IOWA DEPARTMENT OF EDUCATION

(Cite as 20 D.O.E. App. Dec. 139)

In re Maurice M.	)	
	)	
Robin M., Appellant	)	
	)	
v.	)	Decision
	)	
Des Moines Independent Community School District	)	#128
and	)	Admin. Doc. SE# 235
Heartland Area Education Agency (11), Appellees	)	

The above entitled matter was heard by Administrative Law Judge (ALJ) Larry Bartlett on October 18, 2001, in Room 19 of the State Capitol in Des Moines, Iowa. The Appellant was present and was represented by Attorney Curt Sytsma of the Legal Center for Special Education. The Des Moines Independent Community School District (District) and Heartland Area Education Agency (AEA) were represented by Attorney Andrew J. Bracken. Four District Administrators, Toni Dann, John Epp, Tom Jeschke, and Ellen Smith, were present at the hearing.

The hearing was closed to the public at the request of the Appellant. The Parties provided, without objection, an Amended and Substituted Request for Due Process Hearing, an Answer to the Amended and Substituted Complaint, and affidavits of Toni Dann, Ann Benzshawel, John Epp, and Tom Jeschke. The Parties stipulated to a substituted record of the matter and the Appellant provided limited testimony.

The hearing was held pursuant to Section 256B.6 of the Iowa Code 2001, 20 U.S.C. § 1415, 34 C.F.R. Part 300, and Chapter 281-41, Iowa Administrative Code.

In a letter dated March 8, 2001, and stamped received by the Iowa Department of Education on March 9, 2001, the Appellant requested a due process hearing involving her two children attending school in the District. By agreement of the Parties, this hearing and ruling involved Maurice M., only.

The original ALJ assigned to this matter resigned due to potential conflict of interest on April 2, 2001, and the undersigned ALJ was assigned on April 12, 2001. Continuances were previously granted on April 27, June 25 and August 10, 2001. The Parties stipulated that Maurice M. would not be harmed or prejudiced by the requested hearing continuances. The undersigned ALJ resigned from the matter in June due to calendar conflicts, but was later reappointed on July 26, 2001, when the Parties involved agreed to an October 18 hearing date.

Based on the record presented, the Appellant alleges seven issues for resolution in this proceeding.

1. Whether the District has violated the Individuals With Disabilities Education Act (IDEA) by using a non-IDEA civil forum (state court injunction) to alter or attempt to alter the student's Individual Education Program (IEP).

2. Whether the District has violated the IDEA [§ 1415(b)(3)] by changing the provision of special education to the child without prior written notice to the parent.

3. Whether the District has violated the IDEA by engaging in a pattern of suspensions constituting a change in placement for the student without thereafter convening the IEP team to conduct a manifestation determination review.

4. Whether the District has violated the IDEA [§ 1412(a)(1)] by engaging in a pattern of suspensions constituting a change in placement for the child without providing alternative educational services.

5. Whether the District has violated the IDEA [§ 1415(k)(9)] by reporting the alleged conduct of the child to the police when that alleged conduct did not constitute a crime, but, rather, a simple misdemeanor.

6. Whether the District violated the IDEA [§ 1415 (k)(9)] by reporting an alleged simple misdemeanor to the police without providing copies of the student's special education and disciplinary records to appropriate authorities to whom the alleged simple misdemeanor was reported.

7. Whether the District has violated the IDEA [§ 1415(k)(9)] by reporting an alleged simple misdemeanor to the police and as a result changed the educational placement of a student for more than ten days without conducting a manifestation review.

Findings of Fact

This ALJ finds that he and the Iowa Department of Education have jurisdiction over the Parties and subject matter involved in this hearing.

The record is extensive, but the facts are largely uncontested in many respects. For that reason, some events will be condensed and summarized in order to focus on the legal issues presented. What is largely in dispute is the varying perspectives of the events as understood and recalled by the Parties. The Parties agreed at hearing that Maurice's current special education program is not an issue for resolution in this hearing.

It was stated by Ms. M. that her dispute status with various District staff members is of long standing. Ms. M. testified that she believed that the situation complained of by her in this hearing was historically based in a 1997 professional licensure complaint she filed against one of Maurice's elementary teachers for allegedly threatening to physically strike Maurice. The teacher had allegedly told Maurice," If you don't be quiet, then I'm going to hit you." The complaint was upheld after hearing by an ALJ of the Iowa Board of Educational Examiners, but that recommended ruling was revised upon review by the Board and the complaint was dismissed.

Ms. M. stated that the licensure complaint and her past allegations of racism and discrimination against children with disabilities have resulted in various forms of retaliation against her by District staff. In May of 1997, an anonymous complaint was filed with a private agency regarding Ms. M.'s fitness to be a foster mother and to hold licensure for that purpose. The allegation focused on Maurice's behavior toward other children and Ms. M.'s consistent aggressive defense of Maurice's behavior, including her "ranting" and "raving" with other children present. The agency did not remove Ms. M.

as a licensed foster parent. The letter advising her of the decision to not remove her as a foster parent, dated July 10, 1997, suggests that her relationship with the District's schools had deteriorated as a result of then recent experiences with the schools, and suggested that school issues be addressed with a "calm approach." Ms. M. admitted "going to bat for my kids," but denied ever undermining the school's efforts.

The District's staff had a considerably different perspective of Ms. M.'s advocacy style. In a letter to Ms. M. dated November 6, 1998, from the District's Attorney, Mr. Bracken, stated the expressed perception of the District staff as one of great concern. The letter referred to repeated events of yelling at the staff of an elementary school which Maurice was then attending, and using profanity. On the previous day, according to the letter, Ms. M. caused a disturbance in the school's office which placed the school secretary in fear of physical violence, and Ms. M. refused to quiet down when requested to do so by staff, resulting in disruption to students. Apparently, law enforcement officers were notified and handled the situation.

As a result, the District, in writing, requested that Ms M. not again appear at the elementary school without previously making an appointment in advance. She was directed to not have any contact with administrators or other school staff members without first making an appointment. She was advised that should she appear at school without an appointment, she would first be asked to leave. Refusal would result in a request for law enforcement assistance and the possible pursuit of "other legal remedies." The letter concluded with a reminder that "the District's first and most important concern is the safe and orderly operation of its schools.

At the time of hearing in 2001, Maurice was a twelve-year-old student residing in the District with his mother and high-school age sister. He has been diagnosed with Attention-Deficit Hyperactivity Disorder, as well as asthma, and food allergies. His mother stated that Maurice has a strong dislike regarding being touched by other persons or having his space invaded by others. According to a January, 2001 evaluation report, he functions in the "borderline range of cognitive abilities" with a "significant weakness in visual memory." As a result, it was recommended by the University of Iowa Hospital School in January 2001, that instruction should be presented in a manner which contextualizes and functionalizes its understandability. Problem-solving and social skills instruction were also recommended to be provided in a concrete manner. It was further recommended that Maurice's behavior plan be consistent among teachers, framed in positive strategies, and that negative demands (don't) and unrealistic threats of action by school authorities be avoided. At the times relevant, Maurice was in a self-contained classroom with a one-on-one associate.

Maurice has been receiving counseling outside of school to deal with various stresses, including those related to school. School staff had reported to the University of Iowa Hospital School staff in relation to the January, 2001 evaluation that Maurice was argumentative, exhibited explosive outbursts and was verbally aggressive to peers and school staff. Maurice's perspective was reported by Hospital School staff differently. He reported that teachers yelled at him for no reason and that he yells back only when yelled at first.

An IEP, dated April 27, 2000, included goals and objectives related to behavior, reading, writing, and mathematics. The IEP indicated the level of service at "III" and weighting for state funding purposes at "3.74." In August of 2000, a behavior improvement plan was instituted which implemented a positive token/reward system. Also instituted in the fall of 2000 (September 28) was a six step "Crisis Plan" for Maurice which is summarized as follows:

Step 1: 2 verbal redirections

Step 2: 2-5 minute in-class time-out

Step 3: Refer to assigned case manager for coaching and possible directions to case manager's classroom

Step 4: Out-of-class time-out in case manager's classroom for problem-solving and day planning for one or more class periods

Step 5: Parent phone call. Case manager will telephone mother to speak to Maurice to help him change behavior. If behavior improvement does not result, mother may choose to come to school to speak with him or take him home.

Step 6: Office referral: When Maurice continues to be disruptive, in order to prevent further class disruption, he will be referred to the office whether or not his mother is on her way to school.

When incidents have been successfully resolved and a new situation arises, the plan begins anew at Step 1.

It should be noted that, under the crisis plan, the case manager was his special education teacher and Maurice was not provided the right to personally demand to telephone his mother.

The IEP terms for the 2000-2001 school year regarding Maurice's behavior plan and crisis plan were based on a number of incidents over previous years. For the most part, the more relevant matters in this hearing are those occurring during the school year at issue, 2000-2001. Here follows a listing of discipline referrals to the principal's office for that year through mid-March, 2001.

Date	Offense	Discipline	Duration
9-6-00	conflict with peer	conflict management	
9-27-00	disorderly conduct	detention/lunch	
10-11-00	conflict with peer	conference & call	
10-16-00	threats	in-school suspension	1day
10-19-00	insubordination or disobedience	conference held	
10-24-00	truancy	office detention	
11-6-00	conflict with peer	conference held	
11-6-00	false reports*	suspension to Dept.	2 days
11-29-00	display of bigotry or intolerance	office detention	
12-6-00	disorderly conduct	detention lunch	
12-20-00	conflict with peer	conflict management	
1-11-01	conflict with peer	conflict management	
1-12-01	disorderly conduct	detention lunch	
2-13-01	physical violence**	out-of-school suspension	5-days

3-13-01	refusal to conform to rules, out-of-instructional control	out-of-school suspension	1-day

*Maurice was verbally chastised for grabbing and pushing two other students in lunch line. He became insubordinate and refused to go to the principal's office when told to do so. Maurice made untruthful allegations regarding physical contact by the Dean of Students.
**Involved fighting with another student in the school office witnessed by administrator

By mid-March 2001, Maurice had been removed from school for eight days (11-7 & 8-2000; five days after 2-13-2001; and 3-13-2001) and had one day of in-school suspension. The in-school suspension day allowed Maurice access to his special education teachers' IEP program and services. During this time, Maurice's Crisis Plan Step 4 involving interventions and time-out with the case manager was implemented with some regularity, especially in the months of November 2000, and January and February 2001. Ms. M. testified that she had not been informed of Maurice's disciplinary removals to intervention and time-out under the crisis intervention plan.. The plan did not expressly provide for such notice.

On October 16, 2000, Ms. M. appeared on crutches at her son's school, Merrill Middle School, to inquire about an in-school suspension reported to her by her son, and approached the school office at about 9:30. In the hallway outside the office she was approached by two male staff members. One of the staff members and a teacher reported in written memoranda of that date that Ms. M. was argumentative and became angry, disruptive and engaged in loud and "nearly irrational dialogue." She allegedly refused to leave the building and engaged in yelling and screaming at the two staff members. She eventually calmed down and entered into a discussion with the two in a private office. The two staff members stated that they were not able to understand her demands. Issues were not satisfactorily resolved in the nearly two hours together. Ms. M. stated during testimony that she had not been contacted by the school about the in-school suspension, and she felt Maurice's crisis plan was not being followed.

