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IOWA DEPARTMENT OF EDUCATION
(Cite as Docket No. SE-215

In re: Matthew B. W.)
)
James W., Appellant)
) DECISION #120
v.)
)
Fort Madison Community School District)
and Great River AEA 16, Appellees)

The above captioned matter was heard on September 21, 1999 at the Fort Madison Administration Building in Fort Madison, Iowa before Administrative Law Judge Susan L. Etscheidt pursuant to Section 256B.6 *Code of Iowa* and Chapter 281-41 *Iowa Administrative Code* and the applicable regulations found within the Individuals with Disabilities Act (IDEA).

There is a significant procedural history to this appeal. An affidavit of appeal was filed by the appellant, the father of Matthew B.W. on April 16, 1999 and was received by the Iowa Department of Education on April 21, 1999. The issue was identified as Area Education Agency (AEA) 16's failure to authorize an "outside evaluation" of Matthew B.W.

A hearing was set for May 11, 1999 but rescheduled for May 20, 1999 at the request of the appellant. A prehearing conference call was scheduled for May 11, 1999. Participants in the conference call included the appellant, Mr. James W., Mrs. W (mother of Matthew B.W.), Ms. Linda Brock, Director of Student Services and representing Fort Madison Community School District, Dr. Ron Dente, Great River AEA 16 Director, and Mr. Matt Novak, an attorney representing AEA 16, Ms. Carla Bell as secretary for the Iowa Department of Education, and the Administrative Law Judge. The purpose of the conference call was to specifically identify the issues for hearing, to discuss how and when information would be exchanged pursuant to rules regarding documentary evidence, to confirm the official school record, and to outline the procedures for conducting the hearing. The school district indicated that a meeting had been scheduled for Thursday, May 13, 1999 to discuss IEP progress and the IEE. It was decided that a second conference call would be scheduled following that meeting.

On May 14, 1999, the appellant filed a motion for continuance. On May 17, 1999, a second telephone conference call was held. Participants in this call included the appellant, Ms. Linda Brock, Director of Student Services and representing Fort Madison Community School District, Dr. Ron Dente, Great River AEA 16 Director, and Mr. Matt Novak, an attorney representing AEA 16, Ms. Carla Bell as secretary for the Iowa Department of Education, and the Administrative Law Judge. The May 13, 1999 meeting was discussed. The team had decided that an outside evaluation would be conducted prior to the beginning of the 1999-2000 school year and that a subsequent IEP meeting would be held to consider the results. Following that

meeting, a third conference call was to be scheduled. The motion for continuance was granted until August 13, 1999.

On June 10, 1999, the appellees filed a motion for continuance of the above-referenced matter. The outside evaluation of Matthew B. W. was scheduled for August 4, 1999. A telephone conference call was to be scheduled following the completed evaluation to discuss issues remaining for hearing. The motion was granted and the matter continued until September 30, 1999.

On August 18, 1999, the appellant filed an amendment to the request for a due process hearing concerning reimbursement of insurance payments from the lifetime medical health benefits of Matthew B.W. The appellant requested reimbursement for actual expenses deducted from the medical health benefits for all diagnostic and evaluation purposes subsequent to an Oct. 11, 1995 meeting. The issue was added to the appeal.

On August 19, 1999, a conference call was held. The participants included the appellant, Matthew's mother Mrs. W., Mrs. Linda Brock, Mr. Matt Novak, and the Administrative Law Judge. The agenda included a discussion of the status of the outside evaluation, the IEP team's plans to consider the results, the educational program for Matthew B. W. as he began the 1999 fall semester, and the amendment to the issues for hearing. Mrs. W. reported that Matthew had been evaluated on August 4, 1999 but that the evaluation was incomplete. A subsequent appointment was scheduled for August 24, 1999. The participants agreed that Matthew's fall schedule would be based on the verbal recommendations from the outside evaluator and that as soon as the evaluation was complete, the team would meet to discuss the results. The additional issue added to the request for a due process hearing was reimbursement of insurance benefits to cover the cost of diagnostic and evaluation procedures for Matthew B. W. The hearing date was set for September 21, 1999.

On September 17, 1999, a conference call was held to identify the issues remaining for hearing. Both the appellant and attorney for the appellees agreed that the single issue of this hearing was the obligation of the Fort Madison School District and AEA #16 to reimburse costs for diagnostic and evaluation services conducted for Matthew B.W. on the following dates: 1) December 1995 at Mayo Clinic, 2) February 15, 1996 at the University of Iowa and 3) a period from February 19, 1996 to April 30, 1996 at the University of Iowa Hospital Clinics (UIHC).

The appellant was present at the hearing. Ms. Linda Brock was present as the representative for the Fort Madison Community School District and Dr. Ron Dente represented AEA 16. Attorneys for the appellees were Mr. Matthew G. Novak and Ms. Stephanie L. Hinz.

The hearing was open to the public. Sworn testimony from six witnesses was heard by phone and in person, and educational records were received at the time of hearing.

