BEFORE THE BUREAU OF SPECIAL EDUCATION
IOWA DEPARTMENT OF EDUCATION
(Cite as 16 D.o.E. App. Dec. 179)

In re: Laura B., a minor,	)	
Dr. and Mrs. B.,	)	Docket No. SE-205
Individually and on	)	
Behalf of Laura B.,	)	
Appellants,	)	
v.	)	
	)	
Pleasant Valley Community	)	
School District and Mississippi	)	DECISION AND ORDER
Bend Area Education Agency,	)	
Appellees.	)	

This matter comes before the undersigned Administrative Law Judge after hearing on July 14, 1998 in Pleasant Valley, Iowa.

Hearing was held to determine educational issues for Laura B. Laura's parents were present with counsel, Curt Systma, from Iowa Protection and Advocacy Services, Inc. The Pleasant Valley School District and Area Education Agency were represented by Carole J. Anderson, from Lane and Waterman Law Firm, of Davenport Iowa.

The hearing was held pursuant to Iowa Code 256B, Iowa Administrative Code 281-41; 20 U.S.C. § 1415 (the Individuals with Disabilities Education Act (IDEA)), and 34 C.F.R.300 *et seq.* The parties stipulated to the record and additional exhibits were entered at hearing. All parties presented witnesses who had knowledge about Laura and her educational program. All parties were afforded a full opportunity to be heard.

The issues presented for review are:

Whether, the school/AEA should have referred Laura for possible special education evaluation and instruction/services during the 1994-95 and the 1995-96 school years.

Whether the school is responsible for paying the costs of private psychotherapy Laura received during the time period of March 29, 1995 through March 19, 1996.

Whether the school is responsible for paying the costs of the residential treatment facility at Wilson Academy in Faribault, Minnesota for the period of March 19, 1996 through June 28, 1996.

The appeal was filed on May 20, 1998; continuances were granted with good cause. The Appellees presented a motion to dismiss the appeal and ruling was deferred pending the Appellant's briefing of the legal issues. Times for submitting briefs were agreed by the parties

for July 31, 1998 with Appellees' reply brief due on August 10, 1998. Briefs were filed with a continuance to the Appellants for good cause, thereby extending the filing time for the Appellees to August 18, 1998.

Ruling is hereby made on the motion to dismiss. This motion is denied primarily because the federal and state statutes provide procedural safeguards to allow parents the opportunity for a full hearing. The parents, through counsel, gave the school notice that they wished to assert their rights of review in advance of any applicable statute of limitations.

The Appellants specifically stated that they make no claim in this forum under Section 504 of the Rehabilitation Act of 1973, and that any such claims are reserved for another proceeding.

Parents' position. During Laura's 9th and 10th grades at Pleasant Valley High School, (and prior to a mental commitment and out-of-state residential placement in March 1996), Laura and her education were going downhill rapidly. She had become a threat to those around her; had attempted suicide; was a major discipline problem; her grades were dropping; and she was facing expulsion from school. Her parents did not request a special education program or services and did not know they could. They hadn't been involved with the school and hadn't discussed Laura's issues with the school. Her parents were not obligated to know and request services in advance unless they had been given notice by the school of what rights they might pursue.

After the residential treatment, and with the provision of special education programs and services at the neighboring school district (Bettendorf), Laura did very well. There is no disagreement concerning Laura's placement after her return from the residential facility in the summer of 1996. Since then, the parents and school/AEA personnel have worked together to build an appropriate program for Laura.

The request for relief by the parents is: 1)compensatory education in the form of additional support services through the early college years for a period of one to three years, and 2) reimbursement of $11,436.72 for Laura's psychotherapy, from March 29, 1995 through March 19, 1996, and 3) reimbursement for the cost of the out-of-state residential treatment from March 19, 1996 through June 28, 1996, in the amount of $68,299.00.