In a hand written note dated October 16, Ms. M. indicated dissatisfaction with both of her children's educational programs, stated her desire to have them taken out of special education, stated that she would come to school when she wished. With regard to requests that she make prior appointments with school staff to discuss her children, Ms. M. stated, "I will go to the schoo (sic) whenever my kids need me. This will be my Apt." She concluded with a request to meet with top District officials, including the Superintendent, to discuss her issues.

In a letter dated October 16, 2000, Attorney Bracken again (November 6, 1998 letter) reiterated incidents of Ms. M. being rude and yelling at staff members, threatening them, and creating an "unreasonably intimidating environment" at school. He advised her that her request to be present in her son's classroom during school time was being denied as posing an "unreasonable disruption to the teaching and learning environment" for all students in the classroom. She was advised by Bracken that she was "no longer welcome at Roosevelt High School or Merrill Middle School during the school day without an appointment." She was provided with four names of building administrators and one District administrator she could contact for appointments. She was requested to remain outside the buildings and was advised that law enforcement might be summoned in the future or "other legal remedies" sought.

The reference in the October 16 letter to Roosevelt High School was in regard to an older daughter's attendance center. While the staff of Maurice's school were having difficulty with Maurice and his mother, the staff members of the daughter's high school were experiencing parallel problems with Ms. M. and the older daughter.

In a letter to Attorney Bracken and the District dated October 31, Ms. M. alleged that District staff had yelled at, threatened, physically assaulted and intimidated her and her family. She advised that "you may not come with in [sic] 200 feet of my childeren [sic], myself, or and our home...."

In a memo from the Merrill Dean of Students to John Epp, a District Administrator, dated November 3, 2000, the Dean advised that Ms. M. had made numerous visits to the building and had made phone calls resulting in about five hours a week being spent communicating with her during the month of October. During these times, Ms. M. was reported to regularly yell at staff and be demanding and argumentative. He reported that "She has stated, on more than one occasion , the she doesn't support any of our discipline procedures and will encourage Maurice to misbehave."

In a letter from Ms. M. to Merrill and District staff, dated November 7, Ms. M. served notice that Maurice "is not to be questioned, probes [sic], or prodded regarding any matter by any Merriell [sic] staffor [sic], any employee of the ...District, unless and until I have been notified and present during above mentioned actions."

In a letter from pediatrician Fredrick C. Aldrich of Pediatrics and Adolescent Medicine, PC, dated November 8, 2000, and addressed to "Whom It May Concern," he advised that Maurice M. and his sister "should be allowed to call their mother promptly if they would become ill at school." There is no indication in the record whether Dr. Aldrich contacted District staff or investigated the school situation before writing this letter.

In a letter dated November 8, 2000, from Ms. M. to Merrill and District Staff, Ms. M. advised them that Maurice was not to leave school with any District staff member for any reason, except approved field trips, and she advised school staff what to do in a medical emergency.

On or about November 8, Ms. M., and staff members from Iowa Protection and Advocacy and Creative Visions, met with the District's Superintendent, Executive Director for Student and Family Services, Supervisor Epp and some coordinators to discuss an understanding regarding Ms. M.'s communications with District staff members.

On November 14, 2000, a memo regarding the apparent outcome of the joint meeting regarding communication procedures between both schools attended by Ms. M.'s children and home was prepared. It outlined the following communication protocol:

1. Office referral – Administration will call [Ms. M.].

2. [Ms. M.] can then call Creative Visions to ask for assistance.

3. A representative from Creative Visions will then call the school if further follow-up is needed.

4. If a follow-up visit to the school is necessary, a representative from Creative Visions will accompany [Ms. M.] and serve as her advocate.

5. Brandi or Maurice may call Ms. M. if ill, or with permission.

The apparent thrust of the procedure was to have an outside agency assist by serving as a facilitator of communications.

In a letter to Ms. M. dated the next day, both principals of her children's two schools wrote to thank her and Creative Visions for working through the communication issues. The letter requested almost begged, Ms. M. for her support and cooperation with the schools in working with her children, rather than her opposition to the efforts of the staff members of the two schools.

In a response dated November 17, two days later, Ms. M. ignored everything the District had attempted to promote in terms of future communication and cooperation. She accused the District staff of being the problem, not her or her children, and requested another meeting to resolve the outstanding issues. On November 20, 2000, Ms. M. again sent the October 31 and the November 20 warning letters to Bracken and District staff.

On November 22, 2000, a meeting for the purpose of a three-year re-evaluation for Maurice was attended by District and Merrill staff, Ms. M., staff from Iowa Protection and Advocacy and two other "advocates." The meeting report described growth in Maurice's academic and behavior areas, but noted excessive time spent in intervention and time-out. It was felt that, as a result, too much instruction time was being lost. It was determined that an Independent Evaluation would be conducted at Ms. M.'s request and the results incorporated into the three-year evaluation report.

A letter to Ms. M. from Merrill Principal Toni Dann, dated November 22, thanked Ms. M. for her use of the established communication protocol, and requested that it be continued to be followed in order to maintain good communications.

On November 28, Maurice's crisis plan was revised. The revision provided for one, rather than two, verbal redirections for misbehavior, and a change of special education teachers acting as case manager. The latter was a result of Ms. M's. expressions of dissatisfaction with the previous case manager. The November crisis plan was implemented several times, and included visits of a positive nature by Ms. M. to the school at the school's request to calm Maurice.

During much of this time period, the District was involved in investigating several "unfounded" allegations of physical contact with Maurice filed by Ms. M. against various Merrill staff members and an ongoing processing of a complaint of racial and disability discrimination filed by Ms. M. on behalf of both of her children in their respective schools with the Iowa Civil Rights Commission.

In an e-mail to various District staff and Attorney Bracken, dated January 10, 2001, the Roosevelt High School Principal claimed that Ms. M. continued to react hastily to misinformation provided by her daughter attending that school with a result that Ms. M.'s actions bordered on harassment of staff. On that date, Ms. M. had telephoned the school office twelve times. The Principal stated "the majority of her inquiries are loud, and sometimes ranting and nowhere near based on factual information." He continued, "There is seldom a time, if ever, that [Ms. M.] does not loudly complain about how the [District] is trying to get her daughter removed from the school program." He concluded, "It is now to the point where both [the daughter's] and [Ms. M.'s] behavior are negatively affecting the educational learning process of both students and staff. It is nearly impossible to get other important work completed as [Ms. M.] and [the daughter] consume so much [of] everyone's time."

A week later (January 17), the District, through an internal memo, insisted that all staff follow a previously established "communication plan" (December 4, 2000) which restricted initial personal contact by Ms. M. with the High School staff. It provided that initial school contacts be made through a specific high school administrator or a specific District administrator. Ms. M. was clearly not complying with terms of an agreement in which she had participated.

Maurice's behavior situation at school may have had some improvement. In a January 22, 2001, IEP goal progress report, it was noted that he had met his goal of compliance with staff direction on behavior with no more than one "redirection" 94% of the time. A notation stated that a new goal was to be written. At the same time, however, Maurice's time spent in an intervention or time-out was increasing. During the week of January 8, it was ten minutes, January 15 it was 25 minutes, January 22 it was 84 minutes, January 30 it was 105 minutes and February 5 it was over 195 minutes.

A second semester IEP progress report dated March 6 did not show any behavior goal. The record does not explain how or why the goal was omitted from the IEP.

By March, 2001, District staff members felt they were again being inundated with Ms. M.'s complaints, requests for meetings, and special education demands. On March 7, the District filed a Petition for Temporary and Permanent Injunction in District Court against Ms. M., and a hearing was set for March 16. The Petition requested that Ms. M. be ordered by the court from coming on the campus of the high school and middle school attended by her two children, or attending any school event until the hearing on the petition was held. It further requested that parent contacts with school staff be through a single designated staff member at each school and contacts be limited to one contact per day. The Petition alleged outrageous numbers of telephone calls to the offices of District officials (46 times in 75 minutes) and specific examples of highly disruptive conduct by Ms. M.

In a letter dated March 8, 2001, Ms. M. filed a request for due process hearing with the Department. She did not learn of the injunction petition until later that day.

In a memo from Maurice's "case manager" of his IEP to the Merrill Principal, dated March 12, the teacher identified and detailed many of the contacts between herself and Ms. M. between September 8, 2000, and the date of the Petition for Injunction. The teacher stated that parent contacts averaged three per week.

It was at this point after the filing of the Petition for Injunction in mid-March that continuing issues of Ms. M.'s interventions in the education of her children quickly came to a head.

On March 13, 2001, Maurice's special education teacher documented a series of disruptive and insubordinate incidents occurring at the beginning of the school day, and sent Maurice to the Dean of Students Office. As a result of Maurice's loud, argumentative and uncooperative behavior in the Dean's Office, Maurice was suspended from school for one day. The school attempted to telephone Ms. M. to inform her. During several attempts at reaching Ms. M., Maurice and the school administration talked with her. Ms. M. yelled on the phone and stated Maurice should not be suspended and should be kept in school. While the conversation was continuing, Ms. M. "burst through the main office door" talking on a cell phone. Ms. M. "yelled" that Maurice was not going to be taken home and refused to do so. Ms. M. was advised that the police would be called if she failed to take Maurice home. Ms. M. was advised that she should leave the building and she refused.

While a school staff member was on the telephone to a police dispatcher, Ms. M. yelled that she was going to leave, but that Maurice was going to stay at school. The police dispatcher was requested by school officials to send officers to the school. Ms. M. was again asked to leave the building and she refused. She then left the building and telephoned her attorney. That was then she realized she had locked her keys in the car.

When the police arrived, they requested someone be sent to open the car and advised Ms. M. that when the car was opened she would need to leave and take her son with her. She refused and said that the school could not suspend him. School officials, Ms. M. and the police discussed the matter at length, and the police advised Ms. M. that she either had to take Maurice home, or they would take him to "juvenile intake."

Ms. M. engaged in a heated discussion with police and alleged their actions were based in racism. They reminded her that she still had the option of taking Maurice home, which she then agreed to do after her car was unlocked. After an uneasy time in the school hallway, the car was unlocked, and Ms. M. and Maurice left the building. On the way out Ms. M. advised the police officers that the same thing would happen again the next day. One report stated that Ms. M. then turned to the watching group, "raised her outstretched ...arms, laughed and yelled "I'm loving this!"

All the while, Ms. M. was in the building on March 13, she was reported to be "very loud and disorderly," yelling at staff and advising Maurice to not cooperative with school staff. Students in and around the office area were removed from the area to another place in the building. Other students and staff stayed clear of the office when they heard the resulting commotion. The school librarian, with a class of students, locked the library doors as a result of the "loud and verbally aggressive" language heard there. Students and staff were clearly frightened, and the school environment was greatly disrupted. Ms. M. alleged during her testimony that this disruption by her was a result of the scheduled court hearing on the injunction scheduled for three days later.

It was reported by a staff member that one of the policemen was told by Ms. M. to stop yelling at her, and he replied that he wasn't yelling, only trying to talk over her interruptions. Her demeanor was described as "talking fast, asking questions then answering them—never giving anyone a chance to explain anything." One report of the incident in the record stated that a police officer at one point threatened Ms. M. with arrest.

