

TO: Mr. David Brock Fax 517-373-7504
Policy, Planning and Compliance
Michigan Department of Education
P.O. Box 30008
Lansing, Michigan 48909

FROM: Alan E. Duncan (Ph./Fax 248-642-1525)
840 Ardmoor Dr.
Bloomfield Hills, Mi. 48301
DATE: 10-05-00
SUBJECT: Urgent need to Complete IEP Plan for Alex Duncan

Mr. Brock,

I have a problem that has been created by the Due Process Review Hearing ruling for Alex Duncan case H-0331-00. I wrote you on 09-10-00 requesting help with this problem. The ruling requiring that the IEP shall remain in effect until 08-06-2001 is in violation of Federal Law. (I include the SHRO's response to my request for relief from the imposed old IEP) My son is entitled to an annual IEP plan. The IEP done on 5-13-99, which was the basis of the ruling, is over a year old and the goals are no longer valid. Alex achieved the goals on that IEP as per his teacher's end of 4th grade report card where she comments as follows; "He achieved all of his previous goals and ..." see bottom of ATT. A-1.

Additionally, an assistive technology evaluation review was called for by the same review officer. This puts the ruling in conflict with itself for we must believe that the review should result in some items that could be incorporated into a new plan with realistic new goals for Alex.

The SHRO states that I did not raise objections to the remainder of the IEP in July when the review started. That is correct. I do not want a review officer to decide what the new goals should be for my son. I want an IEP team with a group of professionals including a special needs teacher and a regular class teacher, etc. as the federal law prescribes. Alex has multiple needs, quadraplegic, low vision, and below age cognitive skills. It is not in the realm of believability that any parent should be required to articulate all of that for the SHRO so that he could consider it in his ruling and arrive at an up to date IEP. Let's us get real here!!!!!!!!!!!!!!

You may notice that ATT. A is a set of goals from an initial IEP meeting conducted on 5-25-00 that was incomplete due to lack of time for complete discussion and has not been signed by either party. In fact the school is in violation of the ruling if they try to use these new goals. I do not fault the school. I want a new IEP for Alex with appropriate goals for his development but those from the ruling are inadequate and out of date. The SHRO ruling effectively allows the school to define the goals without input from the parents (because I will not contest goals I know are more up to date) and without a formal plan that can be measured against progress. I would have no basis for measuring compliance with the IEP since it is already known that he achieved all of his goals on the old IEP which has been imposed by the SHRO.

I wanted to contact your office to offer you one more chance to correct this problem before I have to pursue legal counsel. The State of Michigan can not give it's hearing officer's the authority to violate Federal Law so there must be some remedy your office can pursue to correct this problem. If necessary, use your own legal counsel to overturn this federal violation on my behalf. I offer this opportunity now to correct this injustice before I have to go to the expense of correcting it. If you do not pursue a remedy, I will site this notice as a reason for a petition to have the State of Michigan pay my legal fees should I prevail.

I am confident that the school and I can work this out and move forward to create a mutually agreed upon plan for my son. I feel we have both learned from the experience but we must be free to take the advice and put it to use for Alex.

Thanks for your consideration.

Alan E. Duncan

Student's Name: Alex Duncan

Date of IEP: 5/25/00

	Fall	Winter	Spring	Final
<u>will be able to produce /sh/,/ch/,/th/ sounds in words in all positions in structured and spontaneous speaking situations.</u>			New Goal	New Goal
<u>will be able to demonstrate improved production of three consonant blends in structured activities including reading, math and spontaneous speaking.</u>			New Goal	New Goal
<u>will be able to demonstrate improved breath control for phonation when asking or answering questions.</u>			New Goal	New Goal
<u>will follow three step related directions with no more than two reminders</u>			New Goal	New Goal
<u>will transition from one activity to another with no more than two reminders.</u>			New Goal	New Goal
<u>Alex will be able to recognize multi-syllabic words when reading a text using various strategies.</u>			New Goal	New Goal
<u>Alex will be able to sequence events and answer 'wh' questions after reading a text.</u>			New Goal	New Goal

Teacher Comment on Goal Achievement.....

