

BEFORE LINDA MCCULLOCH, SUPERINTENDENT OF PUBLIC
INSTRUCTION
STATE OF MONTANA

RECEIVED

AUG 29 2002

OPI LEGAL SERVICES

IN THE MATTER OF [REDACTED]

OSPI 2002-02

REPORT OF SECOND
TELEPHONE
CONFERENCE AND
ORDER

PROCEDURAL HISTORY

In response to a request received in the Office of Public Instruction on July 1, 2002, from Mr. [REDACTED] father of [REDACTED], for a due process hearing under the Individuals With Disabilities Act ["IDEA"], 20 U.S.C. §1415, *et. seq* on July 15, 2002, the Superintendent of Public Instruction appointed the undersigned as the impartial due process hearings officer herein.

Pursuant to notice given to the parties the undersigned conducted an initial telephone conference call on Thursday, July 25, 2002, at 4:00 p.m. Participating were Mr. [REDACTED] on behalf of his son, [REDACTED], and Mr. [REDACTED] and Ms. [REDACTED] Director of Special Education on behalf of [REDACTED] School District ["the District"].

In that telephone conference call Mr. [REDACTED] set out the issues enumerated in the undersigned's Report of First Pre-Hearing Telephone Conference and Order dated July 28, 2002, as the ones he wished to have heard in an IDEA due process hearing. In it the undersigned set a second pre-hearing telephone conference call for Friday, August 23, 2002 at 1:00 p.m.

Following the first telephone pre-hearing conference call by letter received on July 31, 2002, Mr. [REDACTED] provided the undersigned with a revised list of issues which are attached hereto as Exhibit A. On the basis of that letter the undersigned issued an Order dated July 31, 2002, requiring the District to respond to those issues by August 9, 2002, and allowing Mr. [REDACTED] until August 16, 2002, to respond to the District's position with respect thereto.

By letter dated July 30, 2002, with a copy to Mr. [REDACTED] Mr. [REDACTED] [REDACTED], counsel for [REDACTED] School District, advised the undersigned that the District had previously provided Mr. [REDACTED] with copies of his November 30, 2001, January 15, 2002, IEPs and amendments to the January 15, 2002, IEP following a third IEP team meeting on May 23, 2002. Mr. [REDACTED] letter included as enclosures a copy of the January 15, 2002, IEP and the May 23, 2002,

1 amendments thereto. In addition it included a copy of a February 20, 2002,
2 Report of Psychoeducational Evaluation of [REDACTED] That letter and enclosures
3 constitutes the District's only response to the undersigned's amended Order
4 dated July 31, 2002. Mr. [REDACTED] provided his comments by letter received
5 on August 13, 2002, a copy of which is attached hereto as Exhibit B.

6 Pursuant to the July 31, 2002, Order the undersigned conducted a second
7 telephone conference call with Mr. [REDACTED] Mr. [REDACTED] and Ms [REDACTED] on Friday,
8 August 23, 2002, at 1:00 p.m. The purpose of the second pre-hearing telephone
9 conference call was to consider the issues Mr. [REDACTED] set out in his July 31,
10 2002, letter [Exhibit A] and to determine whether any of them raise issues
11 cognizable in an IDEA due process hearing.

12 DISCUSSION

13 1. [REDACTED] - A Profile

14 [REDACTED] is now 17 years of age [d.o.b. 8/31/85]. On the Wechsler Scale of
15 Intelligence (WASI) his full scale IQ is 121 putting him in the "superior" range of
16 intelligence at the 92nd percentile. On the Woodcock-McGrew-Werder Mini-
17 Battery of Achievement [REDACTED] scores are as follows:

	<u>Standard Score</u>	<u>Grade Equivalent</u>
18 Basic Skills	93	8.4
19 Reading	90	7.7
20 Writing	93	8.4
21 Mathematics	96	9.7
22 Factual Knowledge	92	8.0

23 [REDACTED] Achenbach Teacher Report Form shows that most of [REDACTED]
24 behaviors were "comfortably within the normal range with a -1 standard deviation
25 with reference to Anxious/Depress and Attention Problems. [REDACTED] own
26 Achenbach Youth Self Report Form places him at a -2 standard deviation with
27 reference to Social Problems and Withdrawn and at a -1 standard deviation with
28 reference to Anxious/Depress and Attention Problems.¹ On the basis of the
foregoing and other tests not discussed herein school psychologist [REDACTED]
[REDACTED] who administered the above tests finds ² [REDACTED] to be a "very bright,
creative, yet impulsive and inconsistent 16 year-old male in the 10th grade who
continues to reflect "superior" ability and potential for learning in school.

¹ Data taken from Report of Psychoeducational Evaluation prepared by Psychologist [REDACTED]
[REDACTED] on 2/20/02

² *Id. n.1.*

1 2. The 2002-2003 Academic Year IEP and Accommodations for [REDACTED]

2 According to [REDACTED] I.E.P. all of his classes will be taken at [REDACTED]
3 High School except for a learning strategies class and lab at the Alternative
4 School. The latter class and lab are designed to bolster [REDACTED] skills with
5 respect to taking notes, use of notes in class and test taking. As discussed in
6 Issue 13 below there have been problems with [REDACTED] losing books between
7 home and school. For the ensuing year he will be allowed to check out two sets
8 of books one for use at school and one for use at home. A lost book charge of
9 \$40 will be waived.

10 There has also been an issue with respect to the extent [REDACTED] would be
11 allowed to make up missed assignments. For the ensuing school year he will be
12 allowed to make up all missed assignments due to absence without regard to the
13 ten-day rule. He will also be provided with a [REDACTED] bus ticket.