The next day, March 14, an annual IEP review meeting took place with Ms. M., an Iowa Protection and Advocacy staff member, two Concerned Parent Advocates, a University of Iowa Hospital School staff member and five District and Merrill staff members present. Following discussion, it was determined that the IEP would be completed at a meeting two weeks later. While the documentation of that meeting is not detailed, it does not now appear to have been harmonious. The latter meeting was cancelled by Ms. M., as was a classroom visit by a University staff member for the purpose of conducting a functional behavioral assessment. One District staff member claims that Ms. M. requested a one-on-one teacher associate to work with Maurice at the March 14 meeting. Because the IEP completion was delayed and later cancelled, no documentation of a decision appears to have resulted.

On March 16, when the hearing on the District's Petition for Injunction came before the District Court, the Parties agreed to resolve the issues themselves, and came to an agreement for maintaining restricted communication between Ms. M. and school officials. The resulting agreement was approved by the District Court as an Order for Injunction subject to potential enforcement as contempt.

Although the wording of the Order later resulted in confusion, its provisions appeared to be straight forward and is summarized here.

1. Communications by Ms. M. to any school staff member regarding "any complaints, or demands for accommodations or services, or any advocacy," was prohibited except through her legal counsel or his office. [Note. This did not, on its face, prohibit all direct communication, only communication of an advocacy nature not channeled through her attorney. This interpretation would did not result in a change in Maurice's crisis plan.]

2. Presence on any school campus or facility by Ms. M. was prohibited unless through a mutually agreed to appointment or requested by school officials to pick up her children, or "if called upon by the school to assist in addressing either of her children's behavior at school. [Note. This did not substantially alter the spirit or language of Maurice's Crisis Plan.]

3. Revision of the Order was to be effective only through further adjudication and/or IDEA due process procedures.

Ms. M. testified at hearing that her understanding of the Order was that it prohibited "demands" from her, but did not prohibit ordinary contact for information. It was her stated understanding that she could obtain information from the school, but when she disagreed, she was not to argue for a different result. She believed that the Order did not prohibit her from picking up and delivering her children or entering the schools when problems with her children arose and school officials requested her presence. She stated at hearing, also, that she believed that all her rights as a parent under the IDEA would still be followed by the school and available to her.

The week following the hearing was spring break for the District's schools, and Maurice and his mother visited their family physician. It was determined as a result that Maurice would stop taking Ritalin. Ms. M. stated in testimony that Maurice seemed to have a dull or depressed personality as a result of the medication without improvement in his behavior.

The week following spring break was pivotal in bringing the various issues presented in this hearing to a head. On Tuesday, March 27, Maurice returned home from school and told his mother that because he had been bad, and as a result of his mother causing problems, he would receive part of his academic instruction one-on-one while segregated from other students. He is quoted as saying that it was to be conducted in a "tiny little room" and he was taught by a "new" teacher aide. Maurice also reported receiving a type of exercise activity that he had not previously received and his lunchtime had been changed, which he considered punishment. Ms. M. and her attorney set out to attempt to learn what Maurice was talking about, but allege they did not receive details until October 17, the day before this hearing.

The gist of Maurice's information about his altered school activities had a basis in fact, but neither his mother, nor her attorney had received any notice or information regarding the changes, nor had either participated in the discussions leading to these changes.

The record shows that beginning about March 27, 2001, Maurice began receiving "instruction" in math, spelling and social science in a storage room next to the library in which light bulbs were likely stored. His lunch schedule was changed, but apparently would be returned to normal when his

behavior was good. He also received first thing each morning "deep pressure activities to calm his central nervous system prior to beginning academic tasks."

It is here that bad things began to get worse. Ms. M. attempted to contact school officials on March 29, to ask about changes to Maurice's educational program and placement. She also planned to tell them about his change in medicine. She talked with the Merrill office manager before school and said she wanted to pick up Maurice's medicine, but did not. Ms. M. contacted the school nurse and demanded that the nurse get Maurice's medication ready for her to pick up. She did not pick them up. Later, the nurse received a telephone call from Ms. M. telling her to refrain from giving Maurice his late morning medication until she arrived at school. When Ms. M. did not arrive, the Principal instructed the nurse to give Maurice his dosage. Ms. M. did not at any time tell the school staff about the medication change. Ms. M. telephoned the Principal twice in mid-afternoon. During the first conversation, Ms. M. allegedly yelled at the Principal for not informing her about a dangerous incident involving Maurice and a paper clip in an electric outlet, and ten minutes later she called to request a copy of Maurice's schedule. The Principal advised Ms. M. that she needed to request a copy of the schedule change through her own attorney. Clearly, the Principal interpreted the Court Order to require all communication through Ms. M.'s attorney, not merely communication of an advocacy nature.

On March 30, the District filed a Motion to Show Cause why Ms. M. should not be found in contempt by the District Court. Supporting material attached to the contempt request indicates clearly that some school staff were under the impression that Ms. M. was not to contact the school under any circumstances, except through her attorney. At least three of the telephone calls in the attachments were inquiries about her son's IEP change, not prohibited on its face by the language of the Court Order, yet school staff insisted she go through her attorney. Once when Ms. M. told the staff member that the staff member was mistaken about needing to go through her Attorney, the reply was "I told her the injunction made that very clear." Ms. M. responded by calling the staff member a "bitch." A similar difference of opinion as to the interpretation of the Court Order appeared to exist with the high school staff. Ms. M.'s Attorney's effort to obtain clarification on the meaning of the Court Order was rebuffed on March 30. Clear communication of important issues between home and school not prohibited on the face of the Court Order were prohibited by actions of school staff.

All the foregoing trials and tribulations of Maurice paled in comparison to the events of April 2, 2001. Officially, he was suspended for only one day as a result of "insubordination, being out of control, raising his fists to the Dean of Students," and "disorderly conduct." The following is an attempt at brevity by summarizing the many events of that day as recorded and reported by six Merrill staff members.

An incident began between Maurice and a peer in his special education class. The incident escalated with Maurice going to various rooms and other locations in the school talking loudly, acting out-of-control, or disregarding staff directives. Numerous students and staff were disrupted in their activities as Maurice continued to walk around the school at will, refused to comply with repeated staff directives, and repeatedly attempted to telephone his mother from various school sites, including the office. He finally reached his mother by telephone from a classroom with students present and talked for twenty minutes. He told his mother that the staff was mean to him, and that he felt threatened and intimidated. His phone call was cut off by school staff, and he went to the office against directives from staff, and telephoned his mother again. He acted in a wild and uncontrolled manner until that phone was disconnected. He ran to the library office and closed and locked the door, then left the library shouting loudly and slammed his fists against lockers in the halls. He returned to his classroom, was unable to access the telephone there, went into the nurse's office until the telephone there was

disconnected. He went into the teacher's lounge and locked the door. A group of staff members followed him while attempting to protect him and others present and all the while attempting to calm him down.

Maurice briefly left the school building saying he was going home, but returned to the school and ran to the office. The office was cleared of students and staff. The Principal telephoned Ms. M. and advised her that Maurice was suspended and out of control, and that she needed to come to school and pick him up. Ms. M. was advised that failure to pick up her son would result in the police being asked to take him home. Ms. M. refused and the Vice Principal immediately telephoned the police for assistance. This was about sixty-five minutes after the disturbance had begun.

Maurice responded by again yelling and shouting and running from place to place and room to room in the school. Classes were moved and many students became fearful. Maurice finally settled down and was to be taken home by a police officer about ninety minutes after the disruption began. The officer and Maurice left school but soon returned to school where Ms. M. joined them. Ms. M. asked for Maurice's backpack and Ritalin and left with Maurice. Maurice was suspended for the rest of the day on April 2 and the next day, and did not return to school until two days later on April 4.

On April 4, Maurice's first day back at school following his suspension on April 2, his out-of-control behavior began early in the morning and was observed by a number of Merrill and District staff members. He insisted on calling his mother and did so. While there were times that he sat and talked with staff, he generally refused to follow their directives. He fabricated incidents of staff members touching, hitting and kicking him.

Two police officers arrived at school and explained that Ms. M. was parked in front of the school and had called them to come to the school because her son was being abused by school staff. Maurice was excited at the anticipation that the police were there to arrest school staff.

Maurice was suspended from school for three days and the paperwork was given to one of the police officers to give to Ms. M. He returned shortly with Maurice and the paperwork and said that Ms. M. refused to take the paperwork and advised him that the school could not suspend her son. Maurice went to his locker and put his coat away. When the officer agreed to again escort Maurice from the building, Maurice refused to leave and became very loud claiming his mother had told him to stay in the building. The officer took hold of the neck of Maurice's jacket in order to escort him from the building. Maurice's disruptive activity on April 4 lasted for a total of about two hours.

Maurice returned to school the next Monday, April 9, and experienced a more typical school day. He was advised that his morning "decompression exercises" would cease as a result of his mother's expressed fear that it would aggravate his asthma condition. Instead, he would begin his one-on-one academic classes earlier. He was also returned to his favored lunch schedule as a result of his good behavior. He did leave school early in the day due to an asthma attack.

The next day, April 10, when Maurice arrived at school, he insisted that he receive the decompression exercises and denied being advised on the previous day by the Principal and a staff member that his schedule had been changed. He refused to begin his one-on-one class work. His disorderly conduct escalated quickly. He insisted on calling his mother, father, and attorney. He did speak to someone referred to in the record as his "father," who apparently believed what Maurice told him about staff physically "touching" him, and the "father" had to be talked out of coming to the school. He was then

allowed to telephone his mother, but his out-of-control behavior did not de-escalate until it was agreed that he and the Principal would play a board game in the Principal's office.

For the second time (first on April 4), two police officers arrived as board game play was beginning and said they had been called by Maurice's mother, who was parked outside off-school grounds. Maurice immediately falsely accused school staff of physically hurting him. The Principal advised the officers that Maurice was suspended for the remainder of the day and asked that they give Ms. M. the paperwork notice as she was under court order to not come on school grounds.

As before, on April 4, the officers re-entered the building and said that Ms. M. refused the suspension notice and advised them that the school could not legally suspend her son. Maurice then re-entered the building because his mother had told him the school could not suspend him and he was not to leave the school building. The Principal convinced the police to remove Maurice from the building, even though he resisted. Maurice was removed by the police who held onto his jacket to get him to leave the building…

When the police offers approached Ms. M. with Maurice she reportedly began yelling, shouting and screaming because she had telephoned them for help and they were taking the side of the school. She yelled at the police and one of the policemen raised his voice in order to be heard over her. She telephoned her attorney who was advised by the police that they would take Maurice to the attorney's office or to Juvenile Hall, and the choice was his. The attorney agreed that the police should take Maurice to his office and Ms. M. followed in her car. The officers left Maurice with his mother and attorney. The time of Maurice's and his mother's disruptive activities at school lasted about two hours.

After the police left school with Maurice, Ms. M. shouted that the Principal was a "bitch," and paced around on the sidewalk leading up to the school. School staff thought she was "giddy and giggling" before she left for her attorney's office. School staff expressed concern regarding the impact of the incident on the school community because a number of parents and citizens had observed the commotion in front of the school. A number of students expressed concern to school staff and were visibly upset.

The next day, April 11, the situation with Maurice had not improved. Before school started, Maurice refused to go to the library storeroom with his one-on-one associate to work on math and spelling, as called for in his schedule implemented after March 27. He insisted that he wanted his stress-relief exercises and wandered the halls of the school refusing to obey school staff directives. He encountered a peer who had previously received the stress-relief exercises, grabbed him, swung him around and "punched" him. He swore at another student who was trying to calm him down. Maurice ran out of control through classrooms, halls, and the cafeteria shouting vulgarities and throwing furniture. Students were in fear for their safety.

