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DEPARTMENT OF EDUCATION
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Iowa Department of Education

(Cite as 22 D.O.E. App. Dec 293)

IN RE: Damian S.

Eric & Susan S, Appellants

Decision

(Admin. Doc. SE-289)

#139

vs.

Mason City CSD and Northern Trails AEA
2, Appellees

The above entitled matter was heard by Administrative Law Judge Carl R. Smith on April 26, April 29 & May 3, 2004. The Hearing was conducted via telephone as agreed to by all parties. The hearing was held pursuant to Iowa Code Section 281.6 of the Rules of the Iowa Department of Education, the rules of the State Board of Education found in 281-41 Iowa Administrative Code as well as the applicable regulations found within the Individuals with Disabilities Act (IDEA). The Appellants were not represented by legal counsel. The Appellees were represented by Attorney C.W. McManigal.

This Hearing was initiated by Damian's father in an e-mail sent to the Department of Education on April 15, 2004. Mr. S. requested an expedited due process hearing on behalf of his son, Damian, who is a student attending the Alternative Placement Building in Mason City, Iowa. The issues to be addressed in this Appeal include whether Damian should be permitted to attend the high school prom at Mason City High School and whether Damian's placement should be changed from the alternative educational setting back to Mason City High School for the remainder of the 2003-2004 school year.

On Tuesday April 20, 2004 a conference call was held regarding this Appeal attended by Damian, his parents, representatives of the Mason City School District, representatives of the Area Education Agency, Dr. Bunz (the mediator assigned to this Appeal) and this ALJ. In addition to clarifying the intent of this Appeal as outlined above, this conference call provided the parties with an opportunity to clarify other matters related to the Appeal.

At the outset of this call it was noted that Damian had recently turned 18 and the question as to his role in these proceedings was raised. This ALJ responded that, according to his

understanding of the Age of Majority procedures in Iowa, that Damian would be expected to be making decisions on his own behalf and would be expected to be taking an active role in these proceedings and with such matters as requesting a hearing. Damian replied that he was agreed with the need for this Appeal and agreed with the two points in these proceedings outlined in the Request for Hearing sent by Mr. & Mrs. S.

The parties were asked if there were any objections in the assignment of this ALJ to this Appeal. No objections were voiced to his assignment. This ALJ went on to express his opinion that the specifics of this Appeal do not meet the definition of an Expedited Due Process Hearing as defined in the Iowa Rules of Special Education but that the 45 day timeline could be adhered to in the general due process proceedings. This ALJ inquired as to the dates of the prom at Mason City High School (May 1, 2004) and the end of school (June 3, 2004).

It should be noted that the decisions in this matter were delivered to the parties verbally prior to disseminating this written decision. The decision regarding Damian's prom attendance was delivered at the conclusion of the telephone Hearing held on April 26, 2004. The second element of this decision, addressing the request that Damian return to Mason City High School for the remainder of this current school year, was shared with the parties on a phone conference call held on May 3, 2004.

It should also be noted that an additional Request for Hearing was filed by the Appellants on May 3, 2004 via an e-mail message to the Department of Education. This new Appeal (SE 290) requested an Expedited Hearing to examine least restrictive environment issues and what the Appellants assert as unmet needs in career counseling and access to school information systems and scholarships. On May 9, 2004 this ALJ responded:

I have been consulted by Toni Blair and Dee Ann Wilson from the Iowa Department of Education regarding an additional Appeal (SE 290) . . . I expressed my opinion . . . that the context of this new Appeal is similar to the current decision I have verbally rendered in the SE 289 Appeal . . .

I. Finding of Fact

The Administrative Law Judge finds that he and the State Board of Education have jurisdiction over the LEA and AEA and the subject matter involved in this Appeal. Damian is a student with disabilities currently being served in the Mason City Public Schools. His participation in extracurricular activities, which applies to prom attendance in this matter, is specifically addressed as part of his IEP.

Damain S. is an eighteen year old student who has been attending the Alternative Placement School in Mason City Iowa since October, 2002. The initial assignment to this setting was a result of a temporary injunction in the Iowa District Court of Cerro Gordo County and was originally confirmed in a special education due process hearing before this ALJ on November 11, 2002. Subsequent decisions regarding Damian's continued

placement in the Alternative Placement Schools have been made within the IEP team decision making process. In addition to being declared eligible for special education, Damian has been diagnosed as a student with Attention Deficit/Hyperactivity Disorder and Opposition Defiant Disorder. At the time of this Hearing Damian was attending the Alternative Placement School for four hours per day.