I. Findings of Fact

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

Matthew B. W. is a 17-year-old young man living with his mother in Fort Madison, Iowa. Matthew's parents are divorced and his father is the appellant in this matter. Matthew B.W.'s involvement with special education services from AEA 16 began when he was four years old. A staffing held 3/25/87 discussed the results of AEA evaluation data and information from the Gunderson Clinic. The staffing report indicated Matthew was diagnosed by Gunderson Clinic with a "language processing deficit," eye and motor tracking problems, short attention span and distractibility. The recommendation was for Matthew B. W. to attend the preschool handicapped classroom as an eligible "communication disorders" student. Goals and objectives included language development, readiness activities and improving social skills (e.g., "encourage positive self-concept"; "accept limits as set by classroom rules")(see Appellee Exhibits 2 & 3). The preschool teacher's end of the year report indicated that although Matthew had only attended for a few weeks, he had made noticeable progress. The teacher noted "when working with (Matthew B.W.) we have found that his attention span increases when given an activity that has a visual result..." and that he "becomes frustrated when he feels pressure."

Another staffing was held on 5/11/87 to determine educational programming and an Individualized Education Program (IEP) for 1987-88. A preschool assessment, health and family history was completed by school social worker George Welding, a speech/language evaluation was conducted by Verla Barker, and an occupational therapy (OT) evaluation was submitted by Jane Kruse. The staffing report indicated Matthew B. W. was to begin ½ day preschool with speech and OT services. The IEP included gross and fine motor goals and objectives, expressive and receptive language goals and objectives, and cognitive goals and objectives. A 4/5/88 staffing was held for Matthew's transition from preschool to kindergarten. The staffing report indicated he was no longer eligible for OT, and would enter kindergarten with speech and language services.

The staffing report of 5/18/89 summarized Matthew B. W.'s progress during kindergarten and identified him as "an 'at risk' student in receptive language." He had been evaluated November 6-7, 1989 at the Gundersen Clinic in La Cross, Wisconsin resulting in a diagnosis of a "severe language processing disorder," attention deficit disorders (ADD), panic disorder, and pervasive developmental disorders. The 5/18/89 staffing report indicated he continued to need directions repeated and listening skills developed. The IEP for 1989-90 was for regular 1st grade classroom placement with speech therapy services. There were three language-based annual goals.

Prior to entering 2nd grade, Matthew B. W. was evaluated by Eleanore Kenney, a clinical psychologist in St. Louis, Missouri. She identified him as "at risk for mastery of academic skills in a (grade) 2 classroom situation" and suggested "he could indeed benefit from some resource room help with the LD teacher." Matthew had a regular 2nd grade class placement with speech/language services. The IEP for 1990-91 identified the 2nd grade annual goal to "increase auditory skills."

At the end of the 2nd grade year, the IEP team met to discuss parental concerns and determine educational programming for Matthew B. W. in 3rd grade. Listening was identified as a continuing problem, along with task completion and staying on task. The team recommended consultation with the classroom teacher regarding his auditory processing problems. The 1991-92 IEP for Matthew's 3rd grade year included speech/language goals.

Matthew's 4th grade year included a 9/9/92 status review meeting, in which the need for a comprehensive evaluation was documented (see Appellee Exhibit 5). His mother indicated she would have him evaluated at Mayo Clinic and share the results with the team. It was also noted that the "cost of such evaluation will be assumed by parents." "RSDS services" were recommended for "task completion, motoric expression, attentional focus instruction. A follow-up meeting of 9/30/92 was to "review RSDS strategies that are currently being utilized in the regular classroom and brainstorm other strategies that might be useful." Several "possible modifications" were identified and to be implemented "as needed": shortened assignments, assignments written when lengthy assignment given, positive reinforcements as often as possible, learning strategies utilized, contact mom at first sign of difficulty, using a daily journal, offering untimed activities, and including organizational strategies. At a 2/10/93 status review meeting, issues of computer programming and ADD were addressed. The comprehensive educational evaluation was underway with "further analysis...forthcoming". It was recommended that "an appointment be completed on 2/23/93 with Dr. Hartson, Towncrest, Iowa City" and that the results be shared with the team. There is no signature on the 2/10/93 Written Consultation Record from the AEA director authorizing the outside evaluation.

The record suggests that the initial decline in Matthew's condition began around this time in January 1993 when his father had an "acute decompensation in his condition" and became violent (see UIHC report dated 2/16/96). A report from Dr. Hartson dated 8/29/96 similarly indicated that from March of 1993 (when Matthew was initially referred) Matthew was "very concerned about the deteriorating relationship between his parents" and that in the next months developed "significant anxiety problems which included hypervigilance, intrusive thoughts and a sense of loss control"(see Appellee exhibit 24).

A request for a comprehensive educational evaluation was made 8/26/93, following a team meeting to discuss accommodations for Matthew at Denmark School (see Appellee Exhibits 4 & 6). Gary Simpson, school psychologist for AEA 16, completed part of a comprehensive educational evaluation on 2/15/93 to "ascertain whether (Matthew B.W.) has a lot of behaviors that are symptomatic of a student with ADD." Utilizing the Connors Teacher Rating Scale and the Attention Deficit Disorders Evaluation Scale School Version (ADDES-SV), Mr. Simpson concluded that Matthew "is functioning at a level significantly below that of his peers in the regular educational setting and is meeting with a substantial degree of difficulty in performing academically and behaviorally in the regular educational setting." He recommended that a behavior management program be instituted and that Matthew be evaluated by a pediatrician. In a 3/9/93 meeting there were still several components of the comprehensive evaluation needed: adaptive behavior rating of social worker, expressive/receptive language assessment by speech

clinician, and observations by the consultant. The team recommended that the "comprehensive evaluation be completed within max. 4 weeks". A 3/17/93 meeting found the AEA team "awaiting results from an outside evaluation by Dr. Harston" and advertising for a 1:1 aide. It was determined that the team would "wait to see what modifications should be employed as per phone contact with Dr. Hartson and wait for results from this evaluation". During this 4th grade year, Matthew received four detentions for inappropriate behavior.