School/AEA position. The standard is not whether the school "knew or should have known" about Laura's condition. This is an educational malpractice standard and not for this forum. The school was not aware of the problems that Laura experienced until long after their occurrence. With the knowledge the school had at the time, her discipline and attendance problems did not rise to a level that is unusual among children her age. They were problems that occur in children who have no disability, who are not mentally ill, and who are not emotionally disturbed, but who are making poor choices. The school district had no way of knowing of the seriousness of Laura's problems without information and input from the parents. Prior to the time that Laura was placed at the Wilson Center, the parents never presented psychological reasons for her behavior at school, did not provide written reports from physicians, did not provide diagnosis or prescriptions of what the school needed to do. While the parents did request that the school

provide information to a counseling center, they did not provide any information back to the school. Laura was not identified as requiring special education because "the parents never asked". The school did not see the commitment papers which resulted in Laura's placement at Wilson Center until this hearing. The Court ordered placement to the Mt. Pleasant Mental Health Institute, and allowed the parents to choose Wilson Academy. By choosing Wilson they chose unilaterally to pay, without any consultation with the school district.

I. FINDINGS OF FACT

The Administrative Law Judge finds that she and the Iowa Department of Education have jurisdiction over the parties and the subject matter of this hearing.

Laura, now age 17, was a student served in the regular education classroom from Kindergarten through the Eighth grade. She was bright and able to do the school work required during those years, although she was in private counseling from a very young age. Her basic skills tests were generally strong, with composite scores of 90's in first and second grade to 60's in fifth grade, and 70's in seventh and eight grade. By the second semester of the 9th grade, Laura was having serious difficulties at home and at school.

9th grade

Laura's mother testified that in the second semester of Laura's 9th grade her parents were very concerned about her low grades and disruptive behavior. They set a meeting with the high school counselor, and, although Laura's problems were discussed, he did not say anything about a possible evaluation for a special education program or services. Laura's parents had no knowledge of special education programs and services or of the IDEA.

Laura's academic performance continued to decline, in part because of poor attendance. While her first semester grades were B- in freshman English, C+ in American History, B- in Earth Science, D- in Algebra, B in Wellness, D in French, her second semester grades were: F in freshman English, C- in American History, 0 in Earth Science, F in Algebra and F in Wellness. Her Iowa Test of Basic Skills standardized score declined to a 9th grade composite score of 34. Her emotional state concerning school was one of dread and she routinely told her parents she would not go to school the next day. Her emotional state at home was shattered and she and her parents had numerous serious disagreements.

On March 29, 1995, in the 9th grade, Laura attempted to overdose on Tylenol and assaulted her mother when she interfered. This lead to a two day hospitalization at Genesis West and to Laura taking psychotropic medication. The hospital instructor provided written notice of the two day hospital instruction to the Pleasant Valley high school counselor.

[1]During the month of April 1995 Laura received three suspensions in school: all for attendance infractions.

In May, 1995, an incident involving missing money from the home was reported by Laura's parents to the principal. Dr. Jim Spelhaug, now Assistant Superintendent of Pleasant Valley was the high school principal at the time. He contacted other students to determine if they had information. At school, the situation escalated, Laura became very upset, screamed, threatened her parents' life and Dr. Spelhaug's life. These threats, clearly remembered by Laura's parents, are not recalled by Dr. Spelhaug. Laura ran and was returned by a school employee. Laura's parents asked that the police be called to remove Laura. On the day of the threats, May 5, 1995, Laura was admitted to Genesis West again based upon the threats and her parents fears. Dr. Spelhaug does not recall the parents telling him that Laura was too dangerous to return home, does not recall that Laura was removed in handcuffs, and does not believe her reaction was extreme. He does not recall if he knew this incident lead to psychiatric hospital placement. He does believe that someone in the school knew that Laura received hospital instruction, probably the counselor.

Then on May 10, 1995, the same day Laura was released from the hospital, she was in an altercation at school. Another student called her a "psychobitch". Dr. Spelhaug does not recall this, but believes someone in the school should have known and he would be surprised if only Laura was disciplined. Laura was suspended for one day.

On the day after Laura returned from the hospital, May 11, 1995, Associate Principal Thomas Parker surveyed the teachers to determine if Laura would pass that semester. The answer from the teachers was not encouraging. Dr. Spelhaug does not know what steps were taken to help her succeed in school at that time. No referral for special education evaluation was made.

10th Grade

During the 1995-96 school year, in 10th grade, Laura's grades continued to decline. Her grade reports contain erratic grades from quarter to quarter. Her first semester grades were C in sophomore English, C in World History, and F in Biology, B- in Albegra, I in Wellness, C+ in Japanese, C+ in Drivers Ed. The third quarter grades were: F in freshman English, D in sophomore English, F in World History, C- in Biology, C in Algebra, F in Wellness, D+ in Japanese. Her Iowa Test of Basic Skills composite for this year was 36.