The most recent staffing for Damian was held on February 19, 2004. At this time Mr. S. expressed concern that Damian be educated in the least restrictive environment where he would have access to the classes he wants to take. The IEP also states that "Damian's goals are to graduate, go to college, take ACTs, get some career counseling in his area of vocational interest and possibly take some classes. He would like to graduate with his peer group." It should also be noted that within the Present Levels of Educational Performance Section of the IEP the following is noted:

Damian's cognitive and intellectual abilities are above average as indicated by his ITEDs and by his achievement in Honor's Language Arts 10 where he earned a B. School staff are concerned with Damian's disabilities will be barriers to his achievement in post high school education and future employment. He has appropriate skills to live independently.

It was also noted in this IEP that a referral to Vocational Rehabilitation will be made for Damian.

The issue of Damian's attendance at the high school prom was discussed at this February, 2004 IEP meeting. In relation to this request the following is noted:

Angela Nasstrom, legal representative, addressed the concerns of the S. family. She indicated he (Damian) has been doing well behaviorally and completing his academic tasks and should be allowed to take part in the prom. The rest of the IEP team agreed that Damian has made progress both behaviorally and academically within the small group setting and support provided at the APB. We all agreed the 'prom' setting would be in a large building with a large group of people which would make it different and a potential problem with the ODD diagnosis. Angela, Damian, and Eric believe Damian could handle the situation at the prom and he would like to attend. Mr. Van Hemert (Supervisor of Special Education) emphasized the issues around past aggressive behavior and the potential for difficulty in a setting and group this large. (IEP 2/19/04, p. 5)

This section of Damian's IEP also clarifies the credits Damian needs to complete his high school diploma and, as noted above, that his time in the alternative setting would be increased from two to four hours per day. It also states that a referral to Vocational Rehabilitation would be made for Damian. At the close of this meeting it appears that further discussion took place regarding Damian attending the prom with the following proposal made by the school social worker:

Mr. Finn requested that the IEP team revisit their decision . . . and see if parents and staff can come to some compromise. Angela Nasstrom indicated she would present a proposal on this concern. . . . Mr. Finn suggested having Mr. Coates the AEA psychologist at High School see Damian and review concerns and appropriate behavior expectations at the prom. Damian agreed to see Mr. Coates. (IEP 2/19/04, p. 5)

Within the Behavior Intervention Plan contained in this IEP is the intent for the school to continue to provide school social work and school psychologist services to Damian as counseling services in the school setting. The goal areas addressed in Damian's current IEP include responsibility and independence and contribution and citizenship. There is documentation of considerable disagreement between Damian's father and school personnel regarding the extent of Damian's progress in the behavioral area since his previous IEP. Within the section of the IEP dealing with special education services it is noted that social skills/problem solving/anger reduction counseling by the school social worker or school psychologist would be provided for 30 minutes one time per week and that Counseling at the Mental Health Center to work on goal areas would be provided for 50 minutes per week. From the record and testimony presented it does appear that this latter counseling component has been provided This IEP also notes that the following accommodations will be provided for Damian:

Extra time (50%) to complete assignments without penalty when he is overwhelmed with his work. Damian is responsible to telling teachers he is overwhelmed. Example: allowed 3 days instead of 2 days to make up work for each day excused from school.

The following questions are posed in the "Least Restrictive Environment Considerations" section of Damian's IEP with responses noted in parentheses following:

1. Will this individual receive all special education services in general education environments? (No. Special designed instruction at the Alternative Placement Building due to frequent displays of disruption, verbal and physical aggression until therapeutic services are provided.)
2. Will this individual participate in nonacademic activities with nondisabled peers and have the same opportunity to participate in extracurricular activities as nondisabled peers? (Damian is ineligible per the Student Good Conduct Code for all students (MCHS). Also, due to is frequent displays of disruption, verbal and physical aggression, Damian is not eligible for nonacademic extra curricular activities.)
3. Will this individual attend the school he or she would attend if nondisabled? (Until Damian makes progress in therapy, he will continue at the APB. The school agrees to pay for the counseling over the summer . . .)

