

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

B.A., as parent and next friend of
P.A., a minor,

Plaintiff

v.

Civil No. 99-164-P-C

CAPE ELIZABETH SCHOOL
COMMITTEE,

Defendant

GENE CARTER, District Judge

MEMORANDUM OF DECISION AND ORDER

This is an action brought, *inter alia*, pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*, and it involves the request of Plaintiff B.A. (“B.A.”), as parent and next friend of P.A., a minor (“P.A.”), for judicial review of an administrative hearing officer’s (“hearing officer”) decision rendered after a due process hearing conducted pursuant to the IDEA, 20 U.S.C. § 1415(f). Now before the Court is Plaintiff’s Motion to Permit Presentation of Additional Evidence With Incorporated Memorandum of Law (“Plaintiff’s Motion”) (Docket No. 9).

On November 15, 1999, Defendant Cape Elizabeth School Committee (“Cape Elizabeth”) filed its Objection to Plaintiff’s Motion to Permit Presentation of Additional Evidence With Incorporated Memorandum of Law (“Defendant’s Objection”) (Docket No. 10),

and on November 30, 1999, Plaintiff filed her Reply Memorandum of Law in Support of Her Motion to Permit Presentation of Additional Evidence (“Plaintiff’s Reply”) (Docket No. 12). Upon review of the parties’ arguments, the Court will grant Plaintiff’s Motion.

Briefly, in March of 1999, a four-day due process hearing was held in this matter. *See* Plaintiff’s Motion at 5. During that hearing, Plaintiff attempted to offer the testimonial evidence of Deborah Napolitano, a family friend of P.A., with regard to the supposedly inappropriate placement for P.A. at the Cape Elizabeth Middle School. *Id.* at 7. The hearing officer, however, excluded Napolitano’s testimony on the ground that her testimony would be unduly repetitious. *Id.* at 5.

Presently, Plaintiff, pursuant to 20 U.S.C. § 1415(i)(2)(B)(ii), seeks to supplement the administrative record with Napolitano’s excluded testimonial evidence. *See* Plaintiff’s Motion at 1. Plaintiff argues that Napolitano’s evidence concerning P.A.’s mental state, and her growing depression during the time that she attended Cape Elizabeth Middle School, is critical to Plaintiff’s claim that P.A.’s placement at the Cape Elizabeth Middle School was inappropriate. *Id.* at 6. Therefore, Plaintiff maintains that she has demonstrated a “solid justification” for offering the additional Napolitano testimony. Plaintiff’s Reply at 3-5.

Defendant argues in opposition that the hearing officer correctly excluded Napolitano’s testimonial evidence because it would have been redundant and unduly repetitious of previously given testimony. Defendant’s Objection at 1. Consequently, Defendant argues, the Plaintiff’s Motion should be denied. *Id.* at 5.

Pursuant to 20 U.S.C. § 1415(i)(2)(B)(ii), in any action brought under the IDEA, a court “shall hear additional evidence at the request of a party,” if that party has a “solid justification” for offering such additional evidence. *See Roland M. v. Concord School Committee*, 910 F.2d

983, 996 (1st Cir. 1990), *cert. denied*, 499 U.S. 912, 111 S. Ct. 1122, 113 L. Ed. 2d 230 (1991).

Here, Plaintiff made an offer of proof that Napolitano, an intimate friend of P.A., would testify about her observations of P.A.'s depression, and overall mental state, during P.A.'s placement with the Cape Elizabeth Middle School. Nevertheless, the hearing officer determined that Napolitano's testimony would have been cumulative and excluded it as evidence. A central issue in this action, however, concerns P.A.'s state of mind; in particular, P.A.'s purported lack of social and academic progress, as well as her depression, during the period of time that she spent at the Cape Elizabeth Middle School. Thus, Napolitano's testimony would bear directly on this central issue, for she had the opportunity to personally observe P.A during this time frame. Therefore, in an effort to "hedge against injustice," the Court will consider Napolitano's additional testimonial evidence. *See Roland M.*, 910 F.2d at 997.

For the reasons set forth above, it is **ORDERED** as follows:

- (1) Plaintiff's Motion is hereby **GRANTED**;
- (2) Plaintiff may file the affidavit of Deborah Napolitano with the Court for review; and
- (3) Defendant's counsel shall have an opportunity to depose and cross-examine Napolitano, and the transcript of that deposition will be submitted to the Court for review.

GENE CARTER
District Judge

Dated at Portland, Maine this 7th day of December, 1999.