On September 25, 1995 she was admitted to Genesis West again, for a period of four days. Mrs. B. testified that Laura had succeeded in taking Tylenol and that the school nurse called her to report the overdose. Mrs. B. went to the school and took Laura to the emergency room. No reports from the school nurse were presented by either party. The school, through Dr. Spelhaug,

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[1]It is important to note that for each suspension, there are several disciplinary reports. In total for the 1994-95 school year there are 19 disciplinary reports, such as talking, disruptive behavior, presumption of failure in a class, unexcused absence, misuse of pass, etc.

denied ever receiving any reports of any suicide attempts. Mrs. B. does not know if she ever asked for counseling records to be sent to the school and states that she did not know she could take doctor reports to the school. Dr.B., a dentist and Laura's father, denied trying to keep Laura's condition a secret from the school. In fact, he testified he was in regular contact with the school about Laura, reporting by phone such things as, "Laura is depressed today, or fragile or volatile". Mrs. B. testified that throughout this period Laura hated school.

In early 1996, Associate Principal Parker, sent a letter which bears no date to Dr. and Mrs. B. stating that Laura had a "three day out of school suspension on January 3, 4, 5 1994". (*sic, date?*). [2]

> "This action was taken as a consequence of having alcohol on school property December 22, 1995. In accordance with board policy, Laura must also contact the Center for Alcohol and Drug Services (CADS) to establish an appointment for an intake evaluation. Failure to do this or to follow through on the recommended CADS program in a timely manner will result in an expulsion recommendation to the Board of Education."

Copies were sent to a member of the Board of Education, the superintendent, Principal Spelhaug, and the school counselor. Laura participated in and completed the required CADS program from February 5, 1996 to February 22, 1996.

On January 18, 1996, Laura was given notice of a one day suspension for unexcused absence on January 10 and January 11, 1996. On January 22, 1996 she was given notice of a one day suspension for smoking cigarettes on campus. On February 5, 1996 she was given notice of a one day suspension for behavior on January 30, 1996 and on March 8, 1996 she was given notice of a three day suspension for possession of marijuana and tobacco on March 5, 1996. A pre-expulsion hearing was scheduled for March 15, 1996. Laura did not attend this hearing because on March 12, 1996, she was in the hospital at Genesis West again, the subject of a mental commitment.

This hospitalization was prompted by an incident at home involving a gun and threats to the family. Laura's hospitalization was from March 11, 1996 through March 19, 1996, and then became an involuntary mental commitment under Iowa Code Chapter 229. The final commitment findings by the Iowa District Court for Scott County, dated April 29, 1996, summarized that Laura had been suicidal and had secreted a gun in her home. She overdosed on three occasions. Laura had historically been physically and verbally abusive to her immediate family members and had been assaultive toward her peers at school. "Laura is diagnosed with a major depressive disorder, severe with possible psychotic features. Related behavioral problems include interpersonal difficulties with parents, problems at school, and acting-out behavior, including substance abuse".

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[2] For each suspension, there are several disciplinary reports. In the 10th grade, Laura has 20 disciplinary reports including: seven presumptions of failure in classes, smoking, misuse of pass, fighting, unexcused absence, tardy, unacceptable language, disrespectful, GPA below 2.0.

This April 29, 1996 order stated that Laura was to be immediately placed in the Mt. Pleasant Mental Health Institute for a complete psychiatric evaluation and appropriate treatment. Further, the order stated, "[T]he Court continues to allow family placement at the Wilson Center in Faribault, Minnesota, in lieu of placement at MHI". Laura attended Wilson Academy from March 19, 1996 to June 28, 1996.

In the discharge order, the Iowa District Court judge for Scott County agreed with evidence presented by Dr. Robert Roddy, M.D., psychiatrist at the Wilson Center and ordered that Laura B. was a fit subject for discharge from the involuntary commitment. In her discharge summary Dr. Roddy, noted, "[T]he continuation of individual and family therapy was recommended. It was suggested that she could attend a day treatment program following her hospitalization".

Upon her return to the local area, a school evaluation team including Pleasant Valley and AEA personnel was assembled to determine Laura's educational needs for the Fall of 1996. However, Laura actually attended Bettendorf High School rather than her home district of Pleasant Valley because of perceived negative attitudes toward her and the perception that Pleasant Valley could not or would not provide an appropriate program. The Bettendorf program consisted of some one to one instruction, goals in organization, self advocacy skills, vocational skills, testing accommodations, proofreading assistance, individual conferences for progress checks and problem solving, counseling by the school psychologist. [3] In her second and senior year at Bettendorf, her program included a special class with integration.