Following the development of this IEP, Angela Nasstrom, representing Damian and his parents, sent a letter (March 30, 2004) to Mr Weaton, Associate Principal at Mason City

High School, proposing that Damian be allowed to attend the high school prom with the following conditions:

1. Damian continues to meet regularly with Rob Coates (the school psychologist).
2. Rob Coates will provide progress reports to Ms. Nasstrom, who would forward them on to designated school personnel.
3. Damian and Rob Coates would develop a plan for successful attendance at prom and will submit such plan in writing to designated school personnel.
4. Damian would be permitted to attend prom during the time scheduled.
5. Once per hour during the prom, Damian will "check in" with a designated staff member to verify his presence and to discuss any concerns or problems.

Mr. Coates, the school psychologist for the Area Education Agency, provided a report to Ms. Nasstrom dated March 23, 2004 which, in part, stated:

I am writing to give you a summary of my sessions with Damian S. and my impression up to this point. As of today, I have seen Damian for 4 weekly sessions . . . Damian impresses me as a very intelligent and quite articulate young man. Overall I am pleased with how well he has responded during our sessions so far. He has been very cooperative, verbally expressive, and engaged in our discussions. He has also in my opinion been candid in expressing his feelings and thoughts. I have been working simultaneously with Damian on rapport building, probing his social/behavioral history, awareness and insight into anger control difficulties, issues of physiological/social/cognitive dynamics of anger, and anger control techniques it has been my strong opinion and experience with adolescents that dealing with anger control issues, an awareness and acknowledgement of personal difficulties in this area along with insight into how anger has affected their live and a desire and commitment to work on getting control of the problem are absolute prerequisites to making progress. My impression of Damian is that he is well on his way to meeting these prerequisites. He demonstrates fairly good insight into his own problems with anger control and how this has affected him several times in the past several years and also more recently. . . .As you know, the reason I was asked to see Damian was a request by school personnel that Damian enter into counseling for anger issues prior to considering if he will be allowed to attend the prom. I believe there is an expectation that I offer an opinion about the risk or lack of risk that Damian could get physically aggressive if allowed to attend the prom. As I have explained to Damian, I am not in a position to made guarantees and can't say with certainty that if provoked to a certain point he would not become aggressive. I can say however, that I have not encountered anything in our sessions that would raise any "red flags" or lead me to believe that there is a high risk that if allowed to attend the prom there would be problems with aggression . . . (Correspondence from Mr. Coates, March 23, 2004).

In a letter dated April 12, 2004 from Gary Van Hemert to Angela Nasstrom, the following summary is presented regarding the Mason City District's position regarding Damian's attendance at the prom:

At a meeting of the IEP team on February 19, the school district acknowledged Damian's recent academic and behavioral progress within the small group setting and support provided at the APB. The team agreed the prom setting in a large facility with a large number of people would be a problem for Damian due to his diagnosis of Oppositional Defiant Disorder (ODD). The DSM-IV lists the following behaviors of concern for a person with ODD: loses temper, argues with adults, actively defies or refuses to comply with adult requests or rules, deliberately annoys others, is angry, resentful, spiteful, and vindictive. Damian's identified disabilities have manifested themselves in many ways. We are aware of many examples of behaviors which indicate the depth and breadth of his unmet needs. He continues to show no respect no respect for authority. His behaviors have occurred in multiple settings over a long period of time and are significantly discrepant from same age peers. The district is not in a position to guarantee Damian's safety while attending prom due to the nature of his interactions with others.

In addition to the issue of attending the prom the second matter in these proceedings is the request by Damian and his parents that he return to Mason City High School to complete his educational program. Essentially this would appear to constitute a change of placement from his current placement in the alternative school setting. The District's position, as stated in April, 2003, appears consistent with their current views as presented in this Hearing:

We consider Damian to be a threat to his and other's safety. Although his good behavior during the third quarter would indicate progress, his behavior of the past four weeks is a serious concern. The district would be liable for Damian's actions should he injure another person. We would be at risk of litigation from a victim of Damian's physical aggression if it could be shown we were aware of his past tendencies to violence and that no therapy/rehabilitation had taken place prior to being returned to the public school setting. His high cognitive ability coupled with severe behavioral needs presents a unique programming challenge – especially as he approaches his 18th birthday. We continue to advocate placement in a residential program for psychotherapy. We would fully fund such services anywhere within the state of Iowa. (Letter from Mr. Van Hemert to Ms. Nasstrom, April 30, 2003).

