

**STATE OF MAINE**  
**SPECIAL EDUCATION DUE PROCESS HEARING**

April 17, 2007

**07.053H - M.S.A.D. #51 v. Parents**

REPRESENTING THE SCHOOL: Eric Herlan, Esq.,

REPRESENTING THE FAMILY: Richard O'Meara, Esq. & Nicole Bradick, Esq.

HEARING OFFICER: Rebekah J. Smith, Esq.

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This hearing was held and this decision issued pursuant to Title 20-A M.R.S.A. § 7202 et seq., Title 20 U.S.C. § 1415 et seq., and accompanying regulations. The hearing was held on February 8, March 5, March 9, March 12, and March 13, 2007, alternating between the offices of Drummond Woodsum & MacMahon and Murray, Plumb & Murray in Portland, Maine. In addition to counsel listed above, those present for the entire proceeding were the father of the student; the mother of the student; Abbey Greene-Goldman, Esq., attorney at Drummond Woodsum & MacMahon; and Ann Nunery, Special Education Administrator for M.S.A.D. #51.

Testifying at the hearing under oath were:

Father of the student

Friend of the family

Brenda Lapoint, OTR/L, occupational therapist, M.S.A.D. #51

Charles Lyons, Ed.D., educational consultant for the family

Patrick McGillicuddy, teacher, Greely Middle School

Barbara Melnick, director, Aucocisco School

Ann Nunery, director of special education, M.S.A.D. #51

Dianne Paton, behavioral specialist, M.S.A.D. #51

Kristen Rollins, Ph.D., psychologist, M.S.A.D. #51

Ann Rose, special education teacher, Greely Middle School

J. David Ruffner, M.D., student's former psychiatrist

Shelley Schweizer, special education teacher, M.S.A.D. #51

Friend of the family

Doreen Thompson, teacher, Greely Middle School

Judith True, former special education director, M.S.A.D. #51

Jean West, speech-language clinician, M.S.A.D. #51

## **I. PROCEDURAL BACKGROUND**

M.S.A.D. #51 (“the district”) filed a request for a due process hearing on January 5, 2007. A prehearing conference was held on January 31, 2007. Present were the mother and father of the student, Nicole Bradick, Esq., Abbey Greene-Goldman, Esq., Eric Herlan, Esq., Ann Nunery, and Richard O’Meara, Esq. Each party submitted a prehearing memorandum. Documents and witness lists were exchanged in a timely manner. The hearing officer provided a post-prehearing memorandum summarizing the issues for hearing.

The school submitted 120 documents, all of which were accepted into the record (S. 1 to S. 685). The family submitted 32 documents, all of which were accepted into the record (P. 1 to P. 152) as well as a CD recording of a statement by the student.

At the conclusion of the hearing, both parties requested and were granted leave to file written closing arguments and the record was closed upon their receipt on April 2, 2007.

## **II. ISSUES**

1. Did M.S.A.D. #51 violate state or federal special education law by failing to provide the student with a free appropriate public education during his xx grade year (2004-2005) or his xx grade year (2005-2006)?
2. If so, is the family entitled to compensatory education?
3. Did M.S.A.D. #51 violate state or federal special education law by providing an Individualized Education Plan (“IEP”) and placement to the student that failed to provide him a free appropriate public education during his xx grade year (2006-2007)?
4. If so, is the family entitled to reimbursement for costs associated with the student’s unilateral placement at the Aucocisco School in November 2006?

## **III. FINDINGS OF FACT**

1. The student is xx years old and lives in Cumberland Center, Maine, with his parents. The student’s parents unilaterally placed him at Aucocisco School in South Portland, Maine, in November 2006. From xx until November 2006, the student attended public schools in M.S.A.D. #51. (Testimony of Parent.)

2. The student was adopted at birth. The parents were aware of a history of cognitive and developmental disabilities in the student's biological family. (Testimony of Parent.)
3. The student attended three years of preschool beginning when he was age xx. He had difficulty sitting still, staying on task, and socially engaging other students. At age xx, he began to receive speech-language and occupational therapy. (Testimony of Parent.)
4. Just before he turned xx, the student underwent a developmental evaluation. (S. 468-471.) The student was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD"), moderate to severe fine motor delay, moderate gross motor delay, and moderate to severe expressive and receptive language disorders. (S. 469-470.) Evaluators determined that the student did not meet the criteria for autism or Pervasive Developmental Disorder because he "seeks out and appears to enjoy social interaction with peers and adults." (S. 470.)
5. The student was identified as a student with a speech-language disability in xx. In the xx grade, and every grade thereafter, the student had a one-on-one educational technician for all mainstream instruction. In May 2001, as the student neared the end of xx grade, the parents met with Judith True, then the district special education director, to discuss their concerns about the student's social and emotional needs. By xx grade, the student spent most of his time at school by himself. In the neighborhood, the student would come home crying after brief interactions with other children. The student was prescribed Adderall to combat the symptoms of ADHD at some point early in grade school. From xx through xx grades, the parents privately contracted with a tutor to provide the student assistance in math. (Testimony of Parent.)
6. In xx grade (2003-2004), the student began to exhibit resistance to going to school and asked his parents to drive him to school so that he would not have to play on the playground before school. School staff informed the parents that the student often chose to stay in his classroom or to go the library for recess, despite his general love of outdoor play. The student's behavioral specialist agreed to monitor the student on the playground. The school assigned the student a

mentor, a same-age student who lived in his neighborhood. The parents never spoke to the mentor about the student and do not believe that any mentoring activity occurred. By the end of the year, the student began to refuse to go to school and in the mornings would throw himself on the floor and yell. (Testimony of Parent.) The student ended the year performing in the mid-second or ending-second grade range for most language arts skills, in the kindergarten to first grade range for written expression, and in the mid-second grade range in arithmetic. (S. 435-436.)

7. In academic testing conducted in 2003, the student's achievement was average in Broad Knowledge (97), low average in Sound Awareness (88) and Oral Language (84), below average in Broad Reading (79), and significantly below average in Broad Math (67). (S. 462.)

8. From xx through xx grade, the student's parents encouraged him to participate in social activities and arranged play dates for him, which usually went poorly. The student was not invited to parties or events with other children. The parents also encouraged the student to take part in local recreational team sports including soccer, basketball, and baseball, until his skill level began to lag too far behind. (Testimony of Parent.) Although the student seemed to enjoy participating, he did not make friends on the teams. (S. 425; Testimony of Family Friend; Parent.) Despite consistently attempting to engage with other children, the student was mainly unsuccessful. (Testimony of Parent.)

9. In xx grade, the parents expressed a concern about bullying to district staff. The building principal did not find any evidence of bullying in the school but did believe that bullying was occurring in the neighborhood. School staff spoke to a teacher, who was the mother of another student who lived in the student's neighborhood, about her son's role in the neighborhood bullying. (Testimony of Judith True.)

10. Shortly after the start of his xx grade school year, while riding the bus home, the student pulled down his pants to moon a car at the urging of other students. The student was allowed to

continue riding the bus home for the rest of the year as long as he sat behind the bus driver. The student continued to have negative interactions, including physical altercations, with neighborhood children, during the walk home from the school bus. (Testimony of Parent.)

11. The student began to exhibit hostility towards his parents. He blamed them for his lack of friendships. He stated that he hated his life and that he had no friends. He stopped going outside at home because of negative interactions with neighborhood children. He began to exhibit a nervous picking behavior at school, which involved picking at scabs or rough spots on his skin. (Testimony of Parent.)

12. In March 2005, the student began counseling with psychiatrist J. David Ruffner. Dr. Ruffner diagnosed the student with Pervasive Developmental Delay. (P. 68.) Dr. Ruffner sought to help the student improve social interaction with his peers and control his temper. (Testimony of J. David Ruffner.)

13. The student's xx grade special education teacher, Linda Crumrine, hand-wrote for the student when she worked with him because it was such a difficult task for him, although the student's occupational therapist found that the student's handwriting skills improved significantly during the school year. (S. 425-426.) Although Ms. Crumrine reported that the student made progress in all areas of direct special education instruction, he ended the year reading at a level below the level at which he had been measured at the conclusion of the previous year. (S. 650; S. 678.) In written production, the student had not yet begun work on three out of four short-term IEP objectives and he showed only limited progress on the fourth. (S. 649.) The student could not produce any written output without adult support. (S. 678.) In math, the student ended the year performing second grade math independently even though he had been assessed as performing second grade math at the end of xx grade. (S. 425.) Ms. Crumrine reported that she "went back to ground zero" with the student in math to ensure deep understanding. (P. 2; Testimony of Judith True.)

14. The student was polite, cheerful, cooperative, and usually smiling at school. Nevertheless, meaningful interactions with peers were difficult for him because of his inability to read social cues and tendency to get confused, then complain or blame others. (S. 679.)

15. In June 2005, the student's Pupil Evaluation Team ("PET") met to devise his IEP for the xx grade year at Greely Middle School. The parents provided a written list of sixteen concerns. (S. 428-430.) The parents reported that they had stopped the math tutoring and asked that the school be responsible for the cost if the tutoring were to continue. (P. 11.) Ms. Crumrine stated a belief that the student did not need the tutoring. (S. 426; P. 11.) The parents expressed concern that the student was being threatened and harassed at school and requested social pragmatic instruction. (S. 429; P. 9.) The parents cited concern that the student was not interacting with peers during unstructured times of the school day. (S. 429; P. 5.) The parents requested an assistive technology evaluation, a functional behavioral assessment, a speech-language assessment, an occupational evaluation, and psychological and academic testing. (S. 430.) At the parents' request, the district agreed to expand the student's annual goal in reading from eight month's progress to a full year's progress. (S. 427.)