Comments: (NOTE: Additional comments may be attached or written on the back of this form. Be sure to photocopy.)

Alex made excellent progress this year. He achieved all of his previous goals and has worked hard. Next year he will continue to expand on some of those goals. He will be very missed by Mrs. Brubaker (me). ☺ He is a joy to be around.

Student's Name: Alex Duncan

Date of IEP: 5/25/00

will generate a grammatically correct five sentence paragraph independently using an opening sentence, 2-3 supporting details, and a conclusion, using correct mechanics

will be able to use compound words, contractions, synonyms, antonyms and homonyms in his writing.

observe peer interactions and discuss the nature of the interaction

model appropriate social skills

will improve his social functioning in a group setting by decreasing inappropriate laughter

will increase attention to tasks in order to improve work completion in an appropriate amount of time.

will visually attend to a non-preferred activity for up to 5 minutes.

	Fall	Winter	Spring	Final
			New Goal	New Goal
			New Goal	New Goal
			New Goal	New Goal
			New Goal	New Goal
			New Goal	New Goal
			New Goal	New Goal
			New Goal	New Goal

Comments: _____ (NOTE: Additional comments may be attached or written on the back of this form. Be sure to photocopy.)

Pembroke Elementary
Special Education IEP Report Card

Student's Name: Alex Duncan

Date of IEP: 5/25/00

will be able to independently solve up to 4 digit number addition and subtraction problems when using a calculator

will be able to independently identify key words in one-step word problems, to determine the appropriate operation to use

will be able to interpret information presented in tables, charts and graphs

will be able to apply concepts of time, money and fractions to solve functional math word problems

will decrease drooling and dribbling while eating wiping his own mouth one time throughout his meal

will pick up and put down his own utensils throughout his meal

	Fall	Winter	Spring	Final
			New Goal	New Goal
			New Goal	New Goal
			New Goal	New Goal
			New Goal	New Goal
			New Goal	New Goal
			New Goal	New Goal

Comments: _____

(NOTE: Additional comments may be attached or written on the back of this form. Be sure to photocopy.)

Case # H-0331-00

STATE OF MICHIGAN – SPECIAL EDUCATION DUE PROCESS HEARING

In the matter of **ALEX DUNCAN v. BIRMINGHAM PUBLIC SCHOOLS**

Alan E. Duncan and Liz Lawrence Duncan, on behalf of their son, ALEX DUNCAN 840 Ardmoor Bloomfield Hills, MI 48301 Tel/Fax: 248.642.1525 PETITIONERS - APPELLANTS	John W. Hoeffler, Superintendent BIRMINGHAM PUBLIC SCHOOLS (Oakland ISD) 550 W. Merrill 48909 Tel: 248.203.3000 Fax: 248.203.3072 RESPONDENT - APPELLEE
<p style="text-align: center;">PRO SE</p>	Attorneys for Respondent - Appellee RICHARD E. KROOPNIK Pollard & Albertson Tel: 248.258.2850 Fax: 248.258.2851

WILLIAM SOSNOWSKY, Ed.D., State Hearing Review Officer
 33 Cranford Lane, Grosse Pointe MI 48230 Tel: 313-882-5375 Fax: 313-882-9354

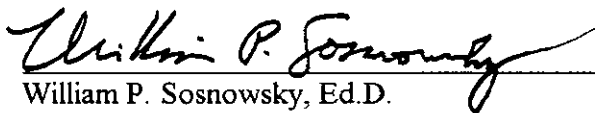
PETITIONERS-APPELLANTS' ALAN & LIZ LAWRENCE DUNCAN *EX PARTE* MOTION TO AMEND THE SHRO'S ORDER (DECISION, p25) REGARDING THE PERIOD OF VALIDITY OF THE IEP.

