behavior intervention will be accomplished using a special educator as an advocate". No details regarding this goal are given. "Completion of assigned tasks will be supported in the resource setting" is also listed, but was not being implemented prior to the disciplinary action taken by the school. (Testimony: The student, Nason; Exhibit: S-6)

8. Freeport Public Schools adopted school policy regarding weapons in the school on December 18, 1995, in response to the federal Gun-Free School Zones Act. This policy states that weapons are prohibited "at all times on school premises... Disciplinary action will be taken which may include detention, suspension,...or expulsion." (Exhibit: S-23)

IV. Conclusions

"School personnel...may order a change in the placement of a child with a disability...to an appropriate interim alternative educational setting...for not more than 45 days if...the child carries a weapon to school..." [§615(k)(1)(A)(ii)]

School personnel under this section may order a change in the placement of a child with a disability to an appropriate interim alternative setting for up to 45 days if the child carries a weapon to school or to a school function. There is no debate that the student had in the student's possession a knife which meets the definition of weapon. The school policy regarding weapons clearly considers "to school" to be interpreted as "on school premises". The skateboard park in the High School parking lot meets that interpretation.

The parent argues that the confrontation occurred on a Saturday afternoon, not during school hours, and not during a school function, and therefore should not be subject to the school policy. However, the school's policy clearly states "persons are prohibited from [possession of weapons] ...**at all times** on school premises". [Emphasis added.] The school has the authority to use this clause to determine that Saturday afternoon fits this description. School staff convincingly argue that there were and often are a number of students at the skateboard park on the weekend, and that additional students could be expected to be in the area this particular Saturday because the school's "Fall Kickoff Weekend" was still in progress.

The school followed proper procedure as it considered the disciplinary action to be taken. The student was suspended on September 8. The parent was notified on that date of the school's action and the need for a PET. Tutoring services were begun on September 9. The PET was convened within 10 days of the school's action to review and make a determination if there existed a relationship between the student's behavior and the student's disability. The team determined that the student's behavior was a manifestation of the student's disability, and made a determination to remove the student to an interim alternative educational setting. The student's mother was notified of the PET's action, and her rights to appeal were mailed to her.

The parent argues that Maine Special Education Regulations at Section 10.10 provide students with disabilities greater protection than companion federal law. Maine regulations do exceed federal regulations in certain aspects of this regulation. Disabled students are provided greater protection under Maine regulation during the first 10 days, individually or cumulatively, of disciplinary action taken by schools by requiring that tutoring services be provided.

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It is the parent's position that the student is entitled to "stay put" in the student's current program pending the outcome of a hearing when a school has taken disciplinary action

against a student. Section 10.10 currently does not prevent the school from taking the action it has taken. The school may remove the student to “stay put” in an alternative setting if the student brings a firearm to school. Section 615 simply extends to the school the authority to take the same action by expanding its jurisdiction to include “weapons” not just firearms. “Any interim alternative educational setting in which a child is placed...shall...be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child’s current IEP...and...include services and modifications designed to address the behavior...so that it does not recur” [§ 615(k)(3)(B)]

The school is currently providing the student with tutoring services which enable the student to “continue to participate in the general curriculum, although in another setting...” The student has access through the tutor to the student’s current academic courses, and the course material the student requires to continue with those courses.

However, the interim setting does not enable the student to continue to receive services and modifications which will enable the student to meet the goals set out in his IEP, nor has the interim program included services and modifications designed to address the behavior which led to the student’s removal from the high school. The school has an obligation to assure that each of these two elements is included in the student’s interim program.

In conclusion, I find that the school acted within the authority given them §615 (k) when they removed the student to an interim alternative educational setting. They now have 45 days from September 8 to complete an assessment and modify the student’s program accordingly. However, it should be noted that the evaluation conducted by the school in the spring of 1997 contains recommendations which are not currently part of the student’s current IEP. Very specific recommendations were made in this evaluation which could and should have been incorporated into the student’s IEP in May 1997. In addition, no behavioral plan to address the student’s episodes of anger control or aggression resulted from this evaluation. Additional evaluations will offer no answers regarding the student’s behavioral needs if the IEP is not modified accordingly.

1. The Pet shall meet no later than Monday, October 6 to describe the methods which the school will incorporate in the interim alternative educational setting to assure that:

- a. The student shall have access to services and modifications to enable the student to meet the goals in the student's IEP, and**
- b. shall have services and modifications designed to address the behavior which led to the student's removal.**

**Carol Lenna
Hearing Officer**