David Quinn, Mississippi Bend Area Education Agency (AEA) Director of Special Education testified that this AEA has adopted the Department of Education policy of early identification of children requiring special education. This AEA uses and supports the federal definition of serious emotional disturbance and recognizes the two prongs of eligibility criteria. Individualized Education Programs (IEP's) can be exclusively related to social/peer relationship goals. Of the two components to special education: specialized instruction and related services, related services can include counseling, but it is unclear whether it includes psychotherapy. In this AEA, psychotherapy is rarely paid for by a school. Reasons for this are that there are few children with severe emotional disabilities/behavior disorders who receive special education and in the instances when a child needs psychotherapy, the families don't often share this information. Mr. Quinn believes the AEA has made a good effort to find children in the AEA who need specialized services from the school, including brochures at mental health centers and pediatrician offices.

Mr. Quinn stated the indicators which trigger the need for a special education evaluation: academic performance below same age peers, decline in grades, increase in behavior problems

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[3]This program was more extensive than the Pleasant Valley IEP called for in the early stages of development in August 1996.

particularly the intensity, duration, and frequency compared to same age peers. None of these indicators alone is sufficient. If a school is informed that a child is under care of mental health professional, that alone does not trigger a special education evaluation, but this might be data to say a collaborative effort is needed. A suicide attempt if known by the school might not alone trigger an evaluation, but could. A child who missed school for psychiatric hospital treatment, might trigger an evaluation if the school knew. If the event of such placement, the school is obligated to follow-up on concerns, but this alone may not trigger notice to parents of their rights in special education. In the event that a parent doesn't care about proper identification or evaluation, the school has a duty to identify and evaluate children who may need special education. If parents refuse consent for evaluation when the school believes it is necessary, he, as Director of Special Education, would ask for a due process hearing to obtain a ruling, although reluctantly.

Prior to Laura's participation in the Wilson Academy, there was no record of her in the AEA; no evaluation by the AEA or school had occurred. Mr. Quinn could not later determine whether it was necessary for Laura's education to be at Wilson Center on March 19, 1996, since there was no evaluation information at that time. It is impossible to "march back in time". However on August 29, 1996 when Laura was released from the Wilson Center, an IEP was developed for her. The record shows that IEP team at Bettendorf established an IEP and that Laura's education went well.

Dr. Spelhaug, then principal at Pleasant Valley, testified that there was a procedure for making referrals for special education, both formal and informal. He reported that the teachers and other professionals focused on the school setting, they reviewed the circumstances of the student and work with all parties to provide solutions to problems. He used a "white sheet" checklist of behaviors and there were regular meetings of guidance counselors, but no records were presented. Prior to March 1996, there were no records of referral of Laura; there was no evaluation; and no notice to parents that they were entitled to special education. There were many letters to Laura's parents regarding her disciplinary infractions.

There was conflicting testimony as to incidents regarding Laura having medication at school. When Laura was taking psychotropic medication as prescribed by her physician, her father spoke with Associate Principal Parker about these drugs and the fact that her private counselor said it would give her a sense of empowerment to carry them. Dr. B. remembers that Mr. Parker had no problem with this arrangement. Mr. Parker says he never spoke to Dr. B. about the prescriptions and would not have said it was all right to carry pills. But later, these drugs were found and confiscated by Mr. Parker. Dr. B. testified that at some point he asked Dr. Spelhaug to give the medication back and Dr. Spelhaug reported stated they were evidence because they were heading toward expulsion. There were no records addressing this situation.

Mr. Parker, who was the special education contact person for the district, testified he doesn't recall ever receiving records about Laura's counseling or emotional problems. He was not the contact person for the hospital and if the hospital contacted anyone it was probably the counselor. He recalls frequent conversations with Laura's parents, particularly with her father during this two year period. He says the parents never said anything to lead him to believe she needed a special education evaluation.