14 August 2000

To the Parties in the matter of **ALEX DUNCAN v. BIRMINGHAM PUBLIC SCHOOLS**:

1. The SHRO received (at 11:24 p.m., 9-13-00), a 5-page fax (copy attached hereto as SHRO fax, pp5-7), *ex parte* from Petitioner-Appellants Alan & Liz Lawrence Duncan.
2. Petitioner-Appellants request that the SHRO "remove this one year constraint....", i.e., the period of validity of Alex's IEP. (Fax p2)
3. A full hearing was held at which Petitioners-Appellants were represented, and at which they had an opportunity to raise any and all issues, but failed to do so.
4. A full state level review of the local hearing Decision was conducted.
5. It was noted in the SHRO's Decision (p20), that, "No objections were raised regarding any aspect of the goals and objectives [Respondent's exhibit D-8, pp115-119], neither during the hearing, nor, later, in Petitioners-Appellants' appeals." It is to be noted that their Brief on appeal is dated 7-11-00, p20], approximately one-month before the beginning of school.
6. In view of the above findings, the SHRO finds no reason to modify the period of validity of the IEP. Therefore, it shall, as previously ordered, remain in effect "for one calendar year from the date of this Decision: 8-06-01."
7. Petitioners-Appellants' motion is denied.
8. It is reiterated that the SHRO's Decision was and is final. The Parties were notified of their rights to appeal (SHRO's Decision, pp28-29), and are again so notified here:

This decision is final unless a party brings a civil action pursuant to the provisions of Rule 25a, which provides, in pertinent part, that: [A]ny party aggrieved by the decision of a reviewing officer under [Rule 25], shall have the right to bring a civil action with respect to the issue presented pursuant to this rule without regard to the amount in controversy. A civil action may be brought in any court of competent jurisdiction.



William P. Sosnowsky, Ed.D.
State Hearing Review Officer

14 September 2000

cc: Mr. James H. Rowell, Supervisor, Field Services, Office of Special Education, MDE, P.O. Box 30008, Lansing, MI 48909. Tel: 517-335-0476, Fax: 517-373-7504.

Wednesday, September 13, 2000 11:24 PM

To: W. P. Sosnowsky

From: Alan E. Duncan, 248-642-1525

Page 1 of 5

Fax

Name: Alan E. Duncan
Company: Automotive Analytics, Inc.
Voice Number: 248-642-1525
Fax Number: 248-642-1525
840 Ardmoor
Bloomfield Hills, Michigan 48301

Date: Wednesday, September 13, 2000
Total Pages: 5
Subject: Alex Duncan Ruling of 08-08-00 IEP Restriction

Name: W. P. Sosnowsky
Company:
Voice Number:
Fax Number: (313) 8829354

Note: ATTN: W. Sosnowsky

See following letter.

Wednesday, September 13, 2000 11:24
PM

To: W. P. Sosnowsky

From: Alan E. Duncan, 248-642-1525

Page: 2 of 5

1

TO: Mr. W. Sosnowsky
33 Cranford Lane
Grosse Pointe Mi 48230
Ph 313-882-5375, Fax 9354

FROM: Alan E. Duncan (Ph./Fax 248-642-1525)

DATE: 09-14-00

SUBJECT: Due Process Review Ruling and Annual IEP
Review Case No. H-0331-00

Dear Mr. Sosnowsky,

I am writing you about a concern with a statement in your ruling of Aug. 8, 2000 for my son Alex Duncan. In the order on P. 25 item A, "... and shall be in effect for one calendar year from the date of this decision 09-06-01", in effect this order forces my son to use a plan that was over one year old on 5-13-2000 and denies him his right of an annual IEP plan.

His report card stated that he achieved his goals for that year and so new goals need to be planned for this year. The old teacher has moved on and he has a new teacher this year. In part C, you directed a review of the Assistive technology needs. Surely, you must expect, as I do, that this will result in a better understanding of his needs which should then be incorporated into his IEP for this year.

I have requested an IEP in due course with my son's right to an annual plan and I have requested the assistive technology review but the IEP is being denied by the school based on your ruling, see Attachment A, included with this letter.

I request that you remove this one year constraint since the basis was an IEP meeting on 5-13-99 and his needs have changed. The issues discussed at the Hearing were narrowly focused on assistive technology and only items that were in dispute and can not be expected to represent the totality of my son's needs that can be addressed by a full IEP team working cooperatively.