Maurice ran to the office and told the Principal he was going home and that he was not going to do anything anyone told him to do. The Principal advised Maurice that he would have to go home.

The Principal telephoned Ms. M., advised her of the situation and requested that Maurice be picked up immediately. Ms. M. declined and said that she needed to consult first with her Attorney. Ms. M. testified that the Principal had threatened to have Maurice arrested and jailed if she did not pick up Maurice from school. The Principal advised Ms. M. that the police would be called if she were not there within thirty minutes.

Maurice returned to the office, pounded the windows, yelled and continued his disruptive activities. He threatened peers with violence, used profanity, and called school staff "racist." After about twenty minutes, the Principal directed the Vice Principal to telephone police. When a police officer arrived, Maurice was quoted as saying, "I can't believe my mom wouldn't come and get me. She knew I was in trouble." The policeman escorted Maurice from the building at approximately 8:15 a.m. Approximately 45 minutes of the school day had been disrupted. It is unknown how long it took to return the school to "normal."

Maurice was taken to Juvenile Court authorities by the officer. Documentation completed by the officer stated that Maurice was charged with "Disorderly Conduct." This was placed on the form identified at line "15 CRIME." The line "16 CLASSIFICATION" was left blank. The police report noted that Maurice's disruption of Merrill School was an "ongoing situation." It noted that "SGT. Hansen Decided to take suspect to JCI FOR Disorderly Conduct."

There is nothing credible in the record to indicate that the School or District officials requested that Maurice be arrested or changed with a violation of the law. Those actions appear to have occurred strictly within the discretion of the law enforcement officers involved. Ms. Dann testified through affidavit that she informed the police when they arrived that the call from the school was not to arrest Maurice, but that he needed to be taken home. She further stated that Maurice acted out and became belligerent in the presence of the policeman.

Court disposition of the charges had not been completed at the time of this hearing.

Ms. M. testified that her delay in coming to school on April 11 resulted from earlier warnings of her Attorney that she could be cited for contempt under the existing injunction for going on the school property. That was why she had kept her distance in front of the school on April 10. Her insistence that the school could not suspend Maurice for more than ten days also arose from her understanding of the law resulting from communications with her Attorney. Ms. Dann testified that in her telephone discussion with Ms. M. on April 11, she explained the emergency nature of the situation and requested that Ms. M. pick up Maurice from school and then call her Attorney later.

Ms. M. and Ms. Dann both noted in their testimony that the disturbance on April 11 began as a protest by Maurice regarding aspects of his schedule change, beginning first in late March, and continuing in early April. Ms. M. stated that she was not ever invited to a meeting for the purpose of changing Maurice's IEP to include the exercise program, one-on-one teaching in isolation or changed lunch time due to behavior.

Following Maurice's arrest on April 11, it was jointly agreed by Ms. M. and the school that Maurice would remain away from school for awhile as a way of cooling down the situation. The Parties mutually agreed to the structure for his return to school and the program to be provided was that existing prior to the time of the injunction proceeding. He retuned to school on April 27.

Ms. M. testified that with the help of her attorney, minister, therapist and others she was attempting to tone down her advocacy style which was described in court documents filed on her behalf as "more intensely verbal and less diplomatic than is conducive to achieving the results she wants for her children." The document states further, and she verified in testimony, that she would avail herself of such formal training if made available.

On cross-examination, Ms. M. denied swearing at or using profanity toward District staff. She said that she never yelled at anyone, but "talked louder than usual." She admitted to raising her voice over other persons' voices in order to be heard, but did not admit to yelling at anyone. In light of numerous documentation to the contrary, this was not credible testimony.

Also, during cross-examination, Ms. M.'s testimony was evasive and not credible regarding her responses to questions related to telephone harassment of District staff at the two District schools attended by her children.

Ms. M. stated under cross-examination that it was her understanding that the terms of the court injunction did not prevent her from contacting her children's schools through the proper process, or coming to school when requested to do so. In effect, the crisis plan for Morris was still operable. This testimony, however, did not explain the somewhat contrary view exhibited in the record by several District staff members that no direct contacts for any reason were to be allowed.

In an affidavit substituting for testimony by mutual agreement of the Parties, Ms. Dann indicated that Maurice's Behavior Intervention and Crisis Plans were followed when possible. The exceptions were those times that Maurice's conduct became so out-of-control that he needed to be immediately removed from the school environment. She acknowledged that some of his behavior may be related to his disabilities, but that suspensions were generally used with him for cooling down the situation when Maurice was out-of-control, and were not considered punitive.

Ms. Dann believes that Ms. M. encouraged her son to not comply with school staff directives and was not supportive of school efforts. This ALJ agrees, but is convinced that Ms. M. may not have comprehended that she was doing so. She certainly had little understanding of the counterproductive impact of her unsupportive conduct. The testimony of Ms. M. indicates that she is an assertive advocate for her children, but it is this ALJ's opinion that she does not recognize the degree of aggression she exhibits or the resulting disruption and negative results which occur.

Ms. Dann stated that it is her belief that Maurice's suspensions during the 2000-01 school year arose out of "separate and discrete instances," and required time away from school to cool down. She emphasized that suspensions were not intended as punishment or to change his placement or his IEP. The institution of deep pressure exercises was devised as a strategy to help Maurice control his behavior in an effort to allow him to stay in school. They consisted of walking, lifting, walking up stairs and other moderate physical activity and were "not intended to be special education or related services." They were not intended to "replace or change" any IEP element. Ms. Dann believed, and the record would confirm, that Maurice enjoyed the deep pressure exercises. She also stated that they did not conflict with Maurice's health plan or compromise his health. The deep pressure exercises were stopped at the request ("demand") of Ms. M., and Maurice apparently became upset as a result.

An affidavit filed by two District special education staff members familiar with deep pressure exercises stated that they are of value to both students identified as needing special education and those who are not. One stated that three other Merrill students engage in deep pressure exercises, and one of those three was not a student eligible for special education. They were designed as a problem-solving strategy with Maurice, but were not intended to be special education. Both staff members further stated that the exercises were initiated as an effort to help Maurice begin the school day, and he was allowed to join a group of students already participating under the supervision of a special education associate. This ALJ notes that several of Maurice's worst days at school began after the exercises were stopped.

Throughout these proceedings this ALJ was surprised by the remarkable restraint shown by school staff to physically not restrain Maurice. Many educators would have done so. Arguments pro and con about the appropriateness of such actions could go on at length. Ms. Dann stated that the school decision to not physically restrain Maurice (although this ALJ believes they had the legal right to do so) was a conscious decision arising out of respect for Ms. M.'s request ("demand") that Maurice not be "physically touched" by school staff. The record indicates that some school staff members may have believed that there may have been resulting emotional damage to Maurice had they done so. Still, the Merrill staff acted from a professional position where other educators may have acted more precipitously. Several staff members recounted incidents of the school attempting to advise Ms. M. of Maurice's disruptive and abusive behavior toward others without Ms. M. showing concern or interest. She is alleged to have said several times that she didn't care what Maurice did to others, so long as it was not Maurice being hurt.

Ms. M. might disagree strongly, but this ALJ believes that he has seen numerous instances of true concern and caring for Maurice's best interest by District staff in this record. This also likely played a role in the degree of restraint exercised by staff..

Ms. Dann explained that the one-on-one academic schedule selected for Maurice, dated March 27, 2001, was one of several proposed schedules and was not ever fully implemented. She stated that the licensed teacher who worked as an associate with the special education teachers sometimes worked with Maurice in a room across the hall from his classroom. While sometimes used as a storeroom, it was actually used for a variety of purposes, had a phone, internet access, computer, sink and a window into the adjoining library. She stated that the door was never locked when anyone was present.

During the 2000-01 school year, District and Merrill staff met regularly with Ms. M., and her advisors and advocates to engage in the planning of Maurice's education. They include: August 28, 2000; September 27, 2000; October 6, 2000; October 25, 2001; November 8, 2000; November 22, 2000; December 8, 2000; February 15, 2001; and March 14, 2001. Several other meetings were cancelled at Ms. M.'s request. Additionally, numerous meetings, many of a similar nature to those involving Maurice, were held regarding Ms. M.'s high school age daughter. The meetings for the school year up until March 14 involved 27-30 staff members in a total of 28 meetings for both children.

School records regarding Maurice were not voluntarily transferred to juvenile court authorities. An order for school records, dated May 9, 2001, was issued by juvenile court. Maurice's special education records were not sent until May 18, 2001.

Not once in thirty-seven years of working in and with schools has this ALJ ever personally witnessed or heard first-hand knowledge regarding such disruptive behavior on the part of a student or a parent as was present in this record. Neither Maurice, nor his mother, have shown any respect for the rights of others that they themselves have claimed while terrorizing school staff, students and even some parents and community members. No student or parent has the legal or moral right to so significantly, blatantly and without regard of others, create such a fearful, disrespectful and disruptive school environment as that created on several occasions by Maurice and his mother. Concerns about, and care for, her children were not doubted in the record or arguments provided in this hearing. But the record does disclose a purely inappropriate and disruptive style of voicing that care and concern that should not be allowed to continue. Neither anarchy, nor tyranny have a place in public schools.

No educator can fault the District staff for attempting to regain and maintain whatever portion of the educational environment they could at Merrill. They must be strong and dedicated educators to not have resorted to less professional actions than they did.

The record indicates that law enforcement officers were at a District school at least six times as a result of Ms. M.'s style of advocacy for Maurice.

November 5, 1998	Perkins Elementary
March 13, 2001	Merrill Middle School
April 2, 2001	Merrill Middle School
April 4, 2001	Merrill Middle School (called by Ms. M.)
April 10, 2001	Merrill Middle School (called by Ms. M.)
April 11, 2001	Merrill Middle School (resulting in arrest)

This ALJ apologizes for potential minor errors in details of fact. The documentary record was over 400 pages, and the testimony was sketchy in many areas. Both the documentary record and testimony evidenced the difficulty of keeping the details of similar events accurate without some degree of confusion. The ALJ is confident, however, that the foregoing finding of fact does represent an accurate finding of the relevant facts.

Conclusions of Law

The issues presented by the Parties on the facts present in this hearing are discussed in the order presented by the Parties.

First Issue presented: Whether the District violated the IDEA by using a non-IDEA civil forum (injunctive action) to alter or to attempt to alter the content of Maurice's IEP.

The thrust of the Appellant's position is that the District violated IDEA mandated procedures when it sought an injunction in an effort to control Ms. M.'s advocacy and indirectly revise Maurice's behavior intervention plan and crisis plan.

The District admits that Maurice's behavior plan was a part of his IEP, but argues that while the crisis plan "was only a part of the Behavior Plan and therefore the IEP, it denies that the crisis plan was a "significant part of the IEP." The District argues that the crisis plan only allowed Ms. M. to be contacted by District staff and did not authorize Ms. M. to initiate communications with District staff. As a result, any action by the school through an injunction to restrict Ms. M.'s ability to "initiate communication" was not contrary to the crisis plan. The District further argues that the injunctive action was for the purpose of protecting its staff from harassment by Ms. M., and that the IEP for Maurice was unaffected by the litigation. It concludes that the District continued to maintain "effective and appropriate" means available for Ms. M. to communicate legitimate concerns.