Mr. Parker sent letters to Laura's parents on the following dates:
April 18, 1995 noting a one day suspension for an unexcused absence;
April 26, 1995 noting a two day suspension for an attendance infraction.
April 28, 1995 noting a three day suspension for an attendance infraction.
May 12, 1995 noting a one day suspension for behavior on May 10, 1995 (fighting).
Nov. 10, 1995 noting a one day suspension for behavior on November 8, 1995 (fighting)
January 18, 1996 noting a one day suspension for unexcused absence on Jan 10 and 11, 1996
January 22, 1996 noting a one day suspension for smoking cigarettes on campus.
February 5, 1996 noting a one day suspension for behavior on January 30, 1996.
[4]March 8, 1996 from Principal Spelhaug noting a three day suspension for possession of marijuana and tobacco on March 5, 1996, and scheduling a pre-expulsion hearing on March 15, 1996.

Dr. Spelhaug testified that no information was given to the parents about IDEA rights at any time prior to the commitment. He is not aware who in the school, if anyone, called the judge or attorney to try to find out about Laura. He states that the school was not informed of the prior suicide attempts. He does not believe the school nurse was informed, and there were no nurse records available on this subject. Dr. Spelhaug testified that prior to March 1996 the parents did not provide Pleasant Valley with reports, diagnosis recommendations or other data from mental health, although the record does show that the school counselor sent a memo to the p.e. staff and teachers dated March 20, 1996, stating that "Laura B. has been transferred to a residential facility", and asked that they prepare her 3rd Quarter grades. Dr. Spelhaug testified that Laura's behavior record was not an extraordinary record. There are instances of family counseling that do not involve the school, and the school should not demand that parents say why their child is seeing a counselor. He believes that "adolescence" is a reason a child might have a drop in grades and that in Laura's case, prior to March 1996 there was no reason to believe an evaluation should have occurred.

After Laura's return from Wilson Center, she received counseling from Elizabeth Lonning. Dr. Lonning testified that when she first saw Laura she had serious emotional disturbance and had struggled for quite some time. These struggles could not have been recent as of March 1996 and were not of sudden onset. She normally advises parents to work with a school if the problem

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[4]Laura did not attend this hearing because on March 12, 1996, she was in the hospital in Genesis West, the subject of a mental commitment.

impacts the child's education, but there are instances when school involvement is not necessary or when the parents don't want to involve the school.

Steve Winkels, principal at Wilson Academy testified by phone that his letter of August 19, 1996 was an accurate reflection of his testimony. He viewed Laura as an apparently bright young lady whose emotional problems gravely interfere with her education. He found it difficult to believe Pleasant Valley had not placed her in an day program for emotionally or behaviorally disturbed. The bill for Wilson Academy was $ 68,299.00.

The bill for other counseling and psychotherapy services comes from Genesis West Hospital resulting from four hospitalizations over a one year period: March 29, 1995 to April 1, 1995; May 5, 1995-May 10, 1995; September 25, 1995 to September 27, 1995; and March 11, 1996 to March 19, 1996. This bill is $11,436.72.

To summarize: 9th grade Pleasant Valley, Sept. 94-May 95 (2 hospitalizations)
10th grade Pleasant Valley, Sept. 95-May 96 (2 hospitalizations and Wilson Center residential treatment from March 19, 1996-June 28, 1996).
11th grade Bettendorf -August 1996-May 1997 -special education placement
12th grade Bettendorf -August 1997-May 1998 - special education placement

II. CONCLUSIONS OF LAW

The Individuals with Disabilities Education Act (IDEA) requires that "[a]ll children with disabilities residing in the State, including children with disabilities attending private school, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located and evaluated." 20 U.S.C. §1412(a)(3). The requirement to identify, locate, and evaluate all children with disabilities is commonly referred to as the "child find system". 20 U.S.C. §1412(a)(3); 34 C.F.R. §300.300. States generally delegate the responsibility for identification of children to local education agencies. In Iowa, , "[e]ach AEA (Area Education Agency) in conjunction with each constituent LEA (Local Education Agency) shall establish and maintain ongoing identification and evaluation procedures to ensure early identification of and appropriate special education for eligible individuals of all ages." Iowa Administrative Code 281-41.47(1)(2).