16. Following the June 2005 PET meeting, the district implemented a four-page "best practices" document that was reviewed and signed by all school staff working with the student and incorporated into the student's IEP. (S. 673-676.) The document outlined best practices in instruction, schedule and routine, language and communication, and monitoring of social interaction. (S. 673-676.) Staff members were asked to coach, translate, and reframe social situations for the student throughout the day. (S. 675.)

17. The student's 2005-2006 IEP for his xx grade year called for 7.5 hours a week of direct special education instruction in math and reading, 90 minutes a week of behavioral support, 110 minutes a week of preteaching, 90 minutes a week of speech-language instruction, and 60 minutes a week of occupational therapy. (S. 407.) For the first time, the student's IEP included a

social skills goal, seeking for the student to improve his ability to make friends, to be measured by teacher observation and report. (S. 412.)

18. In August 2005, Dr. Ruffner prescribed Prozac for the student in an effort to improve the student's frustration, anger, irritation, and impulsiveness. Throughout his sessions with the student, Dr. Ruffner tried to engage the student by taking him out of the office to go for walks on a nearby school campus. Dr. Ruffner observed that the student struggled to interact with other students as they were walking by and that he would often make disjointed attempts at small talk. The student discussed his anxiety about attending Greely Middle School in the fall with Dr. Ruffner. (Testimony of J. David Ruffner.)

19. Also in August 2005, the parents wrote the district expressing their concerns about the proposed IEP. The parents requested that the student be educated in settings of no more than four students to one teacher. The parents suggested that social skills goals be tied to measurable data. The parents expressed concern that the IEP did not adequately address possible bullying and harassment of the student and did not sufficiently incorporate assistive technology. (S. 396-400.) The new director of special education, Ann Nunery, met with the parents and their advocates in September 2005 to review the list of parental concerns. It was agreed that the student's triennial evaluations would be moved up to that fall. (Testimony of Ann Nunery.)

20. The student began xx grade under the IEP developed in June 2005. The student attended science and social studies class in the mainstream setting as well as lunch, recess, and the "allied arts" classes of art, gym, shop, computer, music, and health, always accompanied by an educational technician. His direct instruction in math and language arts was provided by special education teacher Ann Rose or educational technician Greg Carter, using materials prepared by Ms. Rose, in the resource room. (Testimony of Ann Rose.) The student participated in the Launching Learning program with four other students, led by the curriculum strategist, Nancy Boucher, and the applied learning instructor, Shelley Schweizer, in which he was pretaught

science and social studies material once a week for 45 minutes. (Testimony of Shelley Schweizer.) He also received direct instruction from Ms. Boucher, sometimes with his educational technician present, once a week for 45 minutes. (Testimony of Shelley Schweizer.) The student also had one 45 minute period a week with the behavioral strategist, Dianne Paton, as well as a 45 minute period each week with Ms. Paton in a regular education classroom. Ms.

Paton also consulted regularly with other school staff working with the student. (Testimony of Dianne Paton.) The student's speech-language and occupational therapy services were delivered either to the student alone or with one other student. (Testimony of Jean West.)

21. Throughout xx grade, the parents drove the student to school in the mornings. If there were a lot of students in the front hallway when he arrived, the student went to the library before class to avoid the other students. The parents observed that no other students talked to the student as he entered school. (Testimony of Parent.) School staff, however, testified that other students exchanged greetings with the student in the hallway and were generally friendly to him.

(Testimony of Dianne Paton; Ann Rose.)

22. Beginning in September 2005, Ms. Rose had phone communication with one of the student's parents, usually his mother, on a weekly or near weekly basis. (S. 481-539.) In addition, Ms. Rose, who was also the student's case manager, communicated regularly with other Team members. (Testimony of Ann Rose.)

23. The student's social skills and pragmatic language training included use of protocols on how to enter a group of peers, read body language and facial gestures, find appropriate topics, and understand the rules of the playground, as well as pragmatic language topics related to intonation, word stress, eye contact, and body image. (S. 232-238; Testimony of Dianne Paton; Jean West.)

24. In addition to the PET meetings, all school staff that worked with the student, as well as the parents, were invited to monthly Common Planning Time meetings, arranged to allow the student's regular education teachers to share the essential components of upcoming instruction



with the student's preteaching staff and to deal with any issues regarding the student. (Testimony of Ann Rose; Shelley Schweizer.)

25. Not long into the year, the student began to charge excessive amounts to his school account at lunchtime. The parents spoke to the school and, unable to discover the cause, began to give the student cash instead of allowing him to charge food. The student told his parents several months later that he was being asked to purchase lunch for other students in exchange for being allowed to play kickball at recess. (Testimony of Parent.) The district and the parents dispute whether the student's explanation was brought to the district's attention. (Testimony of Parent; Ann Rose.)

26. In a functional behavior assessment performed by Ms. Paton in September 2005, the student stated that he would like to work on friendships. He also stated that peers called him names and mispronounced his last name, which made him angry. (S. 393.) Ms. Paton recommended building the student's social skills in perspective and pragmatic communication skills. (S. 395.)

27. In a psychological assessment, performed by district psychologist Kristin Rollins, Ph.D., in September 2005, Ms.[sic] Rollins reported that the student had difficulty making eye contact and that his tone of voice and facial expression often did not match the topic he was discussing. (S. 362.) Dr. Rollins found that the student had processing challenges that included difficulty with organization, graphomotor challenges, and staying on task. (S. 360.) On the Wechsler Intelligence Scale for Children, Fourth Edition, the student obtained a full scale IQ of 61, in the mild mentally retarded range. (S. 363; S. 366.) Because of anomalies in the test results, however, Dr. Rollins believed that the student's full scale IQ was more likely in the 70s, in the low average or the borderline range. (S. 364; Testimony of Kristin Rollins.)

28. Dr. Rollins concluded that concerns were present regarding the student's abilities in social interaction, language/communication, cognitive flexibility, visual-perceptual/visual-spatial/fine motor, and self-regulatory/sensory categories. (S. 376-377.) She found that the student's behavioral characteristics and manner of processing information were most consistent with a

learning profile of a student with a non-verbal learning disability or Pervasive Developmental Disorder. (S. 377.) Dr. Rollins recommended a variety of instructional strategies including preteaching, scaffolding, repetition and guided practice, communication of clear expectations, and presentation of information at a slow, steady pace. (S. 377.) Dr. Rollins opined that the student would benefit from specific skills training in social interaction. (S. 381-382.)

29. In the speech-language evaluation, performed in September 2005 by district speech-language clinician Jean West, Ms. West found that the student's language skills were in the low average to borderline average range for his age level. (S. 390.) Ms. West's recommendations included breaking down complex topics into smaller directives, providing extra time to process and produce language tasks, preteaching and reviewing of classroom vocabulary, providing conversational groups that focused on pragmatic language skills and expressive reasoning, and using graphic organizers and language webbing techniques. (S. 391.)

30. In an assistive technology assessment also performed in September 2005, district occupational therapist Brenda Lapoint, OTR/L, recommended consistent use of visual mapping software, text to speech programs, talking word processing programs, word prediction programs, and a keyboarding program for the student. (S. 357-358.)

31. In mid-October 2005, the student's PET met to review the evaluations that had been completed. The student's mother stated that the student reported that he loved his two regular education teachers and that he was happy coming to school. (S. 316.) Ms. Paton suggested the use of social stories to help teach social skills and indicated that the student was not yet ready to work in a group. (S. 317.) It was noted that the student walked without his educational technician between classes, at his request. (P. 22; Testimony of Ann Rose.) The parents expressed continued concern that the student was being bullied and harassed between classes. (P. 22.)

32. Shortly after the PET, the district agreed to independent evaluations in the areas of assistive

technology and speech-language at the parents' request. (S. 279; S. 336.)

33. In late October 2005, the district sent the family an IEP for the student to run from October 2005 through June 2006. The IEP called for 8 hours and 55 minutes a week of direct instruction from the special education teacher, 90 minutes a week of direct instruction from the curriculum strategist, 45 minutes a week of direct instruction from the behavioral strategist, 75 minutes a week of consultation by the behavioral consultant in the regular education setting (45 minutes of which was provided in a regular education setting with the student and 30 minutes of which was consultation with the student's educational technicians), 45 minutes a week of speech-language therapy, 60 minutes a week of occupational therapy, and 30 minutes a week of assistive technology consultation, a new service that was provided directly to the student by Ms. Lapoint. (S. 608; Testimony of Brenda Lapoint; Dianne Paton.) In addition, the expected completion dates of many of the student's goals were extended from June 2006 to November 2006. (S. 286; S. 292; S. 293.)

34. In November 2005, district occupational therapist Vickey Bailey, OTR/L, conducted an occupational therapy assessment and found that the student was sensitive to criticism, reacted immaturely to situations, and had difficulty making friends. (S. 341.) When writing, the student had particular difficulty orienting letters to the writing line. (S. 344.) Ms. Bailey concluded that the student had difficulty with fine motor skills, visual motor and perceptual skills, balance, bilateral coordination, sensory processing, and motor planning. (S. 344.) Ms. Bailey's recommendations included the condensing of written assignments, handwriting practice, development of typing skills, leisure and home activities that developed motor planning, and the opportunity to move and use fidget objects in the classroom to assist with focusing. (S. 344-345.)