A detailed review of federal statutes, regulations and interpretive discussion of those regulations does not reveal any clear explanation or definition of the phrase, "behavioral intervention plan." See 20 USC § 1415(K)(1)(B); 34 CFR 300.24 (b)(9)(1)i); .24 (b); .24 (b)(13)(V), .520 (b)(1); and .520(b)(2).

No mention of "crisis plan" was identified. Therefore, for the purpose of interpretation, we are on new ground.

Maurice's IEP developed on April 27, 2000 for implementation in the following academic year provides the following annual goal: "Maurice will comply to initial group and/or individual directions 85% of the time, with no more than one redirection." An unexplained form in the record (p. 27) contains "Maurice [M.'s] Plan for Success," and appears to be part of a token-reward system involving following directions with redirects. A "Crisis Plan" (p. 29) developed on September 27, 2000, and implemented the next day provides at Step 1 for Maurice to receive two verbal redirections. Steps 2, 3, and 4 involve in-class time-out for reflection, conference with the case manager and out-of-class time-out with the case manager. Step 5 is the potential of a telephone call by the school to Ms. M. (Note: Parent initiated or student initiated telephone calls are not part of the crisis plan), and the parent option of coming to school to work with Maurice or taking him home. (Note: Nothing is present in the crisis plan regarding parent advocacy for the child.) Step 6 is an office referral to prevent further class disruption. (Note: Nothing in the crisis plan anticipates the level of disruption occurring in March and April of 2001.)

A "Progress Report" charting Maurice's progress in his behavior "goal area" appears in the record (p. 30) and charts the weekly number of minutes spent by Maurice in time-out or intervention, presumably involving Steps 3 and 4 of the crisis plan.

It appears to this ALJ that the "crisis plan" in the record, and as slightly modified several times, is part and parcel of Maurice's IEP and subject to all applicable parental safeguards of the IDEA. That conclusion, however, does not end the inquiry. The Appellant alleges that the effort to obtain an injunction was motivated by a District staff desire to "restrain" Ms. M.'s communications with them without following the IDEA procedures of notice, team meetings, and opportunity for due process review.

There is nothing in the record of this proceeding to indicate that District staff sought to use the injunctive action begun on March 7, 2001, as a means of circumventing the IDEA. Ms. M.'s aggressive form of advocacy was not something that pubic school staff, students, parents, or the public should be expected to have to contend with more than once. In repeated episodes, the learning environment of Merrill was severely disrupted, staff intimidated and students traumatized; all things which have no place and for which there is no excuse in a school setting. When one person undertakes to put what she claims is the best interest of herself or her children ahead of the interests of untold numbers of other children, parents, dedicated school staff and the community, that borders on anarchy and deserves no protection against appropriate legal processes.

If there were any better available legal alternatives to District officials other than the route they took in seeking an injunction, they are not in the record or within the realm of experience of this ALJ. It is not likely that Congress ever imagined the possibility of a parent so inappropriately usurping authority and raising havoc with a school, allegedly under the same parent protections of the IDEA that were designed to enhance parent and school working relationships, as has occurred on the facts present in this record.

The actual terms of the mutually agreed to court order resulting from the injunctive action do not on their face result in any violation of IDEA procedures or parent rights. By mutual agreement Ms. M. was not prohibited from raising complaints, demands or any advocacy, only that they were to be raised through legal counsel. Presence on school grounds was not prohibited, as long as she was present

through an appointment. She was not prohibited from picking up her children at school or assisting the school in addressing their behavior at school when requested by school staff. Although not expressly contemplated in the IDEA, none of these terms are in conflict with Maurice's IEP or the IDEA.

It is unfortunate that all school staff were not aware of the terms of the Order. Ms. M. became frustrated when school staff refused, in late March and early April, 2001, to tell her what Maurice's schedule was, whether his IEP had been changed, and to talk with her when she attempted to advise the school that Maurice's medication had been changed. Under the express terms of the Order for Injunction, she was not complaining, demanding or advocating, but merely attempting to communicate. It is unfortunate that the Attorney for the District did not understand the confusion over the language of the Order when he declined further discussions of clarification in his letter of March 30, 2001, and began contempt proceedings.

In the overall context of Ms. M.'s aggressive and harassing communication style, and not knowing fully the details of Ms. M.'s contacts with her daughter's high school, which are also part of this issue, this ALJ will not be overly critical of the District rejections, at least in part, of Ms. M.'s efforts to obtain and give information. All events must be taken in the context of other events.

In objecting to the manner of the school's injunctive response to her aggressive advocacy style, Ms. M. has overlooked the fact that the Supreme Court has approved, if not created; the use of the injunctive process as a means of filling unanticipated voids of IDEA procedures.

In Honig v. Doe, 484 U.S. 305, 108 S.Ct. 592 (1988), local and state school officials attempted unsuccessfully to affirm their unilateral authority to exclude students who were dangerous to themselves or others, even in the face of parental requests for due process hearings. Under the law, a parent request for due process hearing required the maintenance of the student's "stay-put" educational placement. This also was an issue not likely anticipated by Congress, and was not expressly or impliedly dealt with in the IDEA legislation.

The Court fashioned a remedy for schools seeking to protect others from dangerous students and uncooperative parents through injunctive relief in appropriate cases. In doing so, the Court noted that the IDEA statutory provisions limiting school authority and procedures did not pre-empt the authority of courts from taking action. Numerous subsequent court decisions, including those of the Court of Appeals for the Eighth Circuit have heard and ruled in cases involving the non-statutory injunctive remedy. Even though not expressly or impliedly appearing in the current IDEA statute or regulations, the Department of Education continues to believe it is still good law. See "Major changes in the Regulations," 64 Federal Register 12407, 12415 (March 12, 1999).

By seeking injunctive relief outside the IDEA against Ms. M.'s unique, aggressive and highly disruptive advocacy style, the District did not circumvent or violate IDEA process or procedures.

The District is the prevailing Party on the First Issue.

Second Issue presented: Whether the District violated the IDEA provisions of notice and parent participation in changing the provision of special education provided Maurice.

The first allegation related to this issue is that the District unilaterally began "deep pressure activities" with Maurice near the end of March, 2001 without notice to, or the participation of, Ms. M. About ten days later the District again unilaterally stopped the "deep pressure activities" when Ms. M. sought clarification of what was occurring. A second allegation involved a change in the placement of Maurice into a one-on-one teaching situation not expressly provided for in his IEP. The third situation alleged was a temporary change in lunch times for Maurice, which resulted from his misbehavior in school, and was not part of his behavior intervention plan..

The District denies that changes occurred in the provision of special education and related services to Maurice after March 16, 2001. It notes numerous meetings involving Ms. M., advocates, and District staff during the entire school year from which it is to be inferred that these matters were discussed.

The District admits that in March, a supervisor directed that the staff at Merrill "put in place day-to-day problem-solving plans" needed to work with Maurice. Staff members took this to mean they should "do what you need to do" to keep Maurice on the learning track at school. Two of the three changes complained of here by the Appellant had indirect, if not direct, implications in the severe behavior exhibited by Maurice in the following days. Ms. M. became frustrated because she didn't trust the school and couldn't learn what was happening with Maurice's school program, except through Maurice's incomplete oral version. Maurice became upset and revolted against his continued one-on-one activities and the stopping of the deep pressure exercises.

Various District staff testified through affidavit that they were working in Maurice's best educational interest and that the "deep pressure activities" and the one-on-one teaching situation were not special education or related services. The deep pressure exercises were used with about four students, one of whom was not eligible for special education services. They were not, however, used with the vast majority of students.

The facts in the record are not totally clear with regard to these issues, and perception differences of the Parties are obvious. The issue of the changed lunch period is especially lacking in detailed information.

Related services are defined in part as "...other supportive services as are required to assist a child with a disability to benefit from special education," and the only clearly excluded service is medical treatment by a physician (emphasis added) (34 C.F.R. § 300.24). Supplementary aids and services "...means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate..." (34 C.F.R. § 300.28). "Systematic problem solving" refers to educational efforts to assist students with learning problems in the regular education environment prior to referral to special education evaluation. § 281-41.47 & .48, I.A.C. Determination and provision of the first two must be part of the IEP process, only the last does not. However, once a student has been identified as being eligible and placed in special education programming and services, the "systematic problem solving" concept is available only through the IEP process.

The purpose of the "deep pressure activities" was to assist Maurice in relieving his stress during the transition between his early morning non-school activities and school activities immediately upon arriving at school in the morning. Thus, the deep pressure activities are both a related service and a supplementary aid and service depending on whether Maurice was going to be in special education or regular education programs and activities. As either, it should have been considered by the IEP team as part of the IEP decision making process.

While the record is not clear with the details regarding the one-on-one teaching by an associate in a place away from the special education classroom before April 1 and after, it does appear that it was something new and different for Maurice and was provided by a "new" staff member. At least one of his existing IEP goals was to be addressed through this different situation and, thus, should have been provided for through the IEP or placement team processes. While "placement" is not clearly defined in law, it must be provided in a setting which allows students with disabilities to be educated with children who are not disabled to the "maximum extent appropriate" (34 C.F.R. § 300.551). Segregated one-on-one instruction may be appropriate for some students, but that decision is to be made by a "group of persons, including the parents" (34 C.F.R. § 300.552), unless it is an issue of methodology only.

The change in lunch period appears to have occurred as reported by Maurice because his former situation was restored on April 9, based on his good behavior. With many details of this decision missing from the record. This ALJ is left to speculate about the context in which this action was taken, and how it related to the existing behavior intervention plan in Maurice's IEP.

From the record, it appears to this ALJ that a group of caring and conscientious District staff members sought and implemented strategies to improve Maurice's situation at school, including his learning progress. No ill intent is even hinted in this record. However, District staff undertook these improvements without the participation and involvement of Maurice's mother, albeit with, perhaps, understandable historical reasons. While one of these changes, i.e. lunchtime for behavioral reasons (though not a "positive" behavioral intervention), or another may be overlooked as inconsequential, together, they represent a school effort to help Maurice by effectively changing his special education program and services without having to face the challenging situation of involving an unpredictable and potentially volatile mother in the process. Ms. M., as a result of her inappropriate and disrupting style of advocacy, is partially responsible for school staff seeking to help Maurice without involving her. Ms. M. must decide soon whether she really wants to help Maurice with his schooling or not. This ALJ finds that the District did violate various IDEA parental safeguards related to program and placement changes in late March and early April, 2001.

It is unfortunate that hindsight is the only view from which these District efforts can be observed as playing a part in the catastrophic events culminating in the April 11 arrest. While Maurice complained about being punished through assignment to an earlier lunch period, and being isolated in a "tiny locked room," which it wasn't, he became visibly upset when the deep pressure exercises were stopped. They were stopped, at least partially, because Ms. M. was not fully informed or involved in the decision to use them and was demanding to know what was going on with regard to her son's program.

The Appellant is the prevailing party on the Second Issue.

Third Issue presented: Whether the District violated the IDEA by engaging in a pattern of suspensions without conducting a manifestation determination review (and other procedures required in such situations).

The Appellant argues that Maruice's fifteen days of suspension from school between October 16, 2000, and April 11, 2001, constitute a "pattern" of suspensions which are equivalent to a change in

placement under the IDEA, and which as a result implicates a number of procedural requirements not provided by the District.

The District argues that the suspensions do not constitute a "pattern," but instead are separate and discrete incidents. It argues that suspensions on April 2, 3, 4, 5, 6, and 10, 2001, involved separate and discrete incidents and were for the purpose of allowing a cooling down period, not punishment.