Special Education Screening and Referral

The IDEA process begins with a combination of screening children, providing information to parents and other, and referring those believed to be disabled for evaluation. Schools may not simply rely on parents to request special education services. Instead, states are required to have a system in place to affirmatively determine those students in need of services. In Iowa, the AEA must develop and use an identification process that, at a minimum, includes certain activities and procedures: the AEA must maintain adequate records of the results of the identification process, interactions with the student, the students' parents, school personnel, and others having specific

responsibilities for or knowledge of the individual; active parent participation is solicited throughout the process; parents are communicated with directly and are encouraged to participate at all decision points. I.A.C.28-41.48(1). The Iowa rules then require a series of general education interventions. The LEA, in conjunction with the AEA shall attempt to resolve the presenting problem and behaviors of concern in the general education environment prior to conducting a full and individual evaluation. I.A.C. 281-41.48.(2). [5]

It is the school's responsibility to identify and place those students in need of special education. The school cannot wait for a parent to bring a child's problem to their attention. The school has the responsibility to find and meet the needs of students, based upon the assessment data, even if a parent does not agree. Due process procedures for the school to identify and evaluate a child overrides the consent of the parents. However, the IDEA does not require that educational agencies test or provide a program to all children for whom evaluations are requested and gives the educators the discretion to evaluate, or to refuse to evaluate children. Pasatiempo by Pasatiempo v. Aizawa, 103 F.3d 796, (9th Cir. 1996).

Laura's education in the 9th and 10th grade included at least nine suspensions over a period of one year. For each suspension there were additional disciplinary reports. The record is replete with notices from the Associate Principal to the parents that Laura had unacceptable behavior, unexcused absences, alcohol, tobacco, and marijuana. Also during this same time, but without notice to the school, Laura was receiving counseling and had serious incidents at home. She had attempted suicide, and she was hospitalized four times. For whatever reason, the parents provided the school a bare minimum of information about the seriousness of Laura's problems and did not ask the private counselors to share information with the school. However, school personnel did have some information. The school counselor knew Laura was receiving hospital instruction in May 1995 and in March 1996. The school counselor knew Laura was placed in a residential program in March 1996. The school nurse was aware of at least one suicide attempt. Had the school counselor or the school nurse testified at the hearing, we would know more of the school's response or lack of response to the information about Laura. Even though the principal

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[5] The Special Education Assessment Standards developed in Iowa in January 1996 for the AEA's and Directors of Special Education refer to screening procedures to answer the question "is further assessment warranted". Screening decisions must always be based upon professional judgement using assessment data and screening criteria as a guideline. It is preferable to "over identify" a few extra persons for further assessment who will be found, upon that assessment, not to have significant problems. Information sources include but are not limited to: the results of general education interventions, parental input, teacher input, student input, permanent products from the classroom, and any available prior testing information (e.g. ITBS, etc.). Special Education Assessment Standards, January 1996.

at the time testified that there were other students doing things worse than Laura, it is puzzling why there was not more intervention for her. In May 1995 there was the particularly disturbing incident at school after which the police were called and Laura was taken away and hospitalized. Yet, this behavior was not viewed by the principal as extraordinary.

Laura, through her behavior and her academic decline, was giving loud and clear signals that she was not doing well. During the second semester of the 9th grade, it was the duty of the school to look further, to refer her for further review for possible general education interventions or for possible special education interventions. There is no evidence that anyone made any type of referral, that anyone assembled a team to focus on Laura and her needs. There was simply no review. The academic decline and the decline in basic skills test scores was not viewed as a whole, because, in the words of the principal, it is not required. Laura was viewed as someone who made bad choices, not as someone who needed help. While we do not know what the professional judgment of the educators would have been in the screening process, the school and AEA clearly erred in not starting the process. Her academic decline and her behavior called for a review of Laura's education in a problem solving manner, for screening to determine if she needed a full evaluation for possible special education programs and services.

Through the child find process, the school should have provided notice to parents concerning special education identification, evaluation, and placement. Although it cannot be mandated, common sense dictates that parents must also give the school notice of their child's needs in order to work together. While Laura was receiving private counseling, her parents did not make any reports available to the school. It is improbable that none of the professionals who worked with Laura in the hospital and in private counseling would have mentioned the possibility of a special education evaluation. Likewise, it seems probable that these professionals would ask permission to discuss Laura's needs with school personnel. While the record contains brief notices from the school counselor, the fact that other reports were not shared leads to the conclusion that Laura's parents did not want her problems known or shared with school personnel. If the goal was a cooperative effort, regardless of the potential for special education assistance, the parent's failure to involve the school contributed to the lack of communication and problem solving. Nevertheless, it is the school's responsibility, not the parents, to refer, and if needed, obtain an evaluation of students who may require special education programs and services.