35. On November 10, 2005, Ms. Nunery met with the parents and their advocates to address their concerns about the student's IEP. (P. 27.) The parents expressed concern about the student's social and emotional needs and lack of friendships. (P. 27-28.)

36. In mid-November 2005, the school held a social event called “Mix It Up” at lunchtime, during which students were given colored cards and were expected to sit with students who held cards of the same color. No other students would sit with the student despite his overtures. His mother, who had volunteered to help with the event, was upset and went to talk to Ms. Rose, who expressed her perception that the student often preferred to sit by himself. (S. 212; Testimony of Parent; Ann Rose.) Ms. Rose testified that the student did not seem upset about the event afterwards. (Testimony of Ann Rose.) The parents later wrote to the district about their frustration with the event and expressed concern that the district was not appropriately addressing the student’s social isolation. (S. 212.)

37. In November 2005, Ms. Rose produced an academic achievement summary report based on academic testing and observations of the student. (S. 268-271.) On the Woodcock-Johnson III Tests of Achievement, the student’s academic skills, ability to apply skills, and fluency were in the low range. The student’s performance was low average in reading and very low in mathematics, math calculation skills, written language, and written expression. (S. 269.)

38. Also in November 2005, Amber Lambke, M.S., CCC-SLP, of Mark R. Hammond Associates, conducted an independent speech-language pathology communication evaluation of the student. (S. 255-265.) Ms. Lambke noted that the student was aware of social dynamics in school and was eager to make friends. (S. 257.) When asked to describe some of his friends, the student stated that he was popular and referred to a girlfriend, reporting that they hung out together before class. (S. 260.) The girl the student referenced as a girlfriend had been kind to the student on one occasion but did not have a friendship or relationship with him. (Testimony of Parent.)

39. Ms. Lambke noted that the student had an immature understanding of friendship and would not learn the nuances of social communication merely by being exposed to them. (S. 263.) Ms. Lambke concluded that the student could make improvements in social behaviors and

interpretations given more social skills instruction, although she recommended individual instruction before introducing group training. (S. 264.) Ms. Lambke recommended, among other things, therapy to preteach and practice social language skills, use of social stories, structured practice with conversation skills, and instruction in organizational skills. (S. 264-265.)

40. In late November 2005, the student's PET met again to review the triennial evaluations, which were nearly complete by then. (S. 252.) The student's special education identification was changed from a speech-language disability to multiple disabilities. (S. 253.)

41. In December 2005, Mark Hammond, M.A., CCC-SLP, conducted an independent assistive technology assessment of the student, in which he suggested gradual introduction of technologies including a typing program as daily homework and software programs for accessing textbooks and practicing vocabulary. (S. 200.)

42. In mid-December 2005, the school sent the parents a revised IEP based on the November PET meeting. (S. 214.) The only changes in services were the addition of an occupational therapy consultation of 60 minutes per month by Ms. Bailey with staff and a decrease in speech-language services from 90 to 45 minutes per week. (S. 215.)

43. In early January 2006, Ms. Rose responded to the parents' letter about the "Mix It Up" event, indicating that she would be setting up a meeting with the student's mother and Ms. Paton to discuss the student's social interactions and social opportunities in general, although it does not appear that such a meeting ever occurred. (P. 49.) Although in the letter Ms. Rose agreed to plan for future events to ensure they were successful for the student, she testified that she did not believe it was her responsibility as case manager to attend or manage social events involving the student, even if they occurred at school. (P. 49; Testimony of Ann Rose.) Ms. Nunery, however, testified that she believed it was Ms. Rose's responsibility to prepare for social events at school to ensure that the student did not experience anything similar to the Mix It Up event, although she was not aware of any steps Ms. Rose took in this regard. (Testimony of Ann Nunery.)

44. At a Common Planning Time meeting in January 2006, one of the student's educational technicians reported that she felt the student would be "totally lost" without an adult in mainstream classes with him and other school staff agreed. (S. 667; Testimony of Ann Rose.) Ms. Paton indicated that school staff should be delivering social skills training to the student throughout the day by providing constant feedback on social interactions. (S. 667.)

45. The student's PET met again in February 2006, where Ms. Lambke and Mr. Hammond presented their evaluations. (S. 191.) It was noted that the student's diagnosis continued to be unconfirmed; the student's mother indicated that he was likely on the autism spectrum while Dr. Rollins opined that his cognitive level made a diagnosis of Asperger's Syndrome inapplicable. (S. 192.) Mr. Hammond recommended that greater emphasis be placed on the student's use of technology during the school day and that the student have a computer available to him at all times. (S. 192.) The district agreed to provide a laptop for the student that he could bring home and also to provide training to the parents. (P. 54; P. 57.)

46. In February 2006, the student's IEP was amended to resume 90 minutes each week of speech-language instruction, with the addition of a social skills group with four other students co-led by Ms. West and another speech-language clinician for 45 minutes each week. (S. 153; S. 193; Testimony of Jean West.) The group utilized the Michelle Garcia Winner social perception program, based on Theory of Mind, the ability to take the perspective of others. (S. 262; Testimony of Jean West.) After using the program in a modified format for four months, Ms. West discontinued use of the program because it was not working well for the group. (Testimony of Jean West.)

47. Also in February 2006, the student's mother approached the track coach about the possibility of the student participating on the team, but, according to testimony of the student's father, the coach expressed reluctance. The parents later wrote to the school expressing frustration about the track coach's response. They reiterated concern about the student's exclusion from social

activities and stated that they had recently learned that the student was being routinely mocked in the hallway by students who called him “retarded.” The parents questioned the appropriateness of Greely Middle School as a placement for the student. (S. 150E-150F.) On March 7, Ms. Nunery wrote the parents that the track coach recalled an upbeat conversation with the student’s mother in which she encouraged the student’s participation in the track team. (S. 150A-150B.)

Ultimately, the student did participate on the track team and was assigned a mentor from the high school. (S. 129.) The student’s father, who went to all of the track meets, observed that the student did not interact with the coach or any peers other than the student assigned as a mentor. (Testimony of Parent.)

48. In March 2006, the parents met with the building principal, Kimberly Brandt, as well as the assistant principal and teacher leader regarding their concerns about bullying, but declined to provide the name of another student who had told them that the student was being bullied because they did not want that student to have to be interviewed by the school. (S. 144; Testimony of Parent.) After their meeting, Ms. Brandt wrote to the parents, stating that the allegations had been discussed with all staff who worked with the student but that none of them had observed any incidents of concern. (S. 144.) The letter stated that the meeting participants, including the parents, had all agreed that the student did not have a clear understanding of the types of behaviors that constituted bullying. (S. 144-145.) The letter concluded that the parents had told Ms. Brandt that “for the most part other kids are kind to [the student].” (S. 145.) The district assigned an educational technician to observe the student in the lunchroom because it was the only time of day that the student was not observed. (S. 665-666.) The student’s father phoned the principal after receiving the letter to indicate disagreement with its content. (Testimony of Parent.)

49. Also in March 2006, Mark Hammond met with the student’s father and school staff to discuss implementation of his assistive technology recommendations at school and at home. (S.

147.)

50. The same month, the parents met with Barbara Melnick, director of Aucocisco School, a private special purpose school, regarding a possible placement for the student. The parents felt that the student was deteriorating emotionally and mentally due to his lack of success at school. Ms. Melnick recommended the student for a summer residential program at Riverview School in East Sandwich, Massachusetts, to address his social and emotional needs. (Testimony of Barbara Melnick; Parent.)

51. By the beginning of April, the student's laptop was available for use at home and school. (S. 663.)

52. In April 2006, the student thrust a knife towards neighborhood children who had thrown balls at him. The student felt that the other children were out to get him and they were trying to make his life miserable. (Testimony of J. David Ruffner.) Dr. Ruffner reported concern that the student was showing signs of violent and paranoid behavior. (P. 87; Testimony of J. David Ruffner.)

53. At the end of April 2006, at the parents' request, school staff filled out recommendations for the student to attend the Riverview summer program. A rating scale filled out jointly by Ms. Paton and Ms. Rose answered "pretty much true" to statements that the student had no friends and the student did not know how to make friends. (S. 125-126.) They felt that the student rated a "2" on a scale of 1 to 5 in terms of his emotional stability. (S. 123; Testimony of Dianne Paton.) Regular education staff rated the student a "4" in relating well to teachers but a "2" in relating well to peers. (S. 124.)

54. In mid-May 2006, the parents wrote to the district with concerns that Mr. Hammond's recommendations, particularly regarding keyboarding software, were not being implemented. (S. 119.) In response, the district set up a PET meeting for early June and invited Mr. Hammond. (S. 118A.)



55. Ms. Lambke returned to the school in May 2006 for a follow-up consultation, although the parents state that Ms. Rose scheduled Ms. Lambke's visit for a day she knew the student would be absent. (Testimony of Parent.) Ms. Paton [sic] had recently begun using the Mind Reading software program recommended by Ms. Paton to help the student understand emotions and facial expressions. (S. 102; S. 663.) District staff also reported that the student was beginning to ask for help understanding social topics, which was seen as significant progress. (S. 103.) Ms. Lambke concluded that district staff was [sic] actively implementing her recommendations and seeking opportunities to infuse social skills lessons throughout the student's day, although the student was many years behind his peers in perspective taking skills and it would take several years for him to make improvements. (S. 103.)