During these proceedings the following witnesses provided testimony:

Mike Finn, School Social Worker for AEA 2,6,7
Amanda Sadler, Teacher in Alternative Placement School, Mason City

Rob Coates, School Psychologist for AEA 2,6,7
Gary Van Hemert, Supervisor, Special Education, Mason City Schools
Bob Weaton, Associate Principal, Mason City High School
Damian S., Student

In relation to the plans for Damian following graduation Damian's father expressed significant concerns regarding plans for Damian's future beyond high school. As stated by him:

. . . he's missed out on opportunities to have counseling as far as college opportunities, he's missed out on opportunities for SATs, he's missed out on opportunities for, you know, guidance sessions that are afforded to other senior students. (Transcript, pg. 134).

It should be noted that the record does not include what would be considered a transition plan for Damian. On page 13 of his current IEP it is noted that there is not the "Development of work and other post-high school living objectives".

At the heart of much of the discussions in these proceedings was the question of the danger Damian poses to other students in attending the high school prom and in returning to Mason City High School. Several of the witnesses in these proceedings testified regarding this matter. Mr. Finn, the school social worker, was hesitant to comment on this question in that he indicated that he had not seen Damian this year because Damian had politely refused to see him for therapy sessions. Ms. Sadler (transcript p. 42) indicated that Damian does act to impress others in larger groups but did not cite specific behaviors that this ALJ could interpret as dangerous. She indicated that Damian used vulgarity at times but was not dangerous in a physical sense (Transcript p. 51).

Mr. Coates, the school psychologist, reported in these proceedings that he had seen Damian for eight individual sessions since being asked to see Damian following the February 27, 2004 staffing. Consistent with his earlier correspondence, Mr. Coates testified (Transcript pgs. 68, 69,70) that, as a result of the sessions, he has not observed behaviors he would consider as "red flags" suggesting Damian would be a danger at the prom or in returning to the high school.

Mr. Weaton, Associate Principal at Mason City High School, testified regarding his concerns with Damian attending the prom. When questioned as to the reasons Damian should not be allowed to attend the prom Mr. Weaton responded:

My reasoning is based on the fact that we cannot provide – I don't think we can adequately provide for the safety of the student body if Damian were to be allowed to go to prom as well as I don't know if we could provide for the safety of Damian if he were to attend prom.

Based upon his being defined as oppositional defiant, I'm not sure that we can guarantee that he would behave in a proper manner in order to

afford the success of all students that would attend prom. (Transcript pgs. 74-75)

When asked by the administrative law judge as to whether there were other students at the high school with a similar diagnosis Mr. Weaton indicated there were and that these students are permitted to attend prom (Transcript pgs 75-76).

Damian's father expressed in these proceedings the frustrations he feels and consequences he believes that Damian has received in relation to the ODD diagnosis:

Ever since we got that diagnosis of ODD, it's been used against us as far as the criteria in the DSM. . . . It's basically a diagnosis of mental illness. It's been used against us instead of a positive. It's been used why Damian can't do this and can't do that and why he's unpredictable while other students have the diagnosis and there's other people on the planet unsupervised that have the same diagnosis . . . (Transcript pg. 163).

Mr. Weaton also explained that the administrative team at Mason City High School, including Mr. Kennedy, the principal, had made the decision that Damian could not attend the prom. It would appear, from the testimony provided by Mr. Van Hemert, the district administrator responsible for special education that a major consideration in denying Damian's attendance at the prom was a fear of litigation if a student considered dangerous with what he considered to be a history of violence was allowed to attend the prom (Transcript, pg. 102).

In relation to the second question raised in these proceedings, that Damian be allowed to return to the high school, there was considerable discussion in these proceedings regarding the amount of progress Damian has made. One of the major reasons given for Damian not being allowed to return to the high school is the lack of therapeutic progress he has made in his program in relation to his behavioral needs. Mr. Van Hemert expressed the opinion that Damian ". . . has made limited success, limited progress during these brief, one-on-one, highly structured sessions with Mr. Coates (Transcript pg 100) but that this therapeutic intervention does not appear sufficient to offset the school's concern regarding Damian's disruptive and perceived threatening behavior. When asked to specify incidents or examples of threatening behavior this current school year Mr. Van Hemert stated:

Our concern for this school year is that Damian has refused to work with the school social worker as provided in the IEP, refused counseling at the North Iowa Mental Health Center as we offered in the IEP, and there is the pattern of nonattendance. (Transcript, pg 113).