Compensatory education is recognized as a proper remedy when a child has been denied a free appropriate education. [6] While we cannot conclude *per se* that Laura was denied a free appropriate education, she certainly was denied the first step in the process, that is screening and referral to determine the possibility of an evaluation and program. Because Pleasant Valley did not show any intervention for Laura except detentions and suspensions, and did not involve other professionals in creating interventions for her, the proper remedy is for the Pleasant Valley School District to pay for two years of compensatory education for her in the form of additional

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[6]Burlington School Community v. Dept. of Education, 471 U.S. 359 (1985) *aff'g*, 736 F.2d 773 (1st Cir. 1984).

support services in her education, through May, 2000. This may include tutors for test taking, proof reading, and organizational support, counseling by educational personnel, and those types of programs and services provided in her two years at Bettendorf. The type of programs and services provided shall be determined based on her needs as determined by a mutidisciplinary team from the AEA, her parents, and representative(s) from the Pleasant Valley School District, the then current educational facility, and if possible, with consultation from Bettendorf School District personnel.

Counseling and Psychotherapy Costs

Under IDEA the term "related services" includes developmental, corrective, and the supportive services as may be required to assist a child with a disability to benefit from special education. 20. U.S.C. § 1401(22). In order to be entitled to a related service, it is necessary to establish that the child is disabled for purposes of IDEA, a related service is involved, the related service is designed to meet the unique needs of the child caused by the disability, and the school district must be responsible under IDEA for providing the related service.

Despite testimony that there is uncertainty whether psychotherapy can be considered a related service under IDEA, the case law is clear that it can be considered as a related service in certain instances.[7] However, the courts are split on the issue of who is to provide the services. Psychiatric services required to be performed by a licensed physician for medical purposes are excluded from the scope of related services. [8] Counseling and related psychological services which are required in a student's education are included as performed by professionals such as psychologist, guidance counselors, social workers.[9] The lines between educational services and medical services are developing in the case law. IDEA requires that schools provide a free appropriate public education to every eligible student with disabilities, but that placement in

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[7]See, T.G. v. Board of Education of Piscataway, 576 F. Supp. 420 423 (D.N.J.. 1983), *aff'd,* 738 F.2d 420 (3rd Cir.) *cert. denied,* 469 U.S. 1086 (1984); Max M. v. Illinois State Board of Education, 629 F. Supp 1054, 1519 (N.D. Ill 1986). *See,* J.B. v Killingly Bd. of Educ., 27 IDELR 324, (1997); *but see,* Laughlin III ex. rel Laughlin IV v. Central Bucks School Dist., 20 IDELR 894 (1994).

[8] 20 U.S.C.A. 1401(a)(17) defines related services to include "medical services, except that such medical services shall be for diagnostic and evaluation purposes only; see also 34 C.F.R. 300.13(b)(4).

[9]While the range of services the states are required to provide as related or supportive services is necessarily broad, it is not unlimited. In construing the exclusions from related services, the Supreme Court noted that Congress had intended to "spare schools from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence." Irving Independent School District v. Tatro, 468 U.S. 883 892, 104 S.Ct. 3371 (1984) ; See Detsel by Detsel v. Board of Education of Auburn, 637 F. Supp. 1022, 1026-27 (N.D.N.Y. 1986) *aff'd,* 820 F.2d 587 (2d Cir. 1987).

psychiatric hospitals need not be provided at public expense due to the Act's exclusion of non-diagnostic medical services. Clovis Unified School District v. California 903 F.2d 635 (9th Cir. 1990) . (Medical services are not reimbursable under IDEA and although some psychological services at the hospital could benefit the child educationally, the scope and intensity of the hospital services were indicative of treating a "medical crisis".). As with any related service, psychotherapy must be "required to assist a handicapped child to benefit from special education", to merit inclusion in the individual program *See* 34 C.F.R. § 300.13 (a).

Laura's parents requested that the school pay for the psychotherapy provided to Laura at Genesis West Hospital on four occasions during Laura's 9th and 10th grade. In each instance, Laura was placed in the hospital in a crisis situation. In March 1995, the hospital records indicate Laura was admitted after she had written a number of suicidal notes and had problems at home. In May 1995, the hospital records indicate Laura was admitted because of her suicidal threats and threats towards family members. In September 1995, the hospital records indicate Laura was admitted following a Tylenol overdose.[10] In March 1996, the hospital records indicate Laura was admitted because she got upset over a grounding and threatened to kill the family, and obtained a gun. In this instance, the psychiatrists and psychologists concerned with the case "all agreed that the home situation was beyond repair."