A request for a comprehensive educational evaluation was issued on 8/26/93 as Matthew B.W. entered his 5th grade year. The request from Dick Herlein, special education consultant, indicated that an Iowa City evaluation had been completed and that the mother reported the resulting diagnosis as ADD. A comprehensive evaluation was "needed to determine services" for Matthew and if he would "qualify for special education services as an ADD student". A written consultation record of the same date indicated Matthew would attend Denmark School and listed the purpose of the meeting to "discuss accommodations needed" in that setting. The Record also states "(Matthew) continues to see Dr. Hartson" who "diagnosed ADD with concerns in area of audio memory". A meeting was held 9/17/93 to discuss possible modifications/accommodations and to "get an academic update" regarding Matthew's progress that year. The Written Consultation Record for that meeting indicates "staff report that he had difficulty staying on task" and "no completed assignments to date". The summary indicated that "Dr. Hartson will evaluate (Matthew) and relate the results to this team by 10/6 and "(Matthew) will have contact with the resource teacher under RSDS". There is no signature on the Written Consultation Record of the AEA director authorizing an outside evaluation.

Dr. Hartson's report dated 10/1/93 indicated that he had seen Matthew "on several occasions over the past six months" and referenced his "extensive history of attention problems". He concluded that Matthew was a child with a notable history of ADHD, and clearly benefitting from psycho-stimulant medication (i.e., Ritalin) but with academic avoidance behaviors and low self confidence and esteem (see Appellant Exhibit U).

A 10/11/93 staffing was held to discuss the report and "share, discuss the comprehensive educational evaluation". School psychologist Gary Simpson had noted that "this evaluation was completed in tandem with an Iowa City, check-up to answer the referral question of whether Burt will quality for special education services as an ADD student". In his report Mr. Simpson noted that in reading Matthew functioned at a level commensurate with his peer on word identification but significantly lower on comprehension due to "trouble staying on task". In math, he performed well, but "displayed more reluctance" in writing samples. There were difficulties noted in paragraph composition but his writing was "neat and legible". A classroom observation conducted by Mr. Herlein in Matthew's 4th grade classroom the previous year reported: "constant movement of his feet, inattentive visual contact with print, daydreaming, lacking in following directions, dependency on peer to do the work, lack of involvement in class discussion, and avoidance to tasks assigned. (Matthew) found it extremely difficult to focus and maintain his attention to instruction in spite of teacher proximity, re-direction and prompting". Distractibility, avoidance, manipulation of objects, movement were seen at 90% of the observation while attentional focus, on-task work completed items were noted at 10%. Sonia Block, 5th grade

teacher, reported that academically Matthew worked best in a 1:1 situation and was progressing satisfactorily. The speech/language pathologist reported that "Burt does not quality for speech therapy at this time". A summary of intellectual assessments by Mr. Herlein from the report of Dr. Hartson indicated Matthew's intelligence was within the average range but that he "displays impairment to his learning processes from other sources". It was decided that Matthew would qualify for special education services and "PD Physical Disability/ADD" and receive resource room assistance for English, math, and keyboarding. In the 93-94 IEP that was developed, goals for "satisfactory grades in English and Math utilizing resource room assistance", keyboarding, "satisfactory grades in the mainstream" and "attentional focus" were developed. Matthew B.W. also received Chapter 1 reading assistance.

A 1/14/94 status review reported great improvement since the beginning of the year, and that resource assistance had been very beneficial. Several reports indicated that Matthew's parents were separated around this time in January of 1994. Dr. Hartson's 8/29/99 report indicated that he was diagnosed in 1994 with Post Traumatic Stress Disorder secondary to family trauma and that Matthew's condition was "related to his fathers' psychiatric decompensation and his parents separation"(see Appellee exhibit 24).

Matthew was evaluated in April 1995 by the University of Iowa Hospitals and Clinics (UIHC) child psychiatry outpatient clinic with a diagnosis of ADHD and post traumatic stress disorder (PTSD).

Matthew's condition continued to deteriorate and by September of 1995 he was increasingly withdrawn and unable to formulate answers or speak clearly (see UIHC report dated 2/19/96). Dr. Hartson's 8/29/99 report similarly indicated that during this time Matthew "continued to deteriorate from a behavioral perspective and in September of 1995 became increasingly withdrawn, anxious and apathetic. He became at that time so disoriented both with his physical environment and with his cognitive performance that he was unable to formulate verbal responses or carry on an appropriate conversation. As (he) continued to deteriorate, there were repetitive motor behaviors and a question of possible Obsessive Compulsive Behavior (See Appellee exhibit 24).