56. In May 2006, the student stopped seeing Dr. Ruffner because the therapy was not productive. By the end of his treatment, Dr. Ruffner did not observe improvement in the student's ability to relate to peers. (Testimony of J. David Ruffner.) The student has seen his physician for medication management since then and continues to take prescriptions of Prozac and Adderall. (Testimony of Parent.)

57. In late May 2006, the student's mother informed Ms. Rose that the student planned to attend the xx grade dance that evening. Ms. Rose testified that she had learned from the student earlier in the week that he was not planning to attend so no preparations had been made. The afternoon of the dance, it was arranged for the assistant principal, who was going to be at the dance, to provide additional support to the student. (Testimony of Ann Rose.) The student left shortly after arriving, stating that no other students had talked to him. (Testimony of Parent.) Ms. Rose testified that no concerns about the dance were reported to her after the event. (Testimony of Ann Rose.)

58. In early June 2006, Mark Hammond conducted a follow-up consultation with members of the student's PET. (S. 98-100.) School staff reported that the student was practicing typing on a

more regular basis and had reached a typing speed of 11.44 words per minute. (S. 98.) School staff also reported that although the student was authorized to take his laptop home to do homework, he had been completing his homework at school. (S. 99.) Mr. Hammond concluded that the suggestions in his initial evaluation had been adopted and that the student was demonstrating progress and becoming more independent in utilizing technology. (S. 99.) Mr. Hammond recommended increased opportunities for the student to practice with the software, including routine practice of his typing skills, whether inside or outside of school. (S. 100.)

59. In mid-June 2006, the student's PET met again and Mr. Hammond attended. (S. 92-95.) Ms. Paton reported that the student had made steady progress on entering a group, managing his emotions, and taking other people's perspectives. (S. 92.) She testified that she felt that the student was more at ease at school and was generally getting along better. (Testimony of Dianne Paton.) His mainstream social studies teacher testified that the student was an enthusiastic class participant who worked well in groups and who regularly engaged with his peers. (Testimony of Patrick McGillicuddy.) The parents, however, reported that the student continued to show significant frustration at home regarding social issues. (S. 92.) The parents rejected the district's offer of extended year services, in favor of the Riverview summer program, which the district refused to fund. (S. 48-49; S. 94.)

60. At the end of xx grade, the student took part in a school field trip to a lake during which he participated in games on the field as well as in the water and appeared to enjoy himself. (Testimony of Dianne Paton.)

61. The parents enrolled the student in the five-week Riverview program, at a cost of \$6,400, in the summer of 2006. (Testimony of Parent.) The Riverview program is designed "to remediate academic, social and independent living skills while maintaining progress achieved during the school year." (S. 97.) The student's courses included math, language arts, science, music, and natural crafts. (P. 108-109.) The student did not have an adult support assigned to him, although

many of his objectives were completed only with one-to-one support. (P. 110; P. 113-117; Testimony of Parent.)

62. The student received positive reports from Riverview. He was observed to make consistent progress developing peer relationships and to interact socially on a regular basis, although he continued to need one-on-one support to display positive behavior in group settings and adhere to rules of class discussions. (P. 118; P. 120.) The student was very proud of his success at Riverview, was reluctant to return home at the end of the program, and has continued a relationship with his Riverview roommate. (Testimony of Parent.) The parents did not forward the student's progress reports from Riverside to M.S.A.D. #51 despite agreeing to do so. (Testimony of Parent.)

63. The student began private counseling with a new counselor in the fall of 2006. (Testimony of Parent.)

64. The student began xx grade under the November 2005 IEP, as modified in February 2006. In xx grade, the student took part in mainstream classes for science and humanities, as well as the allied arts. Ms. Rose again provided all of the student's language arts instruction. Ms. Rose and an educational technician, using materials provided by Ms. Rose, provided the student's math instruction. All staff members who worked with the student signed the "best practices" document outlining instructions for working with the student. (Testimony of Ann Rose.) Use of the "best practices" suggestions was reinforced at Common Planning Time meetings. (S. 659; S. 662; S. 667.)

65. Because of scheduling conflicts, no other students joined the student's two preteaching periods in the Launching Learning program, so he was taught alone by the applied learning instructor and at times his speech therapist or educational technician joined them. (Testimony of Shelley Schweizer.) The student took part in a social skills group with four other boys 45 minutes a week in a group co-led by Ms. Paton and Ms. West. The group worked on sharing

information, asking questions of others, problem solving, negotiating, and compromising in a group setting. (Testimony of Dianne Paton.)

66. Shortly into the student's xx grade year, all xx grade students as well as various school staff attended Camp Kiev for a week of outdoor and leadership training. The parents met with Ms. Schweizer and Ms. Rose about two weeks prior to the program to discuss accommodations for the student. (S. 47I; Testimony of Parent.) The district provided a written profile of the student to Camp Kiev staff and assigned an educational technician to be present with the student in all of the classes. (Testimony of Shelley Schweizer.)

67. On the second day of the program, the student got embarrassed while doing a group activity and told a camp counselor that he hated the program, that he wanted to leave, and that he wanted to join a friend in heaven, mentioning suicide. (S. 47C; Testimony of Shelley Schweizer.) On the third day of the program, the student related a prior experience that he equated with sexual harassment to his counselor and was subsequently interviewed by Principal Brandt. (S. 47D-47E.) The student's father attended the third day of the program and observed the student eating lunch inside with an educational technician while most students sat together outside. That afternoon, the student got scared in the middle of a ropes course and froze. The other students were dismissed and a camp counselor was able to talk the student into backing up and lowering himself down. When the student got down, he was still crying and he jumped into his father's arms. Later, the student's father observed the student play scatterball, during which he was quickly knocked out of the game and infrequently selected by his peers to return to the game. The student commented to his parents that none of the other students respected him. Although reluctant, the student stayed through the end of the program. (Testimony of Parent.)

68. Ms. Schweitzer drafted an overview of the student's experience at Camp Kiev at the parents' request. She concluded that the week went positively for the student and that although he froze during the ropes course, he later indicated that he was proud of his experience on the course. (S.

46.) The parents, however, observed that the student's self-esteem fell after the Camp Kiev experience. (Testimony of Parent.)

69. The student's picking behavior, which had been absent during his time at Riverview, resumed when he returned to school. (S. 3, P. 127; Testimony of Parent.) At the Common Planning Time meeting in October 2006, there was discussion about how much time the student spent drawing in class, which was observed to reduce his skin picking. (S. 659.) Ms. Rose believed drawing in class allowed the student to focus on what was being instructed. (Testimony of Ann Rose.) Other techniques utilized at various times to cut down on the student's picking behavior included holding stress balls, sitting on a big round ball, and keeping his hands in his pockets. (Testimony of Ann Rose.)

70. In October 2006, at the parents' request, Charles Lyons, Ed.D., a special education consultant and educator with over twenty years of experience, observed the student for several hours at Greely Middle School. Dr. Lyons was not allowed to speak with district staff on the day of his observation but was invited to return when Ms. Nunery could be present. (Testimony of Charles Lyons.) Dr. Lyons, who had also observed the student at Riverview, noted that the student had a good relationship with teaching staff but had no social interaction with peers during a mainstream course in which there was general banter among students and in another mainstream course in which he sat at a table with another student. (S. 43.) Dr. Lyons also observed that the student had no contact with other peers while waiting for lunch. (S. 44.) The parents shared Dr. Lyons's informal summary of his observations with the school. (Testimony of Ann Nunery.)

71. On November 2, 2006, the student's PET met for a final time to discuss the student's IEP for the coming year. (S. 2-8.) The district proposed essentially the same schedule of services for the student as the previous year. (S. 2-8.) The student's occupational therapist reported that the student had made tremendous gains in handwriting, as shown by the ability to form letters in appropriate sizes, and was continuing to work on keyboarding skills, although he had reverted to

a typing speed of six words per minute, possibly due to emphasis being placed on appropriate technique. (S. 3; S. 584; Testimony of Brenda Lapoint.) The student's educational technician continued to scribe notes for him. (S. 2.) The possibility of utilizing a behavior checklist for the student to make him more aware of his picking behavior was discussed. (S. 3.) The parents, represented by advocates, rejected the proposed IEP and indicated an intention to unilaterally place the student at Aucocisco School and seek reimbursement. (S. 8.)

72. The student's graded IEP for the period of September 2005 to November 2006 included three objectives for math, two of which were met and one towards which the student made satisfactory progress. (S. 573.) In reading, the student met the goals of reading at DRA Level 40 with 97% reading accuracy and adequate comprehension. (S. 577.) In written production, the student met two objectives and made satisfactory progress towards another. (S. 579.) Ms. Rose felt that the student had moved from the early transitional stage to the late transitional stage in understanding messages and ability in spelling but was still in the early transitional stage in the mechanics of writing. (Testimony of Ann Rose.) In math, the student did not master Unit 2 of the xx grade curriculum in the Everyday Math program, but did master Unit 6 of the xx grade curriculum. (S. 573.)

73. On his pragmatic speech-language goals, the student did not reach any of the three objectives but did maintain satisfactory progress. (S. 605.) The student also mastered visual mapping software and text to speech programs and made progress on typing skills. (S. 587-588.) Within social skills, the student mastered the ability to appropriately enter into social situations 75% of the time with teacher assistance. (S. 594.) On the goals of identifying and implementing a problem solving system and choosing an appropriate topic and initiating conversation, Ms. Paton estimated that the student was successful roughly 50% to 60% of the time but did not reach the goal of success 75% of the time. (S. 594; Testimony of Dianne Paton.)