The hospital clinical summaries focus only on Laura's suicide and homicide threats and not on her educational program. While it is certainly arguable that Laura could not have benefited from her educational program because of her emotional problems which were to be treated in the psychiatric unit, the clinical reports focus on her difficulties at home, not at school. This, coupled with the fact neither the parents nor numerous professionals who worked with Laura provided reports to the school and failed to seek cooperation from the school lead to the conclusion that the psychotherapy was not considered to be a related service in the educational arena. Arguments advanced by the school that the psychotherapy was not necessary for Laura to benefit from a special education program, are upheld.

The Wilson Academy Placement

Residential placements may be required under the IDEA; a residential placement is required when necessary for educational purposes, but a school district is not required to assume the cost of such placement when the residential placement is a response to medical, social or emotional problems that may be segregated from the learning process.[11] However, if institutionalization is

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[10]This hospital report also states the parents report that Laura's school performance is "quite good". Laura was given medication and was to be followed up by Dr. Dent at the Vera French Community Mental Health Center.

[11]Kurelle. v. New Castle County School District, 642 F.2d 687, 693 (3rd Cir. 1981); Metropolitan Gov't of Nashville v. Tennessee Dept. of Education, 771 S.W. 2ds 427, (Tenn Ct. App. 1989), (school is not responsible for psychiatric hospitalization of student which was for

required for reasons that prevent the child from making meaningful educational progress, IDEA requires that the public agency pay for the costs of the placement. Mrs. B. v. Milford Bd. of Education, 103 F.3d 1114 (2nd Cir. 1997); Seattle School Dist. No. 1 v. B.S. 82 F.3d 1493 (9th Cir. 1996); Taylor v. Honig, 910 F.2d 104 (6th Cir. 1990). (Medical/Psychiatric services not reimbursable under IDEA).

The school asserts that the Wilson Academy placement was ordered by the Court for reasons other than education, and therefore, the school is not required to pay for the program. This must be the conclusion in this case. Laura was hospitalized for making threats against her parents; she was ordered by the Court to participate in psychiatric evaluation, under involuntary mental commitment proceedings. She was not identified as a child in need of special education at the time and the school was not involved in her placement.[12] The school was not asked or given the opportunity to recommend an alternate placement in Iowa which would meet Laura's needs. The placement at Wilson Academy was the suggestion of Laura's parents with the approval of the Court.

III. DECISION AND ORDER

During Laura's 9th and 10th grade years, the Pleasant Valley School District and Mississippi Bend AEA failed to properly screen or refer Laura for possible special education evaluation and possible special education placement. This may or may not have resulted in a denial of a free appropriate education for Laura during those two years and since it is impossible to now go back to that point in time. There were numerous indicators which support a referral, an evaluation and possibly a special education program. Therefore, compensatory education is ordered as directed above. The parents prevail on the issue of whether Laura should have been referred for possible special education evaluation, instruction or services.

Payment for the psychotherapy provided to Laura as a part of her hospitalizations in Genesis West was not the responsibility of the school as reasoned above. The school/AEA prevail on the issue of whether the school should pay for the private counseling which was provided to Laura.

The residential placement at Wilson Academy was ordered by the Court in an involuntary mental commitment and chosen by the parents as an alterative to the Mental Health Institute. It was not the financial responsibility of the school for the reasons stated above. The school/AEA prevail on the issue of whether the school should pay for the placement in Minnesota at Wilson Academy.

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medical and not educational purposes; student was suicidal); other cases and citations omitted.

[12]Although it is axiomatic that she could not have been in a special education program since the referral process never began.

All other motions and objections not ruled on above, are denied.

Any party wishing to seek judicial review of this decision may file a petition in an appropriate state or federal district court within 30 days after the issuance of this decision. *See,* Iowa Code Section 17A.19(3) and 281-41.124 Iowa Administrative Code, and 20 U.S.C. § 1415 (e) and 34 C.F.R.§ 300.511.

Dated this 15th day of September, 1998

Kathy Mace Skinner

KATHY MACE SKINNER, J.D.
ADMINISTRATIVE LAW JUDGE

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