SHRO v4

Wednesday, September 13, 2000 11:24
PM

To: W. P. Sosnowsky

From: Alan E. Duncan, 248-642-1525

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I hope you can rule on this favorably for my son.

Thanks for your consideration.

Alan E. Duncan
840 Ardmoor Dr.
Bloomfield Hills, Mich. 48301
Day: 313-653-5213
Eve: 248-642-1525

SHROP 5

Wednesday, September 13, 2000 11:24
PM

To: W. P. Sosnowsky

From: Alan E. Duncan, 248-642-1525

Page: 4 of 5

ATTACHMENT A-1

John W. Hoeffler, Ph.D.
Superintendent

BIRMINGHAM PUBLIC SCHOOLS

550 West Merrill • Birmingham, Michigan 48009
(248) 203-3004 • Fax (248) 203-3007

September 7, 2000

Mr. Alan Duncan
840 Ardmoor
Bloomfield Hills, MI 48301

Dear Mr. Duncan:

I have received your request for assistance in the letter dated September 4, 2000.

Mr. Koneval has called to my attention the letter received from the State level review officer on his decision reached on August 6, 2000. On page 25 of the document (attached) from the State level review official, it indicates that the IEP shall be in affect for one calendar year from the date of this decision which is August 6, 2000; therefore, the IEP will be in affect until August 6, 2001. Mr. Koneval will not hold an additional IEP since that would be in violation of the order issued by the State. It is my feeling that Mr. Koneval, who has regularly updated me on your situation, has tried to work positively with you to resolve these issues. We did not request the hearing procedure, but we will live with the rulings of the review process.

If you have additional concerns regarding Alex that are not IEP issues, you may discuss them at the team meetings that are held on a regular basis with the Pembroke staff.

If you any further questions regarding our response to your concerns, please call me.

Sincerely,

John W. Hoeffler

Attachment (1)

c Chuck Koneval
Susan Safranski
Carol Schraeger

SHRO p6

ATTACHMENT A-2

The Federal Regulations provide as follows:

34/300.136 Personnel standards. (f) A State may allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to CWDs under Part B....

Note 3: With respect to paragraph (b) of this section, nothing in this part prohibits the use of paraprofessionals to assist in the provision of services described under this section, if doing so is consistent with 300.136(f).

Decision: Personnel training is not a hearable issue. Furthermore, Mr. Seitz meets the requirements of the ISD, and he is experienced and trained sufficiently to assist Alex with and without the use of a computer. Furthermore, his superior, the teachers and TC, provide for his on-going training. Petitioners-Appellants may wish to consider engaging Mr. Seitz privately to attend sessions at such times as do not interfere with his duties to Alex. The issue is dismissed.

IV. ORDER

This matter centered only on the provision of certain assistive technology devices and services. The Decision of the LHO that Petitioners-Appellants have failed to carry their burden of proving that the IEP does not provide FAPE is affirmed in part and modified in part. Respondent-Appellee is ordered to proceed with the following orders:

A. The contested IEP is procedurally and substantively sound. It constitutes a FAPE that confers substantial educational benefits to Alex. The annual goals and short-term objectives are indicative of addressing Alex's maximum potential. His genuine participation in general education classes clearly indicate that the requirements of the least restrictive environment for Alex, are fully met. Therefore, this IEP is valid, and shall be in effect for one calendar year from the date of this Decision. ~~8/26/01~~

B. The laptop computer provided by Respondent-Appellee has been made available for Alex's use in school and at home (the two exceptions not withstanding) is the property of the Birmingham Public Schools district. The following conditions apply:

1. The parties have designated Alex's laptop as his "main learning tool". However, the latter designation is to be distinguished from "teaching tools" *per se*. Therefore, when the teacher utilizes it as a "teaching tool" it is then a method of instruction. Thus, the teacher shall be responsible for determining when the laptop is to be used as Alex's "main learning tool."

27 27

SHRO P7