At the beginning of the year during a 9/12/95 meeting, the review of status indicated continuing organizational problems, difficulty with assignments, and the need for motoric modifications and accommodations, including verbal test-taking and reduced assignments (see Appellant Exhibit C; Appellee Exhibits 7 & 8). A 10/3/95 update reported "off task, daydreaming" in Science, not following direction in Art, "he spaces out much of the time" in Reading, "shuts downs and doesn't come back" in Social Studies" and "works slowly, he doesn't follow through assignments at home" in English. The report also suggested there are "indications of oppositional/defiant behavior" (see Appellant Exhibit D; Appellee Exhibit 9). On 10/11/95 a status report suggested absences were problematic in English, noted that Matthew was failing Math, and recommended that he be seen by Dr. Hartson "as soon as possible to deal with ADD, depression possibility issues." There was no signature on the Written Consultation Record of the AEA Director for an outside evaluation. (See Appellant Exhibit B; Appellee Exhibit 10). The 11/7/95 status review

indicated that Matthew B.W. qualified for math instruction in a resource setting and the team formulated IEP goals for 1995-96. These goals were to "pass team English and team Geography" by completing daily assignments , "improve in the area of organizational skills" by maintaining an assignment notebook, and "pass math class" by completing modified assignments (see Appellant Exhibit E; Appellee Exhibits 11, 12 & 13). At a meeting held 11/17/95, the team reported that Matthew "has not eaten a full meal for 3 weeks. He is disorganized in movement, thought. Verbalization is limited. Dr. Paragas thought hospitalization was needed and mother did not care to go this route. Dr. Hartson has recommended psychiatric services. Dr. McManus cannot get (Matthew) back into her schedule. Dr. Cooley wishes to keep (Matthew) off med(ication) until he is hospitalized...(Matthew) has been out of school for the past 3 weeks. Mother is considering contact with Dr. Mikkilineni for assistance...With this situation as is, (Matthew) is not able to function in the school setting successfully" (see Appellee Exhibit 14). The team recommended that a staffing be scheduled to plan for homebound tutorial services and that a shortened school day be explored as an option.

Around this time, Matthew had stopped attending school and was evaluated by Dr. Koele and diagnosed with major depressive disorders and PTSD. She referred him to the University of Iowa Child Psychiatry Services in October 1995. A 11/21/95 Written Consultation Record indicated: "(Matthew) is not in school at this time - he is at home due to mental setback. Has been seen by Dr. Hartson and recommends hospitalization, but there are no beds available. Is not eating solid foods and is very weak. Has been on Welbutsin beginning in Sept. Dr. took him off on 10/26 due to his restlessness, disconnected thinking, etc. Parent is currently very concerned and may call Rochester, Mayo, or an intake at Menningers" (See Appellant Exhibit F; Appellee Exhibit 15).

Mrs. W. took Matthew to Mayo Clinic in December of 1995. The report from Mayo Psychiatry and Psychology Treatment Center dated 12/95 summarized the psychometric evaluations as "clearly bothered and distressed by his parents, their imminent marital breakup, and their treatment of each other". The diagnostic impression was elective mutism and an "adjustment disorder that has depressed and anxious features, and that his anxiety and depression are exacerbated because of the difficulties he has with expressive language and the lack of support he feels at home". The follow-up arrangements included both Dr. Hartson, his psychologist and the psychiatrist, Dr. Mikkilineni (see Appellant Exhibit G). Mrs. W testified that the diagnosis from Mayo was "unsatisfactory".

Early in 1996, Matthew was seen at the Pediatric Neurology outpatient clinic at the University of Iowa which resulted in an "organic workup, including an MRI" which were "unremarkable". There were no reports or bills presented into evidence regarding the services provided to Matthew by Pediatric Neurology.

A report from a meeting held 2/13/96 indicated that Matthew was glad to be back in school and that "mother is contemplating hospitalization at University Hospitals so that further evaluation physically, emotionally can occur". A post note dated 2/15/96 indicated that hospitalization was to occur 2/19/96 at UIHC (see Appellant Exhibit W; Appellee Exhibit 18).

Matthew was admitted to Child Psychiatry Services at the University of Iowa Hospitals and Clinics (UIHC) on 2/19/96 and discharged 4/30/96. The admissions summary identifies Matthew with a history of post traumatic stress disorder, ADHD, mixed expressive and receptive language disorders, possible seizure disorder, and asthma. The admissions report indicated that he was referred by Dr. Sharon Koele. The report noted that "the patient was admitted and placed on safety, suicide and elopement precautions". The report indicated that this was Matthew's first UIHC "psychiatric hospitalization". In the discussion of his "hospital course", there are references to his "obsessions", his "obsessive-compulsive symptoms", and his "anxiety". While hospitalized at Iowa City, Matthew attended the Child Psychiatry School program to "support the therapeutic program for addressing referral problems". The recommendations from child psychiatry at the time of discharge included follow-up for medications with Dr. Mikkilineni for 6/96, and counseling with Dr. Hartson, home tutoring and further long-term in-patient treatment with intensive behavioral therapy. In-state as well as out-of-state options were discussed. Orchard Place was identified as the best of the recommended option in Iowa. The recommendations from the clinical teacher/consultant at time of discharge indicated "Because (Matthew) has missed so much school this year, he will need to make up seventh grade work next year. If (he) continues to refuse work next year, he should be placed in a behavior disorder classroom with integration as appropriate". Copies of the discharge report were sent to Dr. Paragas, Dr. Mikkilineni, Dr. Koele, and Dr. Hartson. (see Appellant Exhibit J; Appellee Exhibit 20). The bill for services at UIHC was $56,696.25 (see Appellant Exhibit K & L; Appellee Exhibit 21).