74. On November 13, 2006, the parents placed the student at Aucocisco School, a private special

purpose school. Aucocisco has 40 students this year in grades three to twelve. Most students are eligible for special education and approximately 90% of the students have a diagnosis of some kind. There are eight students in grades six through eight. The 15 staff members are certified in special education and also in a subject area if they teach one. The philosophy of the school is to provide short-term intensive remedial help to students by immersing them in a special education curriculum with the goal of returning them to a mainstream setting. Classes are taught in small group settings. (Testimony of Barbara Melnick.)

75. The student's courses at Aucocisco, each of which has between one and six students, include humanities (a combination of language arts, social studies, and history), science, art, computer, and math. (P. 148; Testimony of Barbara Melnick.) The student also has tutorial sessions and assisted study labs, including preteaching, for more than seven hours each week. (P. 148.)

76. The student works with a speech pathologist forty-five minutes two times a week in a group of six students, utilizing the Michelle Garcia Winner program. Staff members are trained to incorporate social skills training throughout the school day and are present during unstructured times of the day to guide social interactions. A social worker is available three days a week for individual counseling and spends significant time interacting with students in the general school setting, guiding interactions and helping to resolve problems. (Testimony of Barbara Melnick.)

77. Once the student began at Aucocisco School, his mood improved significantly. He began to engage his parents more at home. He no longer resisted going to school, his anxiety decreased, and his self-esteem increased. (P. 138 & 139; Testimony of Parent; Barbara Melnick.) At school, he converses with nearly all the other students and is rarely alone. (Testimony of Barbara Melnick.) The student states that he loves his new school and that he has friends. (Testimony of Family Friend) He actively participates in the school's reward programs for positive behavior. The student's picking behavior, although present when he started at Aucocisco, has almost completely stopped. (Testimony of Barbara Melnick.) The student went to the movies with

several students from Aucocisco and speaks to Aucocisco students if he sees them in the community. (Testimony of Parent.)

78. The student is performing well academically at Aucocisco, although he requires significant remedial help in math and written output. He has not fully adjusted to being an independent student and works with a peer tutor in addition to the tutoring and preteaching he receives.

(Testimony of Barbara Melnick.) His assessment from the second quarter of the school year included grades from the high 70s to the low 90s in science and math. (P. 142.) In computer class, the student was working on use of text to voice, word prediction, concept-mapping, and graphic software. (P. 149.)

79. Dr. Lyons observed the student for a third time after he began at Aucocisco. He found that the student had significant positive interaction with his fellow students as well as with his teachers during classes. He noted that in unstructured settings, however, the student's interaction with peers was not as strong but was still positive. Dr. Lyons opined that the restrictive setting of Aucocisco is appropriate for the student because of his significant social skills needs. Although Dr. Lyons believes that the IEP developed by Greely Middle School was well drafted, he finds that the student's social skills needs were not being met. Dr. Lyons testified to [sic] concern that the student would be at risk of dropping out of school or hurting himself if he continued to be socially isolated. (Testimony of Charles Lyons.)

80. Staff members at Aucocisco feel that the student continues to need significant supervision and is not ready to return to a mainstream setting. Eventually, however, Ms. Melnick hopes that the student will be able to return to a mainstream setting. (Testimony of Barbara Melnick.) The parents wish for the student to return to M.S.A.D. #51 eventually. (Testimony of Parent.)

81. The district forwarded a proposed IEP for November 2006 to November 2007 to the parents in late November 2006. The IEP called for 7.5 hours of direct special education instruction in language arts and math, 90 minutes a week of direct instruction in mastery of academic



instruction, 45 minutes a week of direct instructional services by the behavior strategist, 75 minutes a week of behavioral consultation, 90 minutes a week of speech-language services, 60 minutes a week of occupational therapy, and 30 minutes a week of consultation by the occupational therapist. (S. 10.) Social skills goals for the student included utilizing effective social skills in social and academic learning situations 80% of the time. (S. 680.)

82. M.S.A.D. #51 staff members testified that they found the student to be generally happy at Greely Middle School and communicative when he was frustrated with a student or situation. (Testimony of Dianne Paton; Ann Rose.) The student's mainstream course teachers found him to be an enthusiastic and eager student who enjoyed being in the mainstream and whose mainstream peers were supportive. (Testimony of Patrick McGillicuddy; Doreen Thompson.) District staff members believe that the student was benefiting socially and academically at Greely, but that the achievement gap between the student and non-disabled peers would necessarily grow over time. (Testimony of Ann Nunery; Kristin Rollins; Ann Rose.) Ms. Rose testified that she believed that although it had not always been the case, the student was happy to come to school in xx grade. (Testimony of Ann Rose.) His teachers testified that the student preferred being in the mainstream and that he did not like being "sped ed." (S. 667; Testimony of Ann Rose; Shelley Schweizer.) Ms. Rose testified that although students were generally friendly to the student in the hallways, their exchanges mainly revolved around school-based topics and projects. (Testimony of Ann Rose.) District staff members believe that the student will benefit less from being educated in a self-contained program with only disabled peers because it is not representative of society in general. (Testimony of Ann Nunery; Kristin Rollins; Ann Rose.)

83. The student's tuition for the period of November 2006 to June 2007 at Aucocisco is \$18,678. The parents have also incurred commuting costs for the round trip of 34 miles each day. (Testimony of Parent.)

#### **IV. DISCUSSION AND CONCLUSIONS**

**A. Which Party Bears the Burden of Proof.**

Although the Individuals with Disabilities Education Act (“IDEA”) is silent on the allocation of the burden of proof, the Supreme Court has held that in an administrative hearing challenging an IEP, the burden of persuasion, determining which party loses “if the evidence is balanced,” lies with the party seeking relief. Schaffer v. Weast, 126 S.Ct. 528, 537 (2005). In this case, the district requested a due process hearing to assert the appropriateness of the student’s xx and xx grade programs and thus bears the burden on those issues. The parents have challenged the appropriateness of the student’s xx grade program and thus bear the burden on that issue.

**B. Whether the Student was Provided a Free Appropriate Public Education During his XX, XX, and XX Grade Years.**

The parties agree that because the student qualifies for special education and related services as a student with multiple disabilities, special education laws require that M.S.A.D. #51 provide him with a free appropriate public education (“FAPE”). 20 U.S.C. § 1412(a)(1)(A); 20 M.R.S.A. § 7201; Maine Special Education Regulations (“MSER”) §§ 1.3 & 11.1. To determine whether a school district has provided a free appropriate public education, two questions must be asked: “First, has the State complied with the procedures set forth in the Act? And, second, is the individualized educational program developed through the Act’s procedures reasonably calculated to enable the child to receive educational benefits?” Bd. of Educ. v. Rowley, 458 U.S. 176, 206-07 (1982) (analyzing predecessor statute to IDEA).

Because no substantive procedural violations have been alleged in this case,<sup>1</sup> the focus of the inquiry is whether the student’s IEPs were reasonably calculated to enable him to receive educational benefit. An IEP should be designed to provide the student with “personalized instruction with sufficient support services to permit the child to benefit educationally from that

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<sup>1</sup>Although the parents note in their recitation of facts that the location for one period of the student’s programming changed from the special education classroom to a mainstream classroom after the start of his

xx grade year, they do not argue that the change rose to the level of a procedural violation that deprived the

instruction.” Id. at 203. Whether an IEP is reasonably calculated to enable a child to receive educational benefits depends on the student’s individual potential. Id. Although an IEP need not maximize the child’s potential, it “must afford some educational benefit” to the student. Lenn v. Portland Sch. Comm., 998 F.2d 1083, 1086 (1<sup>st</sup> Cir. 1993) (stating that the IDEA “emphasizes an appropriate, rather than an ideal, education; it requires an adequate, rather than an optimal, IEP”). At a minimum, a student’s program must be geared toward “the achievement of effective results – demonstrable improvement in the educational and personal skills identified as special need.” Town of Burlington v. Dep’t of Educ., 736 F.2d 773, 788 (1<sup>st</sup> Cir. 1984), aff’d, 471 U.S. 359 (1985); see also Adult Student v. Sanford Sch. Dep’t, 47 IDELR 176 (Me. SEA 2006) (stating that progress must be made in a student’s specific area of need).

The benefit afforded a student may not be “de minimis” or a “mere modicum.” Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245, 252 (5<sup>th</sup> Cir. 1997). Because there is no “bright-line rule on the amount of benefit required of an appropriate IEP,” each situation requires a “student-by-student analysis that carefully considers the student’s individual abilities.” Ridgewood Bd. of Educ. v. N.E., 172 F.3d 238, 248 (3<sup>d</sup> Cir. 1999) (holding that the “meaningful benefit” standard requires “significant learning” (quoting Polk v. Cent. Susquehanna Intermediate Unit 16, 853 F.2d 171, 182 (3<sup>d</sup> Cir. 1988))).

## **1. XX Grade**

The parents contend that the district denied the student a FAPE during his XX grade year (2004-2005) due to deficiencies in academic as well as social skills programming.

### **a. Statute of Limitations**

The district contests the parents’ right to seek compensatory education for the first half of the student’s xx grade year (September through December 2004). The district argues that the parents’ claim is barred by the two-year statute of limitations enacted in the 2004 amendments to the IDEA, since the district’s due process complaint was filed on January 5, 2007, thereby

limiting the parents' claims to the period from January 5, 2007, forward. The parents argue that Maine law provides an independent state law cause of action for denial of a student's right to a FAPE that would stand even if the IDEA were repealed. Thus, the parents contend that the IDEA's two-year statute of limitations is inapplicable.