In summary, this Appeal deals with two central points of contention. From Damian and his parents point of view Damian has shown significant behavioral progress, does not pose a threat to school personnel or students and should be allowed to attend the high school prom and to return to the main high school campus for the remainder of this

school year to complete his high school program. On the other hand, the position of the Mason City School District and the Area Education Agency suggest that Damian continues to pose a threat to other students and staff preventing his participation in the high school prom and precluding a change of placement for Damian back to Mason City High School. It should also be noted that one of the primary reasons given in support of the District and AEA's position is Damian's clinical diagnosis of Oppositional Defiant Disorder.

II. Conclusions of Law

This Hearing focuses on several issues related to the provision of special education programs and services. First, there are issues related to Least Restrictive Environment dealing with both program placement decision making and access to extra-curricular activities. Secondly, there is the issue of transition planning for a student approaching graduation.

Least Restrictive Program/Access to Extracurricular Activities

The basic elements that define the expectations for serving students with disabilities in the least restrictive environment have been in place since the passage of related federal legislation in the 1970s. The Individuals with Disabilities Act (IDEA) requires that each public agency shall ensure:

- (1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and,
- (2) That special schools, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (CFR 300.550)

The Iowa Rules of Special Education (2000) build on this basic foundation and add the expectation that, ". . . Whenever possible, hindrances to learning and to the normal functioning of eligible individuals within the general school environment shall be overcome by the provision of special aids and services rather than by separate programs for those in need of special education (emphasis added) (Iowa Rules 41.37(2)(b)).

In situations in which the behavior of a child is perceived as impeding his or her learning or that of others the IEP team is expected to consider, if appropriate, positive behavioral interventions, strategies, and supports to address that behavior (Iowa Rules, 2000, 41.67 (4)). In a recent hearing decision in Iowa (Mason City Community School District, 36 IDELR 50) ALJ Susan Etscheidt notes, that while federal statutes and regulations fail to specify the components of behavioral intervention plans (BIPs) necessary for

implementing such strategies, an analysis of administrative and judicial decisions would suggest that the following criteria should be examined in reviewing the appropriateness of such plans:

- The BIP must be based on assessment data
- The BIP must be individualized to meet the child's unique needs.
- The BIP must include positive behavior change strategies.
- The BIP must be consistently implemented as planned and its effects monitored.

The Iowa Rules of Special Education (2000) also provide guidance regarding the various considerations that are to be considered related to LRE in the IEP process with an expectation that the team has looked carefully at the accommodations, modifications and adaptations required and why these cannot be delivered in the general education environment. The IEP team is also required to review the supports needed to assist the teacher and others, and the impact of serving the student in the general education classroom for both the student and his or her peers (Iowa Rules, 2000, 41.67 (6)).

What needs to be more carefully reviewed in this situation is the extent to which needed positive behavioral supports have been provided for Damian. This includes a well understood behavioral intervention plan with progress monitoring to demonstrate the success or lack of success of such a program. As stated in Light v. Parkway, 1994, 21 IDELR 933:

Before exercising its equitable authority to remove a disabled child from any placement, a district court shall be satisfied that the school district has made reasonable use of "supplementary aids and services" to control the child's propensity to inflict injury.

Issues raised specifically in this Appeal relate to access to extracurricular activities for a student with behavioral needs such as Damian. Within the Least Restrictive Environment section of the Iowa Rules of Special Education (2000) there are references to defining the general education environment (41.37 (1)) and nonacademic settings (41.40) as follows:

41.37(1) General education environment. The general education environment includes, but is not limited to, the classes, classrooms, services, and nonacademic and extracurricular services and activities made available by an agency to all students.

41.40(256B,36CFR300) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities, each agency shall ensure that each eligible individual participates with nondisabled individuals in those services and activities to the maximum extent appropriate to the needs of that individual.

Throughout these proceedings there have been numerous references to the extent to which school personnel perceive Damian as exhibiting dangerous behavior. In Light v. Parkway the Eighth Circuit has described potential criteria for determining the circumstances under which a child can be removed from a current placement because of such perceived dangerousness:

In sum, a school district seeking to remove an assertedly dangerous disabled child from her current educational placement must show (1) that maintaining the child in that placement is substantially likely to result in injury either to himself or herself, or to others, and (2) that the school district has done all that it reasonably can to reduce the risk that the child will cause injury.