A Written Consultation Record dated 5/1/96 reported that Matthew had returned to the district after a recent hospitalization for diagnosis at UIHC and that the discharge recommendations of either Orchard Place or a return to a district setting were "irresponsible" in Mrs. W.'s view (see Appellee Exhibit 22). At a 5/8/96 meeting, it was determined that Matthew would begin his transition back to school for 1 period only, science, and that a home tutor was to be provided 2 hours per day (see appellee Exhibit 23).

Dr. Hartson's 8/30/96 report indicated that after Matthew was discharged into his mother's care in April of 1996, she discussed with him the possibility of Matthew attending school outside the Fort Madison area. They discussed a miliary school in Mexico, Missouri and the Brehm Academy in Carbondale, Illinois. It was Dr. Hartson's opinion that it would be beneficial for Matthew to live and attend school outside the area due to the "continued dysfunction between family members"(See Appellee Exhibit 24).

During the 1996-97 school year, Matthew attended the Missouri Military Academy in Mexico, Missouri. An 8/20/97 written consultation record indicated Matthew was returning to Fort Madison. A "Certification Form" dated 8/27/99 verified that Matthew would be receiving services under the LD category and that his placement was Resource Multi-Disability (see Appellee Exhibit 25). Currently, Matthew is a junior and receiving resource services at Fort Madison High School.

II. Conclusions of Law

The purpose of the Individuals with Disabilities Education Act (IDEA) is to provide every disabled child with a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living [20 U.S.C. § 1400(d)(1)(A)]. A free and appropriate public education is defined as special education and related services that have been provided at pubic expense, meet the standards of the State education agency, include appropriate preschool, elementary or secondary school education and are provided in conformity with the individualized education program (20 U.S. C. § 1401(8).

Special education means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, and includes "instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings"[20 U.S.C. § 1401(25)]. Related services include "transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children"[20 U.S.C. § 1401(22)].

The single issue of this appeal is whether or not the appellant is entitled to reimbursement for the costs of services provided to Matthew at Mayo Clinic and the University of Iowa Hospitals and Clinics.

The Appellant's Position

The appellant asserts that the services provided to Matthew B.W. at the Mayo Clinic in December of 1995 and at the University of Iowa Hospitals and Clinics (UIHC) on February 15, 1996 and a period from February 19, 1996 to April 30, 1996 were related services, and as such, the costs should be assumed by Fort Madison Community Schools and Area Education Agency 16. The appellant claims that the Mayo Clinic "diagnostic workup" was done "upon the referral of Dr. Hartson" and was for "diagnostic purposes". Since the "team" had made a specific recommendation on 10/11/95 that Matthew be evaluated by Dr. Hartson, his referral to Mayo Clinic was an extension of that evaluation and the financial responsibility of the team. Similarly, the appellant claims that the services provided to Matthew at the UIHC were based on a referral from Dr. Hartson and were "medical services that must be provided under IDEA as they were for the express purpose of diagnosis and evaluation of Matthew B. W. following the "Team" agreement to do so and must be provided free of charge to the parents of Matthew B. W. under FAPE". The appellant also claims that the Child Psychiatry School program Matthew attended while at UIHC was "special education" as defined at 20 U.S.C. § 1401(25). The appellants have requested "reimbursement of the actual expenses deducted from the medical health benefits of Matthew B. W. for all diagnostic and evaluation purposes subsequent to the 10/11/95 'Team'

meeting for which evaluation with Dr. Hartson (and this would imply the referrals made by Dr. Hartson in order to determine a diagnosis) was recommended and approved". Specifically, the appellant is asking for reimbursement in the amount of $28,795.14. Apparently this figure represents "reimbursement of insurance payments from the lifetime medical health benefits of Matthew B. W.", although no itemized list of services or any proof delineating the charges was submitted.

The Appellee's Position

The appellees argue that the medical treatments Matthew received at Mayo and UIHC are medical services which are expressly excluded from the definition of related services. They assert that just because each discharge from hospitalization included a diagnosis or recommendations, that fact did not "transfer medical services into reimbursable related services". The appellees argue that the "determinative factor in deciding whether medical hospitalizations are reimbursable is the principal purpose of the admission". The claim that since Matthew was admitted to psychiatric hospitals at Mayo and UIHC for treatment of a medical crisis relating to his depression and anxiety, they were "medical treatments beyond diagnosis and evaluation" and are not reimbursable. The appellees also contend that the issue raised by the appellant is barred by the statute of limitations as well as by equitable considerations.

The Purpose of the Services

In order to determine whether or not the appellant is entitled to reimbursement for the services at Mayo and UIHC we must examine the purpose of Matthew's hospitalizations at Mayo and UIHC The determination of purpose is critical to questions concerning school district responsibility for hospital placements (see *Manchester Sch. Dist. v. Charles M. F*, 21 IDELR 732 (D.N.H. 1994).