The IDEA embodies a "cooperative federalism" structure. Town of Burlington, 736 F.2d at 786. As such, states are responsible for establishing procedures to ensure that the procedural safeguards guaranteed in the federal statute are implemented. 20 U.S.C. § 1415(a). Until the 2004 amendments, the IDEA contained no explicit statute of limitations but states were free to set such limitations in implementing the IDEA. See, e.g., N.H. Rev. Stat. Ann. § 186-C:16-b(I) (establishing a two-year statute of limitations for all due process hearing requests brought under federal or New Hampshire law).

The 2004 amendments to the IDEA instituted a two-year statute of limitations, requiring that a request for a due process hearing be made within two years of the time at which the action that forms the basis of the complaint occurred. 20 U.S.C. § 1415(f)(3)(C). Nevertheless, an exception to the two-year limitations period exists for state law provisions that explicitly delineate a different limitation for hearing requests made under 20 U.S.C. § 1411 et seq. 20 U.S.C. § 1415(f)(3)(C). Maine special education law does not explicitly set a limitation period for claims brought under the IDEA.

Maine special education law does, however, create a separate cause of action for the denial of a student's right to a FAPE, independent from the IDEA. 20-A M.R.S.A. § 7201(1) (requiring that "[a]ll students shall be provided with equal educational opportunities and all school administrative units shall provide equal educational opportunities for all exceptional students"). Maine law also creates the right to a due process hearing to exercise rights created by Maine special education law. 20-A M.R.S.A. § 7207-B. Maine special education regulations affirm that state law "entitles all school-age students with disabilities to an equal educational

opportunity/free appropriate public education.” *MSER* § 1.1.

Section 1415(f)(3)(C) of the IDEA gives no indication that it applies to claims brought under state special education laws. As such, the statute of limitations in the federal IDEA does not apply to claims brought under Maine law, regardless of the fact that Maine’s special education law does not have an explicit statute of limitations. Instead, Maine’s general six-year statute of limitations on civil actions, 14 M.R.S.A. § 752, applies to claims brought under Maine’s special education statute. See *Caribou Sch. Dep’t*, 35 IDELR 118 (Me. SEA 2001) (relying on *Murphy v. Timberlane Reg’l. Sch. Dist.*, 2 F.3d 1186 (1<sup>st</sup> Cir. 1994)[sic], for the proposition that the general statute of limitations for civil actions is analogous to special education claims); *School Union No. 37 v. Ms. C. and D.B.*, 46 IDELR 9 (D. Me. 2006) (reiterating a six-year statute of limitations without analysis). Therefore, the parents’ claim that the student’s right to a FAPE was denied during the first half of his xx grade year [sic], which can be brought under state law independent of the IDEA, is subject to the general six-year statute of limitations in Maine law and is allowed.<sup>2</sup>

**b. Programming**

The parents argue that the student was not provided a FAPE during his xx grade year on the basis that most of the student’s xx grade reading, writing, and math IEP goals were not met. The parents also point to the lack of social skills or behavioral goals in the student’s xx grade IEP. The district, on the other hand, contends that the student’s xx grade IEP was reasonably calculated to provide him with a FAPE and that the student made meaningful and demonstrable academic progress over the year as evidenced by his graded goals and objectives, anecdotal

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<sup>2</sup>The parents make an alternative argument that their claims would be tolled under the exception to the two-year statute of limitations in the IDEA, available when a school district makes specific misrepresentations that compromise the parents’ ability to raise a claim. 20 U.S.C. § 1415(f)(3)(D). Tolling is allowed where the school misrepresents that it resolved the problem or withholds information that it was required to provide to the parents. *Id.* The parents specifically point to the district’s assertions that the student no longer needed a tutor at the end of xx grade and the district’s repeated assurances that the student’s program was sufficient. If the IDEA’s two-year statute of limitations were applicable, this is not a situation where the tolling exception would apply.

reports, and comparable results on academic achievement tests given in 2003 and 2005. The district argues that the student also made progress in gaining social skills, as evidenced by the principal's conclusion that other students were kind to him following her investigation into possible bullying as well as comments made at the June 2005 PET that the student was playing appropriately with others, made by the behavioral specialist, and that the student was liked by other students, made by the student's mainstream classroom teacher. (S. 424-425.)

Under the student's xx grade IEP, he received 300 minutes per week of direct instruction in reading, writing, and math with a special education teacher in addition to an hour of preteaching. In math, the student's IEP recorded his present level of performance at the end of xx grade to be Unit 5 of the xx grade Everyday Math curriculum. (S. 652.) The student's annual goal was to complete Unit 5 of the xx grade Everyday Math curriculum. (S. 652.) Nevertheless, at the end of xx grade, despite the assistance of a private tutor in math, the student was recorded as still performing at Unit 5 of the xx grade curriculum. (S. 652.)

In reading, the student was recorded as reading at a DRA Level 34 at the end of xx grade with 95% accuracy, with a goal of reaching DRA Level 40 by the end of xx grade. (S. 650.) At the end of xx grade, however, the student was recorded as performing at DRA Level 30, below the level at which he had begun the year, and was reported to be without the inferencing skills necessary to move ahead. (S. 650.) In writing, the student did not begin work on three out of four goals and made only limited progress on the fourth. (S. 649.)

Near the start of the year, the student's special education teacher, Linda Crumrine, had informed the then-special education director, Judith True, that she was returning the student to a DRA Level 24, ending-second grade level, based on her concerns about his reading comprehension. (Testimony of Judith True.) Ms. Crumrine also reported returning the student to "ground zero" in math in order to ensure solid understanding of number sense and math reasoning skills. (P. 2; Testimony of Judith True.)

Despite the student's graded IEP, Ms. Crumrine reported at the end of the year that the student had made progress in all academic areas and gained confidence in his ability to learn. (S. 431; P. 2.) Ms. Crumrine reported that after reading a passage the student was able to share details or events rather than merely repeating the final sentence when asked a question. (S. 678.) In writing, she noted that the legibility of the student's writing improved and that he could produce a cohesive paragraph with guidance by the end of the year. (S. 678.) She also reported that he made steady progress in math, including stronger number sense. (S. 679.)

Although the student's IEP contained no social skills or behavioral goals, the student did receive 90 minutes a week of behavioral support as well as speech-language instruction that focused on pragmatic language and inference skills. (S. 425; S. 642; S. 644.) The student's speech-language IEP grades indicate that he mastered a speech-language goal relating to identifying gestural and facial cues and made satisfactory progress towards other goals relating to understanding inferences and implied meanings and describing current events. (S. 644.) The speech-language clinician also noted that the student was doing a "nice job" in the weekly group setting with other students and that he enjoyed interactive activities. (S. 644.)

Focusing on the student's identified areas of need – reading, writing, math, and social skills – the record suggests that the district did not provide the student a FAPE during his xx grade year. With regard to the student's reading goals, the record indicates that the DRA program allowed for testing that determined a student's comprehension as well as his ability to make inferences and state the main idea. (S. 577; Testimony of Ann Rose.) There is no documented basis for Ms. Crumrine's decision to return the student to material he had previously been assessed as mastering, in both reading and math. In addition, no explanation was provided for the failure to begin work on most of the student's writing goals.

The district argues that even if the present levels of performance developed in June 2004 were inaccurate, such errors would be outside the statute of limitations of this case and that in fact



the student progressed from the DRA Level 24, where the student began the year with Ms. Crumine, to the DRA Level 30 over the course of the year. (S. 447.) Any inaccuracies or clumsiness in the drafting of the IEP did not deny the student a FAPE, the district contends. In this case, however, questions about the student's level of performance were not reviewed by the student's PET or shared with his parents. Nevertheless, significant changes in the student's programming were implemented for the student's xx grade year without amendment of the student's IEP. It is the responsibility of the PET to develop the measurable annual goals and short-term objectives of each student. *MSER* § 10.2(B). Changes in services, goals, and objectives are the province of the PET and require an amended IEP. *MSER* § 10.4(D). Even though Ms. Crumine was surely well-intentioned, the progress that was reported by Ms. Crumine at the end of the year does not account for the alterations in programming and goals that characterized the year and is not compelling given that the student repeated significant portions of programming. As a District Court Magistrate recently held in a recommended decision, it is not appropriate for an individual teacher to suspend delivery of programming in a student's IEP of her own accord. M.S.A.D. #56 v. Ms. W., 107 LRP 17136 (D. Me. 2007).

Furthermore, social skills had clearly been identified by the start of the student's xx grade year as an area of need. Even though the student was provided 90 minutes a week with the school's behavioral strategist, the only information in the record regarding that instruction indicates that it was directed at helping the student work more independently and maintain focus. (Testimony of Judith True.) Moreover, there were no social skills goals or objectives in the student's IEP. See Burlington, 736 F.2d at 778 (holding that "all of a child's special needs must be addressed" in an IEP). Because of these deficiencies in the student's academic and social skills instruction, I hold that the district denied the student a FAPE during his xx grade year.

## **2. XX and XX Grades**

The district asserts that the student was provided a FAPE during his xx grade year (2005-

2006) and x grade year (2006-2007) and would have been provided a FAPE by the IEP proposed for the rest of xx and start of xx grade (November 2006 to November 2007).