14 FINDINGS OF FACT AND CONCLUSIONS OF LAW

15 The issues as presented in Mr. [REDACTED] July 31, 2002, letter and the
16 undersigned's findings of fact and conclusions of law with respect to each are
17 discussed in the order presented in his letter [Exhibit A] and take into account his
18 position with respect to each issue as set out in his August 13, 2002, letter
19 [Exhibit B] as well as the accommodations discussed above.

20 Issue 1: As framed in Exhibit A this issue is not cognizable in an IDEA due
21 process hearing.

22 Issue 2. The District claims it has heretofore provided Mr. [REDACTED] with
23 copies of all of [REDACTED] IEPs and amendments thereto. Nonetheless it has
24 agreed to provide Mr. [REDACTED] with a complete set of all of [REDACTED] school
25 records including those which duplicate records which the District claims it has
26 previously provided to Mr. [REDACTED]. All of these records will be suitably bound
27 for Mr. [REDACTED] convenient use. This satisfies Mr. [REDACTED] rights as a
28 parent to examine all records concerning [REDACTED]. See IDEA §615(b)(1), 20
29 U.S.C. §1415(b)(1).

30 Issue 3. As framed this issue is not cognizable in an IDEA due process
31 hearing.

32 Issue 4. Based on the District's agreements as set forth above this issue is
33 now moot.

34 Issue 5. According to Ms. [REDACTED] Ms. [REDACTED] is an Assistant Principal and,
35 as such, has never been assigned as [REDACTED] Dean nor will she be this
36 [REDACTED]

1 forthcoming school year. While this issue is otherwise outside the scope of an
2 IDEA due process hearing in any event it appears now to be moot.

3 Issue 6. The documents Mr. [REDACTED] requests will be included as part of
4 [REDACTED] school records to be provided to him as discussed in Issue 2 above.
5 Nothing in Mr. [REDACTED] discussion of this issue constitutes good cause for
6 having [REDACTED] privately tested at the District's expense.

7 Issue 7. [REDACTED] complete IEP will be provided to Mr. [REDACTED]
8 According to Ms. [REDACTED] nothing has been added to his IEP absent an IEP team
9 meeting.

10 Issue 8. In his comment on this issue Mr. [REDACTED] acknowledges that his
11 advocates were in fact allowed to speak at IEP team meetings rendering this
12 issue moot. See Exhibit B Issue 8.

13 Issue 9. According to the May 23, 2002 amendment to [REDACTED] IEP a
14 bus ticket will be provided to [REDACTED] for the forthcoming school year.

15 Issues 10,11 and 12. Nothing in Mr. [REDACTED] discussion of these issues
16 raise any issues cognizable in a due process hearing under IDEA.

17 Issue 13. As discussed above as an accommodation the District will allow
18 [REDACTED] to check out two sets of books one for use at school and one for use at
19 home. The District has also agreed to waive the \$40 charge for the book [REDACTED]
20 lost.

21 Unnumbered Issue: Beyond the above numbered issues Mr. [REDACTED]
22 claims that on the basis of issues 1 – 13 above his trust in terms of the District's
23 commitment to provide [REDACTED] with a free and appropriate public education has
24 been "irreparably violated, breached and broken" and that, therefore, the District
25 should be required to provide [REDACTED] with a private education at public expense.
26 However, lack of trust between a parent and a school does not constitute good
27 cause for requiring a school to provide a child with a disability with a private
28 education at its expense. Beyond lack of trust nothing in Mr. [REDACTED]
discussion in Exhibits A and B hereto suggest that [REDACTED] IEP is inappropriate
to his diagnosed disabilities or that the District lacks the resources necessary to
appropriately address [REDACTED] educational disabilities. Because of this lack of
trust Mr. [REDACTED] suggests he may remove [REDACTED] from school and provide his
schooling at home. If he does so [REDACTED] education then ceases to be the
District's responsibility.

ORDER

It appearing that the accommodations reached between Mr. [REDACTED] and the District during the course of the second telephone pre-hearing conference on August, 23, 2002, as discussed above address all of the matters Mr. [REDACTED] raises in his July 31, 2002, letter [Exhibit A] that are cognizable in an IDEA due process hearing; it further appearing that the remaining issues Mr. [REDACTED] raises are not cognizable in an IDEA due process hearing; now, therefore,

IT IS ORDERED:

1. That the District provide [REDACTED] with the accommodations described in the above Findings of Fact and Conclusions of Law.

2. That the District provide Mr. [REDACTED] with a complete set of [REDACTED] school records as provided in the Findings of Fact and Conclusions of Law above.

3. That Mr. [REDACTED] application that [REDACTED] be provided with a private education at the District's expense is denied

4. That all relief sought and not specifically granted in paragraphs 1 and 2 above is denied.

Dated this 27th day of August, 2002.


Ross W. Cannon, Hearing Officer

NOTICE: This decision is the final decision of the Office of Public Instruction herein. A party aggrieved by this decision has the right to bring a civil action with respect to the complaint presented pursuant to CFR §300.507. The action may be brought in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy. See 20 U.S.C. 1415(i)(2), (l)(3)(A) and 1415(l) and CFR §300.512. For judicial review in a Montana district court see Title 2, Chapter 4, Part 7, Montana Code Annotated. A party contemplating exercising the rights set out herein is encouraged to consult legal counsel.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the 27th day of August 2002, a true and exact copy of the foregoing Report of Second Telephone Pre-hearing Conference and Order was mailed by first class; postage prepaid, to:

Linda Brandon-Kjos
Office of Public Instruction
Legal Division
P.O. Box 202501
Helena, MT 59620-2501

Dated this 27th day of August 2002.


Ross W. Cannon