Provision of an Appropriate Educational Program

If the purpose of the hospitalization is to provide an appropriate educational program, the services are "special education" and must be provided by the school district: "Special education is to be "conducted in the classroom, in the home, in hospitals and institutions, and in other settings"[20 U.S.C. § 1401(25)] and related services may be required "to assist a child with a disability to benefit from special education"[20 U.S.C. § 1401(22)]. The federal regulations also stipulate that if placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child (34 C.F.R. § 300.302). The law further requires that children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency to provide special education and related services [20 U.S.C. §1412(a)(10)(B)]. The law clearly intended special education and related services to be extended to hospitals, residential placements and private schools.

Courts have held that hospital services are reimbursable if they are necessary for educational purposes and if they comport with established educational goals. Courts have approved psychiatric hospital programs at public expense when the school district program is unable to meet the needs of the child and the medical aspect of the hospital stay is secondary to the nature

of the educational programming provided (McAndrews, 1996). These courts have found that the emotional or medical problems requiring hospitalization are so "intertwined "with the educational needs of the individual, that the school district was responsible for the costs of hospitalization. In these decisions, the hospitalization was in response to established education needs and determined to be an appropriate educational placement corresponding to educational goals [see *Babb v. Knox County School System*, 965 F.2d 104, 18 IDELR 1030 (6th Cir. 1992) (holding that special education costs arising out of a psychiatric hospitalization are not excludable medical expenses, and are reimbursable to the parents, if the hospitalization is determined to be an appropriate educational placement corresponding to educational goals)].

However, if the services provided in the hospital setting did not comport with established educational goals of the Individualized Education Program (IEP) or the hospitalization was not an appropriate educational placement, reimbursement was denied [see *Clovis Unified Sch. Dist. v. California Office of Admin. Hearings*, 903 F.2d 635 (9th Cir. 1990) (concluding that the students placement in an acute care facility was due to an "acute" psychiatric crisis and that the student's educational program implemented at the hospital was not the Individualized Education Program (IEP) designed by the school system, but was instead a program determined by a medical team: "In enacting the 20 U.S.C. § 1401(16) provision, Congress sought to ensure that children confined to hospitals or homes for either physical or mental illnesses would not be denied an education. School districts are required to send tutors and other trained specialists to both homes and hospitals to meet the educational needs of handicapped children to continue services outlined in their IEP". The court concluded that the student was hospitalized primarily for medical, i.e. psychiatric, reasons, and therefore the hospitalization was not a "related service" for which the school district was responsible to fund. The intensity of the student's program indicated that the services she received were focused upon treating an underlying medical crisis)].

The *Clovis* case is analogous to Matthew's. The Child Psychiatry School program that Matthew attended while hospitalized was intended to "support the therapeutic program for addressing referral problems. Children are admitted to the inpatient unit because their acute psychiatric problems require immediate attention". The students in the Psychiatry School work on "suitable school behavior, social skills, impulse and anger control and cognitive restructuring" in daily classes. In reporting Matthew's performance in the Child Psychiatry School, his teacher reported that Matthew

> "did little school work in our structured school setting...During most of his stay, he refused academic and vocational work...In group classes, (Matthew) refused to participate. Near the end of his stay, he began participating by pointing to words or objects....If he was in a larger group, he would usually sit in his chair and not participate or focus on the group...

Matthew spent 52 days in the Child Psychiatry School program between 2/19/96 and 4//30/96. He received 19 hours of "Pass" for group work and 46 hours of "Fail"; 78 hours of "Fail" for seatwork, 10 hours of "Fail" for friendship time; 50 hours of "Fail" for activities; and 10 hours of "Fail" for art.

The program offered at the Child Psychiatry School was not intended to correspond with

Matthew's existing IEP goals and objectives, but to serve as support for the therapeutic, psychiatric program addressing his referral problems. As in *Clovis*, the UIHC program was not an extension of Matthew's IEP program but rather an adjunct service to support his psychiatric hospitalization. The psychiatric services or psychiatric school program were never discussed or viewed as an appropriate educational placement option for Matthew. In fact, on 11/17/96 Matthew's IEP team discussed homebound tutorial services and a shortened school day prior to his hospitalization, and provided both when he returned from his hospital stay on 5/1/96.

Although he attended the Child Psychiatric School program at UIHC, the primary purpose of Matthew's placement at the UIHC was not for the provision of an appropriate educational program.

Diagnosis and Evaluation

If the purpose of the hospitalization is student diagnosis and evaluation, the services are considered related and are reimbursable: "medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education" [20 U.S.C. § 1401(22)]. Courts have reimbursed the costs for diagnostic and evaluation services conducted in hospital settings [See *Doe v. Bd. of Ed. of Nashville*, EHLR 441:106 (MD TN 1988) (school district ordered to pay for psychiatric evaluation. The court recognized that although school systems are not required to provide medical care, they must pay for evaluative and diagnostic services by licensed physicians in order to develop an appropriate IEP)].