**a. Academic Instruction**

The parents respond that the student's xx grade academic programming was "alarmingly deficient," particularly in math, and that the program proposed for the rest of his xx grade year promised no improvement. The district argues that the student's xx and xx grade IEPs were well drafted, were delivered as proposed, and resulted in a meaningful benefit for the student in both mainstream and special education settings. The district points to Dr. Lyons's observations that the student's instructional time was well used and that teachers were using "solid strategies" and multi-sensory approaches. (S. 44.) The district also highlights Ms. Rollins's testimony that she considered the student's PET to be the best she had worked with after working in several school districts and the parents' statements that the student's teachers were working hard. (S. 8; S. 506; Testimony of Kristen Rollins.)

In his mainstream courses, the student received modifications to instruction and expectations, as well as preteaching and educational technician support in class. The student was an enthusiastic participant in mainstream classes, worked well in groups, was supported by peers, and was able to access the instruction according to testimony of two of his mainstream teachers. (Testimony of Patrick McGillicuddy; Doreen Thompson.) The student met expectations in his xx grade mainstream courses and received grades in the B range for the first trimester in all of his xx grade courses. (S. 581-582; S. 654.)

With regard to his graded goals and objectives in areas of direct instruction, from September 2005 to November 2006, the student made demonstrable progress in reading accuracy, comprehension, and fluency. (S. 577.) After starting the year at a DRA Level 34, he completed the period reading DRA Level 40 at 97% accuracy and with adequate comprehension. (S. 577.)

In writing, the student mastered two goals relating to expanding sentences with adjectives

and prepositional phrases and revising his writing between September 2005 and November 2006. (S. 579.) He made satisfactory progress learning to revise with less prompting. (S. 579). The student moved from writing or typing simple sentences independently to mastering the ability to write expanded single sentences including adjectives and prepositional phrases and to revise paragraphs with moderate prompting. (Testimony of Ann Rose.) He also began to participate in literature circle groups. (Testimony of Ann Rose.)

In math, the student met the goal of mastering Unit 10 of the xx grade Everyday Math curriculum and Unit 6 of the xx grade curriculum by November 2006. (S. 573.) The student did not master Unit 2, xx grade, but made satisfactory progress. (S. 573.) Ms. Rose reported that he had begun to learn multiplication facts and had improved his knowledge of basic addition and subtraction facts, but that rote memorization was difficult for him. (S. 573.)<sup>3</sup>

With regard to the implementation of assistive technology, by June 2006, Mr. Hammond concluded that many of the suggestions he had made in his initial evaluation had been adopted, resulting in progress by the student in utilizing technological tools. (S. 99.) In manual handwriting, between September 2005 and November 2006, the student met goals related to using correct letter formation and made progress toward goals relating to appropriate letter size and formation. (S. 584.)

Thus, the totality of the evidence in the record establishes that the student was provided a FAPE and made demonstrable progress in academic areas during his xx and the first part of his xx grade years at Greely Middle School.

Academic programming proposed for the student's November 2006 to November 2007 IEP remained largely the same. The student would have remained in mainstream humanities,

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<sup>3</sup>The parents' complaint that the district lengthened the amount of time allotted to meet the student's goals, by revising the timeframes in the fall 2006 IEP revisions, is not without merit. Ms. Rose testified that the extensions of the writing and reading goals were done to align his IEP with the annual PET meeting, while the math goal was adjusted to account for a change in focus in math programming to more pragmatic skills. Although neither of these justifications is particularly compelling, the extensions, by three school months, do not negate the progress the student made over this period.

science, and allied arts courses and would have been provided direct instruction in language arts and math. (S. 10-11.) The proposed goals for the IEP included moving to a DRA Level 50 (fifth grade level) in reading, moving to third grade level writing, and beginning to learn decimals and fractions. (S. 19; S. 23; S. 25.) As such, I hold that the academic programming proposed in the student's November 2006 to November 2007 IEP was reasonably calculated to provide the student with educational benefit.

**b. Social Skills Instruction**

Whether the student was receiving meaningful benefit from his social skills training is a more difficult question. The parents argue that even if the student's program was reasonably calculated to provide him with a meaningful benefit, his placement was inappropriate because it did not allow him the opportunity to practice and generalize social skills among his peers. The parents allege that in order to maintain any educational benefit in mainstream courses, the student was necessarily segregated from his peers by the presence of an educational technician, which was fatal to his attempts to socialize. The parents contend that no programming that Greely Middle School could have offered would have sufficed because the school is "simply too large, too overwhelming, and populated with too many peers whose opinions of [the student] already had been established" for the student to succeed in the placement there. They contend that despite the preference for mainstreaming in the IDEA, this is a case where the student could not obtain educational benefit in a mainstream setting because of his social skills deficits.

The district, on the other hand, asserts that the student was making progress in social arenas and that merely because the student is happier in his private placement does not require the district to place him there. The district further argues that the student's placement at Greely Middle School was in keeping with the IDEA's requirement that students be educated in mainstream settings to the maximum extent appropriate. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2); see also *MSER* § 11.1. Under this principle, a public school may remove a child

with disabilities from the regular educational environment only when “the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. § 1412(a)(5)(A); *MSER* § 11.2(c); see also Murray v. Montrose County Sch. Dist., 51 F.3d 921, 926 (10<sup>th</sup> Cir. 1995) (explaining that the least restrictive environment principle is one of “the most important substantive requirements” in the IDEA). The educational benefit and least restrictive environment requirements “operate in tandem to create a continuum of educational possibilities.” Roland M. v. Concord Sch. Comm., 910 F.2d 983, 993 (1<sup>st</sup> Cir. 1990).

In fact, a “placement which may be considered better for academic reasons may not be appropriate because of the failure to provide for mainstreaming.” Roncker v. Walter, 700 F.2d 1058, 1063 (6<sup>th</sup> Cir.); see also Abrahamson v. Hershman, 701 F.2d 223, 227 n.7 (1<sup>st</sup> Cir. 1983). The district contends that placing the student at a school mainly populated by disabled students will ultimately undercut his development of appropriate social skills even though he may have more friends.

The student’s social skills programming in xx grade included 90 minutes a week of direct instruction from the behavioral strategist, who had over 30 years of experience as a behavioral specialist, half of which was delivered in a mainstream setting. (S. 407; Testimony of Dianne Paton.) Ms. Paton utilized a visual protocol on how to enter a group as well as social stories addressing particular situations. In xx grade, the student began group work with four other boys of varying social skill abilities. The format of the group programming was to share conversation and ask questions of others, focusing on group problem solving, negotiating, and compromising. Ms. Paton also consulted with members of the student’s PET, who provided the student with social skills coaching throughout the day. (Testimony of Dianne Paton.)

Ms. Paton testified that she was aware when she started working with the student at the start of his xx grade year that he had difficulty entering groups and that in the mornings, during

unstructured time, he had difficulty interacting with peers. She found that the student became more interactive in the hallways and more comfortable in groups as the year progressed. Ms. Paton observed the student speak to other students in the hallways and at the lockers. Ms. Paton also testified that as a result of direct instruction the student had increased success on the playground such that he could better understand rules and roles of games and was able to interact more easily. In addition, the student instigated a conversation facilitated by his educational technician with a student with whom he frequently clashed in order to relieve the conflict. (Testimony of Dianne Paton.) One of the student's xx grade mainstream course teachers testified that he frequently observed the student playing kickball at school at recess and noticed that the student interacted with students from different homeroom groupings. (Testimony of Patrick McGillicuddy.) With regard to his xx grade group programming, Ms. Paton testified that the student improved in his ability to interact with the other students by sharing responsibilities and leadership opportunities. (Testimony of Dianne Paton.)

The student's November 2006 IEP grades indicate that he met the goal of appropriately entering a group with teacher assistance 75% of the time. (S. 594.) The student also made satisfactory progress toward, but did not meet goals, related to identifying and implementing a problem solving system with teacher assistance 75% of the time and choosing an appropriate topic for conversation with teacher assistance 75% of the time. (S. 594.) He also met a goal of requesting and choosing appropriate sensory breaks independently 75% of the time. (S. 585.)

The student made progress toward, but did not meet, his pragmatic language goals from September 2005 to November 2006. (S. 605.) Those goals included answering questions requiring expressive reasoning by making inferences, demonstrating knowledge and use of inflection and stress patterns of speech, and demonstrating knowledge and use of body language. (S. 605.) By May 2006, Ms. Lambke concluded that the student's instructors were implementing her pragmatic language instruction suggestions and infusing social skills lessons throughout the

day. (S. 103.)

Although school staff testified that other students were friendly to the student, they acknowledged that the student's relationships with peers did not extend further. School staff as well as Dr. Lyons testified to the fact that the student regularly smiled at school, although different explanations for this behavior were offered. District staff believed that the student was generally happy at school and that he would let them know when he was frustrated with a situation or student. (Testimony of Dianne Paton; Ann Rose.) Dr. Lyons and the student's parents, on the other hand, opined that the student's smile was an attempt to open lines of communication and that in fact the student was profoundly unhappy while at school. (Testimony of Charles Lyons; Parent.) At home, the parents observed that the student was growing increasingly frustrated with his social experiences at school and in the neighborhood and that he was deeply unhappy with his lack of friendships. (Testimony of Parent.)

It is clear that a key concern of the IDEA is to foster self-sufficiency and to enable students to be productive citizens. Polk, 853 F.2d at 181-82; Mr. I. v. M.S.A.D. #55, 47 IDELR 121 (1<sup>st</sup> Cir. 2007); David D. v. Dartmouth Sch. Comm., 615 F. Supp. 639, 647 (D. Mass. 1984), aff'd, 775 F.2d 411 (1<sup>st</sup> Cir. 1995). Further, emotional problems, even if only manifested at home, may require support in a student's IEP. Gonzalez v. Puerto Rico Dep't of Educ., 254 F.3d 350, 353 (1<sup>st</sup> Cir. 2001) (holding that when the student's disability is serious and requires a significant degree of structure, an IEP must address social and behavioral needs even if a residential placement is not required).