Most public school educators know, or should know, that the 1997 Amendments to the IDEA are interpreted to provide the possibility of unlimited, short-fixed term suspensions from school for students with disabilities, so long as each individual suspension length is ten consecutive school days or less. This may be accomplished without much implication for the IDEA and its procedural and other safeguards. Hehir to Eldridge, 30 IDELR 543 (OSEP 1998). This was greatly heralded and written about in the professional literature.

What is frequently overlooked and misunderstood, however, is that accumulated short-fixed-term suspensions may result in an unbelievably difficult legal situation for schools when they occur in such a way that they result in a "pattern" of suspensions which effectively results in a "change in placement" under the IDEA. The provision at 34 C.F.R. § 300.519 provides in relevant part as follows:

> ...a change in placement occurs if – (b) The child is subjected to a series of removals that constitute a pattern because they culminate to more than 10 school days in a school year and because of factors such as the length, the total amount of time the child is removed, and the proximity of the removals to one another. (emphasis added)

The difficult legal situation for school officials is that when a "pattern" exists in a series of suspensions, they must conduct a manifestation determination review (by the IEP team, including parents), plan a functional behavioral assessment or review in some situations, create or review existing behavioral intervention plans, provide the detailed written notice to parents of a "proposed" change in placement, conduct a re-evaluation, provide a continuation of a free appropriate public education (as determined by the IEP team, including parents), and probably provide a greater constitutional procedural due process hearing than is required for mere short-fixed term suspensions (Goss v. Lopez, 419 U.S. 565 (1975).

What makes this difficult legal situation impossible ("Catch 22" comes to mind) is that the school will not know until after the fact that a "pattern" exists, and then it may be too late to go back and provide all the required procedural components. It is akin to an automatic "out of compliance" with the IDEA.

We know from the regulations that for a "pattern" to exist, it must involve more than ten school days in a school year, and that the length of each removal, the total amount of time removed, the proximity of the removals to one another, and other potential "factors" are relevant. But the law does not really provide much interpretive help beyond that. This ALJ strongly believes that one other important "factor" to be considered in determinations of "patterns" is that of the nature of the offense. This point is inherent in the District's position when it argues that Maurice's suspensions were largely "separate and discrete" incidents.

This ALJ finds that Maurice was suspended from school for fifteen days during the 2000-2001 school year. October 16, 2000, was a day of in-school suspension during which he had access to his IEP program and services and does not count toward accumulated suspensions. See Office of Special Education interpretation at "Analysis of Comments and Changes," 64 (No. 48) Fed. Reg. 12537, 12619

(March 12, 1999). Portions of a school day for which a student is suspended are to be counted as a full day of suspension for the purposes of determining accumulated school days of suspension, or whether a student is subjected to a change in placement (Id.):

November 6 & 7, 2000	insubordination, false reports (portion of day on November 6)
February 13, 14, 15, 16, & 19, 2001	fighting in school office (portion of day on February 13)
March 13, 2001	out of instructional control, failure to conform to rules (portion of day)
April 2 & 3, 2001	out of control (portion of the day on April 2)
April 4, 5, & 6, 2001	out of control (portion of the day on April 4)
April 10, 2001	out of control (portion of the day)
April 11, 2001	out of control (portion of the day)

This ALJ concludes, however, that the suspension of Maurice M. for 15 days during the 2000-2001 school year does not constitute a "pattern" as that term is used in 34 C.F.R. § 300.519.

The suspensions of March 13, April 3, 4, 5, 6, 10 and 11 are eight days which meet the requirements of length of each removal, proximity, and similarity of reason for suspension, but they do not meet the total length criteria. Suspensions totaling seven days on November 6 & 7, 2000, and February 13, 14, 15, 16 & 19, 2001, were separate and discrete incidents and not a "pattern" or part of a pattern resulting in a change of placement.

The District has raised an interesting question of law regarding suspensions from school for purposes of cooling down the situation being treated differently than suspensions for reasons of punishment. It argues that the former should not be considered a deprivation of a student's special education programs and services and only the latter should.

While there is logic to the argument, it appears to this ALJ at this time that both are unilaterally imposed deprivations of special education by a school and should be considered the same. However, since the issue of the number of days not being a pattern of suspension was decided on other factual grounds, this issue does not need resolution here.

Implicit in one of the District's arguments was the point that had Ms. M. not been so difficult to work with, an IEP program change would have occurred prior to Maurice's tenth suspension and there would have been no issue of a pattern of suspensions. This point appears to be founded in an interpretation of law existing prior to 1997, and is not currently a valid position to advance. Since the 1997 Amendments, the allowable ten days of suspensions are counted in a school year, and not the time between changes in placement as previously interpreted by OSEP. Letter to Zirkel, 31 IDELR π 138, 512 (OSEP 1999); letter to Bieker, 33 IDELR π 125 (OSEP 2000).

The District is the prevailing party on the third issue.

Fourth Issue presented: Whether the District violated the IDEA provision of required free appropriate public education as a result of engaging in a pattern of suspensions resulting in a change in placement.

The Appellant alleges that the District failed to provide Maurice with "alternative educational services" after suspending him from school on April 3, 4, 5, 6, and 10, 2001, as the result of a pattern of suspensions constituting a change in placement.

The District alleges that offered alternative educational opportunities for Maurice were rejected by his mother and that the suspensions in the 2000-2001 school year did not constitute a pattern resulting in a change in placement.

The IDEA requires that Free Appropriate Public Education (FAPE) for special education students must be continued, even when the student is suspended or expelled (34 C.F.R. 300.121(d)). For students receiving short-fixed term suspensions, not greater than ten consecutive school days each, and the accumulation does not constitute a "pattern" resulting in a change, school officials must continue provision of FAPE beginning on the eleventh day of suspension. In that situation, school officials, in consultation with the child's special education teacher, must determine which services are necessary to "enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP...."

When a student's accumulated suspensions exceed ten in a school year and the result is a "pattern" of suspensions resulting in a change in placement, a manifestation determination review must be conducted to determine the existence or absence of a relationship between the student's misbehavior and disability. If a relationship exists, the student's IEP and placement must be reviewed and altered to take the misbehavior into account. If no relationship exists, the student may be treated as non-disabled students are treated. However, in this latter situation, FAPE must be continued during the suspension period as determined by the IEP team. The criteria for IEP team determination of the appropriateness of FAPE is that the school must continue services "necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP...."

As concluded by this ALJ under the Third Issue discussed above, the fifteen days of suspension for Maurice in the 2000-2001 school year did not constitute a "pattern" of suspensions constituting a change in placement. As accumulated suspensions did not constitute a pattern, the District should have offered Maurice FAPE in an alternative manner with regard to the April 4 or 5 suspensions from school, as determined by school officials in consultation with Maurice's special education teacher. The confusion results from April 4 being a partial day of expulsion and the difficulty of determining FAPE in such a short time frame.

The record does not establish that the District ever considered providing FAPE resulting from consultation with Maurice's special education teacher for April 5, 6, 10 or 11, 2001, which it technically should have done. However, even if the consultation had taken place, there is no reasonable assurance that, given the short time frames involved and the conditions surrounding the suspensions, that any consideration given would have actually necessarily resulted in the provision of FAPE

services in an alternative setting. The District reasonably argues that the suspensions for those days were not designed to be punitive, but were merely a cooling off period.

What we end up with on the facts in the record is a technical violation of the IDEA provisions governing FAPE continuation by the District without any likelihood of serious detriment to Maurice's education program, certainly not beyond what had already occurred. However, it is clear that the District was not required to provide an IEP team determination of FAPE requirements because the series of suspensions did not constitute a "pattern" resulting in a change in placement.

The Appellant has prevailed, not on the specific issue argued, but on a closely related technicality. The District prevailed on the specific issue alleged.

Fifth Issue presented: Whether the District violated the IDEA by reporting the alleged conduct of Maurice on April 11 to police as a "crime" when at most it was a simple misdemeanor.

The Appellant argues that a legal distinction exists between the IDEA's term of "crime" which may be reported by schools to the police and the phrase "simple misdemeanor" with which Maurice was actually charged. She further argues that "simple misdemeanors" are not authorized to be reported by schools when they are "predictable manifestations" of a student's disability.

The District argues that law enforcement assistance had previously been sought by both the mother (April 4 and April 10) and the school. Whenever the school had sought law enforcement assistance, it was because of severe out-of-control behavior exhibited by Maurice. It was never the school's intention to report a "crime" perpetuated by Maurice to police. On at least one occasion, when given the choice of picking Maurice up at school or having the police called to the school to take Maurice home, his mother told the school to go ahead and call the police.

The record is devoid of any credible evidence to indicate that school officials ever intended that Maurice be charged with either a "crime" or a "misdemeanor," or that such a request was ever made by school officials. The record does not establish that the law enforcement officers who arrested Maurice at the school acted on anything but the independent exercise of their own judgment.

In a likely effort to end legal questions regarding law enforcement officers' independent actions and those requested by school officials, Congress in the 1997 Amendments to the IDEA provided the following authority:

> Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. (emphasis added)(20 USC § 1415 (K)(9)(A))

The House and Senate reports of PL 105-17 do not provide any insight into the meaning of the above quoted language. The language of the federal regulations does not differ from the statute (34 C.F.R. § 300.529 (a)).

The "Analysis of Comments and Changes" regarding the final regulations under the IDEA appearing at 64 Federal Register, 12537, 12631 (March 12, 1999) reaffirms that the purpose of that rule was to "clarify" school and law enforcement authority regarding crimes committed by students with disabilities. The legal procedural protections which apply to reports of a crime are to be established by criminal law, but the reporting of a crime under that rule "does not authorize school districts to circumvent any of their responsibilities" under the IDEA. Reporting students with disabilities to law enforcement authorities in a manner differing from that for the reporting of students without disabilities would be discrimination. OSEP noted that the possibility that schools may desire to "press charges" when they report a crime is not addressed by the IDEA, but it does present numerous issues discussed under Issue Seven, but not present on the facts of this hearing.

The sum and substance of this new provision of the IDEA, as understood by this ALJ, is that schools are supposed to do what schools do best and law enforcement officials are supposed to do what law enforcement officials do best, and the IDEA does not disturb or change any of those responsibilities. It is logical to believe that Congress intended this new provision of the IDEA to prevent students with disabilities who commit crimes from "using their disability as a shield against any action by law enforcement authorities." In re Beau II, 31 IDELR π 180, (N.Y. Sup Ct 3rd Div, 1999), 639, 640.

There is nothing in the IDEA to distinguish "crimes" from "misdemeanors." Under the Iowa Code 2001, the terms "public offense" (§ 701.2), "misdemeanor" (§ 701.8), and "felony" (§ 701.7) are defined, but no definition of "crime" is found. Under Iowa law, a misdemeanor is considered a "public offense," albeit one of lesser degree. Neither in the IDEA or the Iowa Criminal Code is "crime" defined in any clear manner. Educators should not be expected to independently be able to make those distinctions. A New York State review officer is in agreement. Board of Education, 31 IDELR π 203, 707 (N.Y. September 30, 1999).

Be that as it may, the record shows that Merrill School authorities only requested law enforcement assistance on April 11, as they had previously done on several occasions. No request, express or implied, for the arrest of Maurice was made by school officials, and school officials did not even technically "report" a crime.