In these proceedings it appears to this ALJ that the District and AEA did not establish the likelihood that Damian would pose a treat to others in the prom setting. Furthermore, this ALJ was not convinced that the District had taken the steps necessary to arrive at a plan to reduce the likelihood of dangerous situations arising in the prom setting which had been proposed by those working most closely with Damian in a counseling role such as Mr. Coates.

Having Damian return to the High School from his current placement was the second issue addressed in this Appeal. Quite frankly, time sequence and duration weighed heavily with this ALJ in deliberating on this aspect of the Appeal. If Damian had a significant period of time left in his educational program the criteria delineated in Light v. Parkway would be relevant here as well. The emphasis put on the diagnostic specification of Oppositional Defiant Disorder in lieu of specific recent behavioral data would, in this ALJ's opinion, be a particularly weak position to heavily justify continued placement in a more restrictive setting. However, there also seems to be highly relevant setting considerations in the situation before us. To have any student enter the comprehensive high school setting for the last month of their senior year would seem to introduce a number of risk factors that potentially threaten Damian's successful completion of his senior year. It should also be noted that this conclusion goes beyond Damian's behavior and recognizes the impact of other students' behavior and the risk that Damian could be involved in serious behavioral events precipitated by other students rather than initiated by himself.

Transition Planning

Mr. S., in these proceedings, has also noted significant concerns that he has regarding the what Damian has missed out on in areas such as counseling as far as college opportunities, SAT preparation and other guidance sessions that are provided to high school seniors preparing for graduation. This requirement for transition planning for students with disabilities is specifically delineated in the Iowa Rules of Special Education (2000) in relation to those program elements expected to be in place for students reaching the age of 14 and age 16 (Iowa Rules, section 41.67(2) Transition Services). The Office of Special Education Programs has addressed the transition from high school to college

for students with disabilities (Letter to Moore, November 21, 2002, 39 IDELR 189) in the following manner:

... IEPs for children with disabilities, must, to the extent appropriate for each individual child, focus on providing instruction and experiences that enable the child to prepare himself or herself for later educational experiences and for post-school activities, including formal education, if appropriate, employment, and independent living.

A significant issue in Damian's situation is the question of whether the school has provided sufficient support in planning for his transition needs following high school completion. Testimony in these proceedings did clarify that Damian is on track to graduate at the conclusion of this school year and the plans supporting his transition to post-secondary opportunities would certainly seem to be a priority.

III Decision

The ALJ ruled on the first matter related to this appeal on April 26, 2004 at the conclusion of the initial session of this Appeal. This ruling stated that Damian should be permitted to attend the Prom at Mason City High School as requested by the parents in this matter. The ALJ expressed his opinion that the school had not established a compelling reason as to why Damian could not be accommodated in his desire to attend the Prom. He furthermore expressed the opinion that the idea of using the IEP as a rationale as to why a student could not be accommodated in an extracurricular activity establishes a notion that seems contrary with the concept of an IEP addressing the special education needs of a student and the accommodations needed in order for a student to be able to participate in education. The parties in his matter convened a conference call on the evening of April 29th during which time they agreed on the written plan for Damian's participation in the prom.

The following portion of the ALJ's opinion was shared with the parties involved in these proceedings on May 3, 2004 in a conference call.

The second issue in this Appeal is the assertion by the Appellants that Damian should leave the alternative school setting and return to Mason City High School for the remainder of this school year. This ALJ cannot support this request. From testimony presented in these proceedings it appears that Damian is clearly on course to graduate at the end of the current year from the Mason City school system. To change his placement back to the Mason City High School with less than one month left in the school year would not, in this ALJ's opinion, provide benefits that would compensate for the possible loss in program gains through such a change of placement at this time in the year.

An issue related to this Appeal is the adequacy of the transition plans that have been made for Damian. As stated in the current IEP for Damian, "School staff are concerned that Damian's disabilities will be barriers to his achievement in post high school education and future employment. He has appropriate skills to live independently." It is also noted in this IEP that a referral to Vocational Rehabilitation will be made for Damian. This ALJ is concerned with the comprehensiveness of Damian's current transition plan and thus directed the IEP team to reconvene by May 15, 2004 to carefully consider the elements of Damian's transition plan that need to be in place as he approaches graduation.

CR Smith

Carl R. Smith, Ph.D.
Administrative Law Judge

5-25-04

Date (May 25, 2004)