The parents rely on a recent Maine hearing decision, Parent v. Gorham School Department, Case No. 07.020H (Me. SEA 2007), in which the hearing officer found that the school denied the student a FAPE by not addressing the student's social and emotional needs. In that case, the school was aware from parent reports and psychological evaluations that the student was depressed due to school experiences. The hearing officer found that the student's emotional

and social difficulties, derived from his experiences at school, significantly contributed to his inability to succeed academically despite his superior cognitive potential. The school, however, disavowed any responsibility to address the student's social and emotional needs because the student did not display an adverse impact from those needs at school.

In the present case, however, the district did in fact attempt to redress the student's social skills needs during his xx and xx grade years and provided extensive programming, individualized and in group settings, in special education as well as mainstream settings. The district instituted the recommendations of pragmatic speech-language evaluations performed by district and independent evaluators. It took seriously concerns of bullying and investigated all reports. In keeping with the least restrictive environment requirement, the district placed the student in the mainstream as much as possible while providing substantial programming to improve the student's social skills and attempted to ensure that such programming benefited him throughout the school day. This programming included step-by-step instruction in social interactions, consistent with evaluators' observations that the student would not learn social skills simply by being exposed to non-disabled peers. (S. 263-264; S. 380-381.) Further, the district included behavioral consultation among staff in the student's IEP and utilized monthly Common Planning Time meetings to review the use of social skills programming and instruction throughout the day. (S. 659; S. 662; S. 667.)

The facts here are not comparable with cases in which a student's emotional problems cause behavioral issues that prevent him from receiving an educational benefit. See, e.g., Indep. Sch. Dist. No. 284 v. A.C., 258 F.3d 769, 777 (8<sup>th</sup> Cir. 2001) (holding that the student's emotional and behavioral problems required a therapeutic approach and caused truancy and disruptiveness that prevented her from receiving an educational benefit). Nor is this case akin to Colin K. v. Schmidt, 536 F. Supp. 1375 (D.R.I. 1982), aff'd, 715 F.2d 1 (1<sup>st</sup> Cir. 1983), in which mainstreaming of two disabled students was deemed inappropriate. The record in Colin K.



included testimony that the students were unable to handle transitions, could not benefit from mainstream teacher-to-student ratios, and needed individual instruction to prevent regression. Id. at 1386-87. Further, a special educator had concluded that mainstreaming would exacerbate the boys' feelings of insecurity, but that being around other disabled students allowed the students to develop confidence and take risks in learning. Id. at 1381. The student's pediatrician, who worked extensively with children with disabilities, testified that one of the students had "high risk" emotional problems, resulting from chronic failures in school, which interfered with academic progress and as a result he needed a "protective and secure" environment. Id. at 1382. On the record presented in this case, however, the student successfully transitioned between mainstream classes without the assistance of an educational technician, benefited from mainstream academic instruction, and was making academic progress. (Testimony of Dianne Paton; Ann Rose; Shelley Schweitzer.)

That is not to say that the district's social skills programming for the student did not have weaknesses. The parents point to shortcomings in preparation for school social events, as epitomized by the student's experiences at the Mix-It-Up lunch and a xx grade dance. Although Ms. Nunery testified that she believed it was the responsibility of Ms. Rose, as the student's case manager, to prepare the student for school social events, Ms. Rose testified that she did not believe it was her responsibility to do so. Providing direct support in such situations could have been beneficial to the student in generalizing the skills he was learning.

Thus, even though the student is making progress and is happier in his private school placement, I hold that his IEP at Greely Middle School was appropriate. See O'Toole v. Olathe Dist. Schs., 144 F.3d 692 (10<sup>th</sup> Cir. 1998) (holding that facts that student was happier and made more progress in a private placement did not compel the conclusion that her public school placement was inappropriate). Here, the record establishes that the district provided the student social skills and pragmatic language instruction that was reasonably calculated, and did result in,

meaningful benefit for the student. And though everyone would wish that that training would have led to more meaningful connections, as it is clear that the student yearns for and is capable of making those connections, the district met its obligation to provide instruction reasonably calculated to provide the student a meaningful benefit.

The IEP proposed for the student for November 2006 to November 2007 provided similar amounts of social skills and pragmatic language instruction as his prior IEP. His annual social skills goal was to utilize effective social skills in social and academic settings 80% of the time. (S. 680.)<sup>4</sup> Social skills objectives included demonstrating increased independence in redirecting himself, identifying and implementing a problem solving system 80% of the time, and contributing to conversation and initiating interactions 80% of the time. (S. 680.) His pragmatic language objectives included improving his express reasoning and ability to make inferences, using appropriate inflection and stress patterns of speech, and understanding body language. (S. 31.) This IEP was also reasonably calculated to provide the student meaningful benefit in social skills instruction.

Thus, I hold that the district did not deny the student a FAPE with the programming and placement it provided during the student's xx and xx grade years and in the IEP that it proposed for the period of November 2006 to November 2007.

**C. Whether the Student is Entitled to a Remedy of Compensatory Education.**

The parents seek an award of compensatory education for the district's denial of a FAPE to the student during his xx grade year. In particular, the parents request reimbursement for the student's tuition at Aucocisco as a form of compensatory education. The district contends that the parents have provided insufficient evidence of educational harm to justify an award of compensatory education or to allow the hearing officer to craft the contents of such an award.

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<sup>4</sup>Although Ms. Paton drafted an IEP goal in social skills for the student as described above, which was distributed at the November 2006 PET, the IEP mailed a few weeks later to the parents contained a markedly different social skills goal that Ms. Paton testified was erroneous. (S. 27; P. 132; Testimony of

Compensatory education is a remedy designed to compensate a student for educational opportunities missed as a result of substantive IDEA violations. M.S.A.D. No. 35 v. Mr. & Mrs. R., 321 F.3d 9, 19 (1<sup>st</sup> Cir. 2003); see also Pihl v. Mass. Dep't of Educ., 9 F.3d 184, 189 (1<sup>st</sup> Cir. 1993). Compensatory education may be ordered as a remedy for the past failure of a school to provide a FAPE, Pihl, 9 F.3d at 189, and can include reimbursement to the parents for costs associated with providing their child with appropriate compensatory services, M.C. v. Cent. Reg'l Sch. Dist., 81 F.3d 389, 395 (3<sup>d</sup> Cir. 1996). An award of compensatory damages “should aim to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA.” Reid v. District of Columbia, 401 F.3d 516, 518 (D.C. Cir. 2005); see also M.S.A.D. #22, 43 IDELR 268 (Me. SEA 2005) (stating that the typical compensatory education award is an award of “compensatory education services in an amount sufficient to make up for the past educational deficiencies”).

An award of compensatory education need not be an hour-for-hour replacement for lost time or opportunity. Parents of Student W v. Puyallup Sch. Dist. #3, 31 F.3d 1489, 1497 (9<sup>th</sup> Cir. 1994). Instead, the content of the award will depend on the particular facts of the case and the child’s needs. Reid, 401 F.3d 516 at 518. Although an IEP need only provide some benefit, “compensatory awards must do more – they must compensate.” Id.<sup>5</sup>

The parents presented significant evidence that the student is receiving programming at Aucocisco School designed to meet his particular needs in math, reading, and language as well as social skill instruction and coaching on a daily basis – the areas in which his xx grade programming in M.S.A.D. # 51 was deficient. Further, it is clear that the student is benefitting from the academic and social skills instruction at Aucocisco.

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Dianne Paton.)

<sup>5</sup>As discussed above, the parents’ claim that the district violated the student’s right to a FAPE during the first half of his xx grade year is grounded in Maine law. Although the parties have not raised this issue, the compensatory education remedy, as an equitable form of relief, is available under state law as it is under the IDEA, since the remedy is derived from the failure of a school to provide a free appropriate public education, see, e.g., Pihl, 9 F.3d at 189, a right that exists in Maine law.

As such, I hold that the district is required to reimburse the family for the costs of one school year (September to June) of tuition and associated transportation costs for his attendance at Aucocisco School to the extent that such costs are incurred. The student's tuition for the period from November 13, 2006, to the end of the 2006-2007 school year was \$18,678. The record does not establish whether the student will be enrolled beyond the end of the school year, nor what the cost of further enrollment would be. If, however, the student is enrolled beyond the end of the school year, the district is responsible for additional tuition and associated transportation costs up to a total of the equivalent of one school year of such costs.

**V. ORDER**

After consideration of the evidence presented during this due process hearing, the Hearing Officer orders as follows:

1. The district failed to provide the student with a free appropriate public education during his xx grade year, 2004-2005. To fund compensatory educational services for the student, the district is therefore ordered to provide the parents with tuition reimbursement for up to one full school year at Aucocisco School, to the extent that the family incurs such costs, plus related transportation costs documented by the family.

2. The district succeeded in providing the student with a free appropriate public education during his xx grade year (2005-2006) and his xx grade year (2006-2007) until he was removed from school in November 2006. Further, the district offered the student a program and placement for the period of November 2006 to November 2007 that was reasonably calculated to provide him with a free appropriate public education.

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Rebekah J. Smith, Esq.  
Hearing Officer