The Appellant argues that "simple misdemeanors" are especially not authorized to be reported to police when they are an expected manifestation of a student's disability. The 1997 Amendment on reporting crimes does not contain any provision regarding a manifestation determination review of relationship to the "report" of a crime made by school officials. It is unlikely that a relationship between a student's misbehavior and disability has any immediate impact on law enforcement interest in alleged violations of criminal law. If it has any impact at all, it would likely go to the issue of criminal intent which is an issue for the judiciary.

The District is the prevailing party on the Fifth Issue.

Sixth Issue presented: Whether the District violated IDEA provisions by failing to provide law enforcement authorities with copies of Maurice's special education and disciplinary records when they reported that Maurice was involved in a crime.

The Appellant alleges that the District was required by the IDEA to provide Maurice's special education and disciplinary records to the police and juvenile court authorities as a result of Maurice's

April 11 arrest, and thus failure to do so prevented authorities from having important information that would have influenced many decisions related to prosecution.

The District denies that it was obligated to provide Maurice's education records to the police as it did not report a "crime." It also states that Maurice's mother could have provided copies to police if desired.

The record indicates that Maurice's education and disciplinary records, including those regarding the April 11 incident, were not provided until May 18, 2001, and then in response to a subpoena from the Juvenile Court. The District responsibility to do so earlier is doubtful.

As a companion part to Congress's expressed legal authority for schools to be able to report crimes to law enforcement authorities, the IDEA also requires that when schools make such reports, the education records of the student must be submitted to law enforcement authorities.

> An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports a crime. (emphasis added) 20 USC § 1415 (K)(9)(B).

The IDEA regulations quote the same language, but in an apparent effort to avert a conflict with another federal statute, those regulations limit the transfer of education records in this situation.

> An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (emphasis added) (34 CFR § 300.529 (b)(2)).

The Family Educational Rights and Privacy Act (FERPA) allows disclosure of such records with the written consent of the parent, a court order or subpoena, or one of a number of express exceptions to the consent requirements. One of those exceptions is disclosure, pursuant to a state statute, concerning the juvenile justice system and the system's ability to effectively serve the student whose records are released, prior to adjudication, but also requires protections against redisclosure. 34 CFR, § 99.38.

The legal requirement to provide education records to law enforcement authorities in this situation is premised on the school's reporting of a crime committed by the child. Because the record does not establish that the District "reported" Maurice to law enforcement authorities for committing a crime, it was not mandated by the terms of the IDEA to forward Maurice's education record.

The District is the prevailing Party on the Sixth Issue.

Seventh Issue presented: Whether the District's reporting of Maurice's conduct to the police illegally circumvented the IDEA procedures for change of placement for more than ten days without convening the IEP or placement teams.

The Appellant argues that the District's reporting of a crime is a change in placement, which triggers a number of parental procedural safeguards, and Congress's failure to provide that reporting an alleged

crime is not a change in placement means that it intended that relevant procedural protections must continue to be provided. The manifestation determination review result, it is argued, has a vital impact for subsequent juvenile court determinations.
The District argues that it did not "report" a crime regarding Maurice; that it did not intend a change in placement for Maurice; that juvenile court involvement does not necessarily affect a student's educational placement, and that it was not required to provide procedural safeguards in this situation. It is further argued that nothing in the IDEA provides that the reporting of a crime triggers the procedural protections of the IDEA.

It is exactly this confusion of the appropriate roles and responsibilities of school officials and law enforcement officials in situations involving potential criminal conduct by students with disabilities that prompted the enactment of 20 U.S.C. § 1415 K(9). As discussed in Issues Five and Six above, Congress intended in the 1997 Amendments to clarify the law in what then seemed conflicting court decisions (House Report No. 105-95, p. 113, 1997 U.S.C.C. & A.N. (Vol. 2), 80, 111).

The understanding of OSEP, when it developed its regulations to implement § 1415 K(9), was that each respective agency, education and law enforcement, was to perform its respective functions independent of the other. The reality is that each agency has a role to play and the law governing each is different. OSEP stated that the procedural protections that apply to crimes are established by criminal law, not the IDEA. OSEP did emphasize that the addition of the crime reporting authority to the IDEA "does not authorize school districts to circumvent any of their responsibilities under the Act." The specific question of a school bringing charges against a student was not addressed in the IDEA. ("Analysis of Comments and Changes," 64 Federal Register, 12537, 12631 (March 12, 1999.)

A reasonable interpretation of these new provisions of the IDEA would be that while school officials may report crimes related to students with disabilities to law enforcement officials, law enforcement officials will act independent of school officials and will enforce criminal laws outside the purview and control of school officials. School officials do not control and do not know the if, when and under-what-conditions a student previously reported for a crime will return to school. Regardless of what law enforcement officials do, educators must prepare for the potential and, for most students, the likely eventual return to school. Law enforcement officials exercise their own authority and responsibility and may or may not keep school officials informed of their intent and actions. Therefore, school officials must presume that a student arrested for alleged criminal misconduct, whether reported by the school or not, will be back in school the next school day. School staff, in cooperation with the reported student's parents, should review the student's IEP and placement for appropriateness, and determine the desirability of additional evaluation.

When the school also contemplates its own form of discipline for a student reported for criminal activity, it must assure itself that appropriate IDEA processes and procedures have been, or will be, implemented. This would often include a manifestation determination, a functional behavioral assessment plan or review, a behavioral intervention plan or review, determination of appropriate FAPE, provision of parent procedural safeguards, including a notice which may trigger a due process hearing, and the provision of constitutional procedural due process.

A historical review of this legal issue may assist in an understanding of what Congress was attempting as a result in its effort to clarify school authority to report a crime through the enactment of § 1415 (K)(9).

The concept that school officials may not substitute juvenile court action for their own responsibilities under the IDEA is clear from early court and administrative interpretation. Among the earliest interpretations was In re Tony McCann, 17 EHLR 551 (Ct. App. Tenn., 1990), perm. app. denied (Tenn. 1990).
The facts in McCann involved a mild mentally retarded and emotionally disabled fourteen-year-old. The boy was suspended from school for ten days for threatening teachers and refusing to do classroom work. The school system filed a petition in county juvenile court, under Tennessee statutes, seeking a determination that the boy was an "unruly" child and "habitually disobedient." Following the ten-day suspension, the boy returned to school, but no action was taken by the juvenile court.

About one year later, the boy was involved in a fight with another student and "ran away" from the special education center he was attending. At the time, the State Department of Human Services was attempting to place the boy in a residential facility.

School authorities notified the boy's parents in writing that the school had scheduled an "appointment" with a juvenile judge in an attempt to determine the "best placement" for him. The next day, a school official filed a second juvenile court petition seeking a finding that the boy was "unruly," this time for being physically abusive to other students, disruptive, and verbally threatening school staff members. Two days later, the boy's parents were notified that an IEP team meeting was scheduled to occur two weeks later, but the meeting was subsequently cancelled and never rescheduled.

The boy's parents appealed to a state appellate court alleging that the two court petitions should have been dismissed because the school system had failed to follow statutorily mandated procedures governing the discipline of students with disabilities. The Court of Appeals agreed with the parents.

The Tennessee Court of Appeals found that the school system had illegally substituted the juvenile court process for the procedural requirements of the IDEA. The Court expressly found that the school system did not comply with parent notice requirements, the IEP placement team did not ever meet to discuss an alternative placement, and the filing of the juvenile court petitions resulting in the boy not attending school was a "change in educational placement." Rather than evaluating the boy's behavior in relation to his disability and identifying an appropriate educational placement, the school system had initiated "unruly child" petitions and placed him into the juvenile court system. The Court concluded, at page 553, that:

> School discipline problems and a student's failure to perform assignments must be addressed within the administrative framework of the school system before the school system can resort to court intervention.

The Court concluded that the actions of the school system had violated both state and federal special education laws by circumventing their mandated administrative procedures and proceeding into juvenile court.

Four years later, a federal district court in the same state upheld a hearing officer ruling that another school system had improperly circumvented federal special education law by filing a complaint in juvenile court rather than following IDEA administrative procedures (Morgan v. Chris L., 927 F. Supp. 267 (E.D. Tenn., 1994), aff'd. 106 F.3d 401 (6th Cir. 199), cert. denied, 520 U.S. 1271 (1997). In doing so, that court cited In re McCann with approval. In its ruling, the federal court in Chris L. concluded that the student's statutory rights were violated when the student was not timely identified as a child with

disabilities, parent notice was not provided and the school filed a juvenile court petition without treating the court proceeding as a change in placement.

In the Morgan decision, the school system argued that compliance with the IDEA's administrative requirements would require that a dangerous child would need to be kept in school until the administrative procedures were met. The court noted that the argument was made in the abstract and the record did not show that the child presented a "risk of physical injury to anyone." Because there was no "emergency," the school would not be excused from compliance with the IDEA administrative requirements.

From this ALJ's perspective, the decision in the Chris L. case sets the appropriate criteria. In the absence of a bona fide emergency, when dealing with disruptive and unruly students, schools should be expected to follow the administrative requirements of the IDEA. Going one step further, when the school seeks exemption from, or authority to, temporarily circumvent those otherwise mandated requirements, the burden should fall on the school to establish the appropriate justification for doing so.

The above two factual situations both involved schools initiating the court petitions and thus having some control of the method of alleged circumvention of the IDEA. There appears to be a considerable distinction between situations where school employees request that a student be arrested or the school official files a criminal complaint against the student, and those situations where the school official merely informs law enforcement regarding an alleged crime and law enforcement authorities act independently in exercising discretion in the situation. An Arkansas hearing officer has so ruled in Cabot School District, 29 IDELR 300 (Ark. September 21, 1998). In that situation, the hearing officer found that even though law enforcement authorities had actually filed the criminal charges against the student, school officials motivated by a desire to circumvent IDEA mandated procedures had manipulated the situation in such a way that charges were brought by others.

In a Wisconsin state court ruling entitled In re Trent N., 212 Wis. 2d 728, 569 N.W.2d 719 (Wis. App. 1997), the court noted that in most circumstances, a school may not change the educational placement of a child with disabilities outside proper administrative procedures, but that non-school civil authorities through their actions may effectively do so. The facts in Trent N. involved a student identified as a student with emotional disabilities who had allegedly struck another student in the chest and lit a match and threw it in a school locker. A school official contacted the school police liaison officer and the state's attorney, not the school district, filed a juvenile delinquency petition against the boy. The boy's attorney argued that the school, by contacting police, was attempting to circumvent the IDEA proceedings previously initiated by his parents.

The court agreed with the student's legal argument, but did not agree with his factual position:

> Trent correctly argues that the purpose of the IDEA is to prevent schools from initiating juvenile proceedings against students with exceptional needs.(at p. 724)

However, the court concluded that the laws of Wisconsin, unlike Tennessee in the Chris L. case, did not authorize juvenile proceedings to be brought by school officials. In Wisconsin, juvenile proceedings could only be filed by the district attorney. Because the IDEA targets only school action, the separate authority of the state to file a delinquency petition and the separate authority of the juvenile court were not impeded.

The court explained:

> The school's responsibility under the IDEA, to provide disabled children with an appropriate education, does not end when a child enters the juvenile system. Both case law and statutes support the proposition that the IDEA continues to work even when a child is involved in juvenile court proceedings. Any administrative proceedings underway between the school and the parents to secure a more appropriate IEP may continue regardless of the child's status in juvenile court. The school's responsibility to the child is constant. (emphasis added) (Id.)