Matthew's IEP Team recommended on 10/11/99 that he be evaluated by Dr. Hartson. In fact, that evaluation was authorized by Ed Minnard, the designee for the AEA director (see testimony of Dr. Dente). The evaluations conducted by Dr. Hartson and the school district's or AEA's responsibility for the costs of Dr. Hartson's evaluations are not issues of this dispute. Rather, the appellant argues that Dr. Hartson's subsequent involvement in Matthew's psychiatric hospitalization was an extension of the authorized outside evaluation, that the services provided were diagnostic and evaluative, and that the costs of the hospitalizations should be the responsibility of the school district and AEA. These arguments fail for several reasons.

First, the evaluation requested by the IEP team and authorized by the AEA was for Dr. Hartson only (see Written Consultation Report dated 10/11/95 Appellant Exhibit B; Appellee Exhibit 10). Dr. Hartson had evaluated Matthew since 1993 and the IEP team noted that he had "been very helpful in the past and may be of benefit to once again meet with (Matthew)" (see Written Consultation Report dated 10/11/95 Appellant Exhibit B; Appellee Exhibit 10).

Further, although there were diagnoses and evaluation conducted at Mayo and UIHC, that was not the primary reason for Matthew's hospitalization. Dr. Hartson was one of several doctors who had discussed the possible need for hospitalization with Matthew's mother. The Written Consultation Report of 11/1795 indicated "Dr. Paragas thought hospitalization was needed and mother did not care to go this route. Dr. Hartson has recommended psychiatric services. Dr.

McManus cannot get (Matthew) back into her schedule. Dr. Cooley wishes to keep (Matthew) off med(ication) until he is hospitalized...(Matthew) has been out of school for the past 3 weeks. Mother is considering contact with Dr. Mikkilineni for assistance" (see Appellee Exhibit 14). Matthew's mother was contacting many doctors in an attempt to have Matthew hospitalized.

Also, although the referring source is not identified for the Mayo hospitalization, the referral to UIHC was made by Dr. Sharon Koele (see Appellant Exhibit J; Appellee Exhibit 20). Copies of the discharge report were sent to Dr. Paragas, Dr. Mikkilineni, Dr. Koele, and Dr. Hartson. (see Appellant Exhibit J; Appellee Exhibit 20).

Most importantly, Matthew's mother testified that the decision to hospitalize him was not related to diagnostic or evaluation services:

> "I did not seek the permission nor the support of the team members in making that decision (UIHC hospitalization). It was at that point in time a medical emergency, and I handled that emergency as a parent..." (see testimony of Mrs. W).

Although both his Mayo and UIHC hospitalizations resulted in diagnoses and recommendations, the primary purpose for which Matthew was hospitalized was not to obtain diagnostic or evaluative services.

Response to a Medical Crisis

If a student is hospitalized for either medical or psychiatric reasons (i.e., to stabilize the student's health) the school district is not financially responsible for the services [see *Salley v. St. Tammany Parish School Board*, 21 IDELR 12 (EdD. La. 1994) *aff'd,* 57 F. 3d 458 (5th Cir. 1995)(court denied compensation for medical services and hospitalizations primarily for medical treatment); *Los Gatos Joint Union High School Dist. V. Doe*, 1984-85 EHLR 556:281 (N.D. Cal. 1984)(holding that since emotionally disturbed student was hospitalized primarily for medical, not educational reasons, residential placement and treatment involved in rendering medical services are not related services); *Darlene L. v. Illinois State Bd. of Educ.*, 568 F.Supp. 1340, 19982--83 EHLR 554:532(N.D. Ill. 1983)(concluding that psychiatric or other medical care is not provided to any handicapped child to "maximize" potential unless for evaluation or diagnostic purposes and that a contrary ruling would impose a great, indeterminate financial burden on states and divert the limited funds available for special education to subsidize the high cost of psychiatric care for a relatively small number of mentally disturbed children); *Metropolitical Gov't v. Tennessee Dept. of Education*, 771 S.W.2d 427, 1988-89 EHLR 441:450 (Tenn Ct. App. 1989)(concluded criteria for assigning responsibility for cost of student's hospitalization include whether placement was least restrictive program for child's needs and whether it was deemed necessary for educational, as opposed to medical reasons. The court was convinced youth was hospitalized for medical reasons because his problems with authority and peers went beyond need for appropriate educational services and psychiatrist admitted youth was hospitalized to keep him from harming self. This court was not convinced that youth's educational needs escalated so suddenly that residential or hospital placement became necessary); *McKenzie v. Jefferson*, 566 F. Supp. 404 (D.D.C. 1983)(holding that the law did not encompass inpatient and outpatient hospitalization expenses for an emotionally disturbed students since the hospitalization was primarily for medical and not

educational reasons); *Haddonfield Bd. of Educ.*, 16 EHLR 1293 (SEA NJ 1990)(holding the treatment program consisted primarily of medical and psychiatric services rendered by licensed physicians. Thus, the program did not constitute a related medical service); *Richardson Indep. Sch. Dist.*, 21 IDELR 333 (SEA TX 1994)(awarding parents reimbursement for private school placement since the student's IEP was found to be inappropriate, but denying reimbursement for a hospital day program, psychiatric evaluation, and biofeedback services since there was no evidence that they were required for his educational benefit)]. These courts were able to sever a child's medical needs from his educational needs, and did not hold school districts responsible for the costs of hospitalization. Importantly, although not financial responsible for the hospitalization, the school district must stand ready to deliver an appropriate IEP in an appropriate placement following the hospitalization.