Juvenile court proceedings, even when filed by school officials, do not automatically conflict with the rights of students with disabilities. In In re Beau II, 715 N.Y.S.2d 686 (Ct. App. 2000), a New York court ruled that a juvenile petition filed by school authorities did not violate the IDEA when its purpose was not to effect a change in placement. The intent of school authorities was to obtain family court support for continuation of the student in his educational program, not to change the program.

State action in juvenile court, in the absence of school official initiation or participation, does not conflict with the IDEA rights of a student with disabilities, even when it may indirectly impact IDEA procedures and programs at the school. In A.A. v. Independent Sch. Dist. No. 283, 24 IDELR 553, 555 (D. Minn. 1996), a Minnesota federal court noted that if a student with disabilities committed a murder, subsequent state court action would impact the student's education under the IDEA, but would not rise to the level of violation of the IDEA that would result in federal court jurisdiction over the murder proceedings: "This result is absurd and contrary to the fundamental tenets of federalism."(Id.) The court concluded that the "fact that a juvenile court proceeding may have a collateral effect on A.A.'s educational placement is, in this respect, irrelevant."(Id.) There was a similar result in a New York delinquency proceeding where it was explained that the concerns of a juvenile court may be in the community's interest more than that of a student with disabilities. In re Christopher V.T., 163 Misc. 2d 208, 620 N.Y.S. 2d 213 (Fam. Ct. 1994). See also State v. David F., 29 IDELR 376 (Conn. Sup. Ct. 1998).

A recent court federal decision more directly of the facts presented here was rendered in Joseph M. v. Southeast Delco School District, 34 IDELR π 117, 446 (E.D. Penn. 2001). In that case, school authorities notified law enforcement (reported) regarding a student starting a fire in the school cafeteria and law enforcement, not the school, filed the petition in juvenile court. On the basis of those facts, the court upheld a hearing officer decision that found that a school district may report criminal conduct to juvenile authorities without first conducting an IDEA manifestation determination review. (at p. 449) See also, letter to Holt, 32 IDELR 207 (OSEP 1999).

This view is similar to that taken by the Office of Civil Rights under its enforcement responsibilities regarding discrimination on the basis of disability under § 504 of the Rehabilitation Act of 1973 and Title II of the Americans With disabilities Act of 1990. School districts who refer students with disabilities to law enforcement authorities because they are unable to maintain control of the student do not engage in illegal discrimination when law enforcement authorities arrest the student and engage in criminal prosecution. This is especially true when educational services are continued and IDEA procedures, including a manifestation determination review, IEP review, and placement are eventually conducted. (Citrus Cty. (FL) Sch. Dist., 34 IDELR π 67, 253 (OCR September 15, 2000); See also Battle Creek (MI) Pub. Schs., 16 EHLR 665 (OCR 1990).

In summary, schools may report crimes committed by students with disabilities to law enforcement authorities, so long as they similarly report crimes by non-disabled students. In doing so, school authorities do not abrogate their responsibilities to students to provide FAPE and various statutory and constitutional rights to students with disabilities. The reporting of alleged student criminal activity in no way alters school official responsibility under the IDEA so long as the student remains under the jurisdiction of the school, or may return to the jurisdiction of the school.

The situation presented in this hearing is that on April 11, District officials requested assistance from law enforcement authorities in getting Maurice's extremely disruptive behavior under control. Maurice did not respond cooperatively with responding officers and was taken into custody. He was later charged by the arresting police officers with "disorderly conduct." It appears to this ALJ that law enforcement officials acted independently in exercising their own discretion to arrest and charge Maurice. School officials did not either request an arrest or charge Maurice with a crime. They did not even technically "report" a crime.

But, had they reported a crime, District officials would not have been legally expected to do any more or any less than what they appeared to do. They worked and cooperated with Maurice's mother and her Attorney to arrive at a mutually agreeable educational arrangement between April 11 and Maurice's return to school later in April. They worked jointly to establish and maintain an appropriate educational program after Maurice's return to school. The current educational program may not be satisfactory in all respects to all persons involved, but it is being provided as mutually agreed until the situation is more fully stabilized. The appropriateness of Maurices' education program after April 11 to the time of hearing was not at issue in this hearing.

District staff appear on the record to have assisted in Maurice's education after April 11, and planned for his return to school. They did not appear to seek to involve law enforcement as a means of circumventing the IDEA. This ALJ is at a loss to identify anything more, either legally or educationally, that they could, or should, have done in working with Maurice on and after April 11.

The District has prevailed on the Seventh Issue.

Motions and objections not previously ruled upon, if any, are hereby overruled.

Decision

The undersigned ALJ has determined on the facts in this record that the District did not violate or circumvent the IDEA by seeking an injunction in an effort to protect the educational environment at Merrill from the unique and unacceptable advocacy style of Ms. M.; the District did not violate the IDEA by engaging in a "pattern" of suspensions which resulted in a change of educational placement for Maurice and, therefore, the District did not violate the various procedural and FAPE requirements of the IDEA required when a pattern of suspensions does exist; the District did not violate the IDEA crime reporting authority by seeking law enforcement assistance on several occasions in an effort to restore the educational environment at Merrill when it was being disrupted by Maurice's out-of-control behavior; because they did not "report" a crime to law enforcement authorities, the District's staff was not required to transfer Maurice's education records to juvenile authorities under the IDEA; and the District did not circumvent the IDEA process or procedures by its involvement of law enforcement in the maintenance of the educational environment at Merrill when Maurice exhibited out-of-control behavior. The record

does not establish that District officials either reported a crime or requested that Maurice be arrested when asking for assistance in bringing order to the school environment on April 11, 2001.

The ALJ does find that District staff members were remiss and did violate IDEA processes and procedures when individualized special education and related services were provided Maurice, and his placement changed without an IEP team or a placement team meeting, and without required IDEA notice to Ms. M. at the end of March and early April, 2001. While this ALJ recognizes the difficulty of attempting to work with Ms. M. at that time, the IDEA requires efforts to do so. Parents are to be equal

participants in these decision making events. They do not have the right to unilaterally make decisions and neither does the school.

The ALJ does find that the District technically violated the IDEA when it did not consider and/or provide FAPE to Maurice for suspensions after his tenth day of suspension in the same school year (beginning April 4). It is fully recognized by this ALJ that the situation created by Maurice and Ms. M. at the time was not conducive to providing FAPE to Maurice when not in school. It may be in the existing situation that had school officials "consulted" with the special education teacher, as required by 34 CFR § 300.121 (d)(3)(i), it would have been determined that alternative provisions of providing FAPE would be ineffective. It does not appear that the suspensions of Maurice on or after April 4 were for punishment, but were for the purpose of maintaining the school environment by allowing Maurice an opportunity to cool down. This should not be considered a serious violation of FAPE requirements.

The District is directed to take Ms. M. up on her offer, stated during testimony, that she was seeking and would embrace new advocacy skills, if provided. The District is directed to identify neutral groups which may be able to work with Ms. M. on rechanneling her care and concern into a more positive advocacy approach (e.g., Creative Visions, Iowa Peace Institute). The District is directed to plan and identify appropriate components of a program designed to assist Ms. M. in the revision of her approach to advocacy, including the legal and practical limits of the exercise of her rights. This training in dispute resolution must involve information about the positive role of the parent in IDEA decision making. It must include clear information to Ms. M. that parents are equal partners and cannot dominate the decision making through intimidation or other means. She must be made fully aware of the various alternatives available, informally and under the law, to advocate in an appropriate manner.

District staff at Merrill, including non-educators, need professional development opportunities in dealing with difficult citizens. It is very likely that a number of them will have other than appropriate responses if and when Ms. M. returns to Merrill to advocate on Maurice's behalf. Having vulnerable buttons available for the pushing is likely to quickly escalate matters to where they were in April.

District staff members at Merrill shall review and reconsider their roles and responsibilities to the student in the development and implementation of special education programs. Educators have an ethical and legal responsibility to work with parents as "equal partners" and should never allow parents to dominate special education decision making to the detriment of the student. For whatever reason, this ALJ considers Ms. M.'s informal control over her son's education to be greatly out of proportion to what it should be. For instance, the record indicates that the possibility of appropriate alternative placements were mentioned to Ms. M. and vetoed or ignored by her. School staff did not exercise their responsibility in obtaining parent agreement or moving ahead in necessary situations without it. The processes and procedures of the IDEA provide for decision making in opposition to parental wishes, and the spirit of the IDEA and good educational practice demand it. Parents and school staff are equal partners in the

planning and provision of special education. While disagreements are a normal part of the process, the IDEA provides that school staff, in order to prevent serious detriment to the student, must proceed to develop an appropriate program and placement, provide the parent with appropriate notice, and unless the parent requests a due process hearing, implement the new educational program. When a parent requests a due process hearing, the school will have a neutral third party to whom it can attempt to establish the desirability of its decisions.

The District staff is directed to work with Ms. M. and her Attorney to develop a temporary formal communication understanding along the lines of the language of the Order for Injunction. In the event that it becomes necessary and desirable to seek outside assistance in resolving disagreements over terms, and the Parties are unable to agree on a mediator, they shall request Department of Education mediator services for that purpose. The primary elements of the agreement would include details implementing the following:

1. Ms. M. will not have any direct communication with the District staff member regarding any complaints, demands or advocacy except as arranged through her Attorney.

2. Ms. M. may directly contact appropriate District staff solely for the purpose of communicating information with regard to Maurice and his educational program. This communication agreement should explain the criteria to be used by school staff to determine when Ms. M. is complaining, demanding or advocating contrary to the agreement, and the course of action to be taken.

3. Ms. M. may be present on Merrill school grounds or in the building only by an appointment mutually agreed upon between Ms. M. and the school staff; or when requested by the school staff to assist in addressing Maurice's behavior; or when picking up Maurice at school, and then for that purpose only.

4. The agreement should establish the criteria and process for ending or altering the agreement when desirable.

The proceeding items of parent development of effective advocacy skills and an understanding of appropriate parent role in special education advocacy, District staff professional development, and development of a communication protocol are to be provided as "related services" under 34 CFR § 300.24, without the necessity of IEP revision. Nevertheless, Parties can attempt to engage in the "spirit" of the IEP revision process through frequent communication and input.

Nothing in this decision should be construed as a condemnation of Merrill or District staff efforts at attempting to serve Maurice's educational needs. Not many educators would have exhibited the professional restraint and caring and concern priorities given Maurice's educational needs as were established on the record of this hearing.

A personal note from this ALJ to Ms. M. Although you do not know me personally, and may not have reason to trust me, I want to make a personal observation to you that I have concluded from a close review of the record, including portions which may not be familiar to you. There is no doubt in my mind that, although the Merrill school staff members may not love Maurice as you do as a son, they (especially Toni Dann) care about Maurice as much as you do, and are as concerned as you are about his educational progress and his future. If you and the school use the same amount of time and energy

that has been used to fight one another and channel it toward working cooperatively for Maurice, he is much more likely to have the better future that all of you desire for him to have.

The Parties are advised that when aggrieved by this ruling they can bring civil action through an appeal into either state or federal court, § 281-41.124 I.A.C. and 34 C.F.R. § 300.512.

Respectfully submitted.

Larry D. Bartlett, J.D., Ph.D.
Administrative Law Judge

December 4, 2001

Date