It is clear from the official school record and testimony that the primary purpose of Matthew's hospitalizations at Mayo and the UIHC was to address an underlying medical crisis. The record demonstrates that the services he received were focused on treating his medical condition and involved intensive medical treatment by a multi-disciplinary team of psychiatrists, therapists and clinicians. The services at Mayo Clinic are described as an "Adolescent Treatment Program" and "psychiatry" (see Appellant Exhibit H). The reasons for admission are listed as "poor appetite, social withdrawal, disorganized speech and behavior". The "Present Psychiatric Illness" section of the report discussed Matthew's witnessing extreme family violence and becoming extremely anxious about it: "Since the beginning of this year, he has been very scared of dying, anxious, hypervigilent, with decreased sleep, poor communication, social withdrawal, decreased energy level, has lost ten pounds of the last six weeks, poor concentration, has been having increasing difficulty at school and is preoccupied with his mother's safety". The "Hospital Course" revealed that Matthew has "some ritualistic behavior; e.g., hand movements, avoiding geometrical patterns and certain pats of the unit, building, etc. He also had poor appetite and social withdrawal. He was given a brief trial of Haldol but developed a dystonic reaction to this and Haldol was discontinued. He was started on Mellaril and Benadryl elixir on 12/21/9. He improved during his hospitalization..."(see Appellant Exhibit H).

In discussing Matthew's mental status on admissions to UIHC, psychiatrists reported that he was "unable to recall the name of his school and his address" and they observed "ritualistic" behaviors. While it could be argued that Matthew could not have benefitted from his special education program because of psychological problems which were treated during his psychiatric hospitalization, the UIHC report clearly shows a medical, as opposed to educational, approach to treatment:

> Since the patient has been admitted it has been difficult to communicate with him. Initially, he would simply not reply or have long latency periods, just staring at the examiner with a squint...A Children's Yale-Brown Obsessive Compulsive Scale showed that he spent more than 8 hours on obsessions with extremely short obsession-free intervals. He described them as being severely distressing...After being on the unit for a week, staff began increasingly reporting more clear obsessive compulsive symptoms like rocking, finger tapping, pacing, avoiding certain door thresholds, as well as the need for periodic channel flipping. Eventually on 2/26/96 a trial with fluvoxamine was started at 25

> mg po q HS and slowly increased to target a dose of 250 mg/day, reached on 2/28/96. At that time working diagnoses were obsessive compulsive disorder and probably major depressive disorder with catatonic features. In an attempt to disinhibit the patient and hopefully allowing him to verbalize his thoughts, a trial with lorazepam 2 mg BID was started on 3/14/96...He also reported hallucinations, however, recognizing that they weren't real. He complained of seeing things hanging from the ceiling and how furniture got smaller and larger...on 3/21/96 Klonopin was started 0.5 mg q HS and then increased to BID, mainly to target his anxiety. On 3/26/96 lithium was added...It was not infrequent for him to spend a couple of days without eating nor drinking nor taking his meds because "he could not get things right"...Eventually on 4/11/96 patient's Klonopin level was increased to 1 mg BID, which resulted in noticeable sedation...The patient spent 2 days with apparently no intake until it was decided to place a nasogastric tube on 4/12 to begin tube feeding...On 4/25/96 NG was pulled as (Matthew) was choosing to eat...

Most persuasively, Matthew's mother, Mrs. W., testified that she took Matthew to Mayo and the UIHC because of medical emergencies, and that she was seeking medical treatment. According to her testimony, a medical crisis existed at the time of his admission to both Mayo and UIHC:

> "It very rapidly became certainly a medical condition that required very prompt attention. And as I brought people in , there were not the answers, and his condition deteriorated. The school did attempt initially to accommodate him, but he was unable to function in even the most rudimentary fashion. It ceased to be a concern of the school. It was my problem...I had a son that enjoyed life that played basketball, had friends, ran around, was late coming home from the park, was hungry, wanted money to go to do this, go do that. And I walked in one day, and I had a son who didn't speak, who if you put him on a sofa, he would sit there 24 hours. I would get him up. I would physically lead him around. I dressed him. When I put food in front of him, he did not eat. When I talked to him, he did not respond. He didn't respond to anything. If I put him in a dark room with a TV in front of him, he simply sat there. There was nothing that the school could do for him or for me. If that isn't a medical emergency, I do not know what it"(see testimony of Mrs. W).

It is clear that the primary purpose of the services at the Mayo Clinic in December of 1995 and at the University of Iowa Hospitals and Clinics (UIHC) on February 15, 1996 and a period from February 19, 1996 to April 30, 1996 was to treat Matthew's medical crisis.

III. Decision

The services provided to Matthew B. W. at the Mayo Clinic in December of 1995 and at the University of Iowa Hospitals and Clinics (UIHC) on February 15, 1996 and a period from February 19, 1996 to April 30, 1996 were medical services and are not reimbursable as special education or related services.

Since the appellees have prevailed in the substantive issue presented in this case, the argument that the issue is barred by the statue of limitations and equitable considerations will not be addressed.

All other motions not previously ruled on are hereby denied. All other objections not previously ruled on are hereby overruled.

Susan L. Etscheidt

Susan L. Etscheidt, PhD
Administrative Law Judge

28 Sept. 1999