

Complaint Investigation Report
Parent v. Eastport (Union #104)
Date: September 24, 2007

Complaint No. 08.009C

Complaint Investigator: Sheila Mayberry
Date of Appointment: July 31, 2007

I. Identifying Information

Complainant: Parent
Address
City

Respondent: Arthur Wittine
Superintendent of Schools
Union #104
102 High Street
Eastport, Maine 04631

Special Education Director: Janet Weston

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Maine Department of Education received this complaint on July 26, 2007. The complaint investigator was appointed on July 26, 2007. The complaint investigator received 60 pages of documents from the parent and none from the Respondent. However, the complaint investigator reviewed the file in Case No. 07.107C and asked the District for several updated documents.¹ Interviews were conducted with the following people: the Parent; Janet Weston, Director of Special Education in Union #104; and Emily Ginsberg, Wings Case Management Services for Children with Mental Health Needs (“Wings”).

¹ The complaint investigator also reminded the District to send copies to the Parent.

III. Preliminary Statement

The Student is a xx year-old female, residing in Eastport, Maine with her paternal grandmother, who is also her adoptive parent (Parent). In April 2006, when the Student was in the xx grade, the Parent and Student moved from Swan's Island, Maine to Eastport, Maine. At the time that the complaint was filed, the Student was entering the xx grade at Eastport Elementary School. The Student receives special education services under the category of Emotional Disability. She has been diagnosed with Post-Traumatic Stress Disorder and Reactive Attachment Disorder. The complaint was filed by the Parent.

IV. Allegations

1. Failure to provide special education and related services which addressed the Student's Emotional Disability during the 2006-2007 school year. MSER § 1.3, 8.3; 10.3.
2. Failure to include a behavior plan in the Student's IEP for the 2006-2007 school year. MSER §§1.3, 10.3;
3. Failure to develop a plan to address safety as it may affect the Student's Emotional Disability during the 2006-2007 school year. MSER §§ 8.3, 10.3.
4. Failure to implement reasonably calculated Extended School Year (ESY) services for the 2007 summer. MSER § 10.5.

V. Summary of Findings

1. The summary of findings which were established in Case No. 07.107, are attached to this report. (See page 11). Additional findings are summarized below.
2. Inserted in the Student's IEP, dated September 26, 2006, was a document entitled "Treatment Plan" from the Roland B. French Medical Center, Eastport, Maine; the document was dated October 6, 2006. It listed K. Cook, LCSW, as the name of the provider responsible for the treatment. The plan listed "Learning Disorder" as a diagnosis. Goals and objectives were also included. The long term goal was to "Build self-esteem to better cope effectively with the frustrations associated with the learning disability." The objectives were defined as:
 - Participate in EAP/T activities;
 - Teach the Student positive coping mechanisms to utilize when encountering frustration differently through EAP/T;
 - Teach stop, look, listen, and think skills;
 - Participate in positive peer group activities.
3. In an interview with the complaint investigator, the Parent stated that she was not aware of the "Treatment Plan" document and did not know it was in the Student's IEP. She stated that the Student had never been diagnosed with a Learning Disability. She stated that this document could be related to the Equine Therapy Program in which the Student briefly participated. She also stated that she had spoken to K. Cook after they moved to Eastport, needing to find another therapist for the Student who was affiliated with the

Roland French Medical Center. She said, however, that the Student had never been assessed by the staff of that facility.

4. Special Education Director Janet Weston reported to the Complaint Investigator that she believed the Treatment Plan referred to the Equine Therapy Program, which the Parent discontinued in November 2007.
5. In a letter to the Parent, dated June 2, 2007, Janet Weston inquired whether she would agree to have an evaluation performed based upon the reports from the Student that she had been harassed. She stated:

I think assumptions have been made by all of us regarding whether or not the reported harassment has had an impact on (the Student's) education. If you are interested in learning more about this dilemma, we would be happy to have an assessment completed by an independent evaluator with the goal of gaining more insight in this issue. The assessment would be primarily focused on (the Student's) perceptions and could be completed at home with you present. If you are interested in pursuing such an assessment, please let me know so that we can move forward.

6. In a letter to Janet Weston, dated June 3, 2007, the Parent submitted a list of tutors that the Student would like to have. The Parent also reported that the family had been away on a family emergency from May 25, 2007 to June 4, 2007.
7. In a telephone log, dated June 6, 2007, Janet Weston reported that she had spoken to the Parent about when to start the Student's ESY tutoring. Although the Parent wanted it to begin on June 11, 2007, Mrs. Weston stated she could not approve it because school was still in session. No agreement was reached on the start date.
8. In a letter to Janet Weston, dated June 17, 2007, the Parent stated that she was "intervening to delay the start of in home one on one services because of the level of anxiety a lack of transitional services has created. (The Student) is highly motivated to accomplish the goal of grade level success. She does not know the plan or the person. There is no plan or person, yet." She requested a meeting with the District staff in order to interview tutors. She also requested specific books and other materials the Student was using in school.
9. In a telephone log, dated June 18, 2007, Janet Weston reported that she had spoken to the Parent about arranging to have a tutor, Brenda Sullivan, meet the Parent and the Student. Mrs. Weston also stated that because Ms. Sullivan could only work one and a half hours a day, she was going to find someone else who could work three hours a day, five days a week. However, Ms. Sullivan could tutor for one week.
10. In a letter to the Parent, dated June 27, 2007, Janet Weston reviewed the history of deliberations over when the ESY program would begin. She stated that, due to "communication difficulties," tutoring with Ms. Sullivan did not begin until June 20,

2007, even though her time was limited to one and a half hours per week. She also reported that, due to the Student's teacher being on vacation until June 27, 2007, school materials could not be prepared until her return. It was Mrs. Weston's hope that the Student's regular school work, which she missed since she had been withdrawn from school on May 21, 2007, could be completed by June 29, 2007 or the following week. The purpose of the tutor was to fill the Student's skill gaps in reading, writing, spelling, and mathematics. She clarified that a PET was necessary to finalize the details of the ESY program, and that the meeting needed to include the Student's teacher, Mrs. Newcomb.

11. In a telephone log, dated July 2, 2007, Janet Weston reported that the Student's tutor, Brenda Sullivan, had requested from the Parent that tutoring be done in another setting due to the distractions in the home setting.
12. In a generally addressed letter, dated July 3, 2007, the Parent reported that there were problems with the tutoring. She stated that there was no IEP and that school materials were not provided to the tutor. She stated that Ms. Sullivan decided to quit the day before, Monday, June 2, 2007. She acknowledged that a meeting had been scheduled for July 11, 2007. She expressed her extreme disappointment in the delay in getting the tutoring underway. She stated a new tutor "cannot start her job until an IEP is developed and it as been approved by myself, Ann Gosselin, and (the Student). This needs to be typed up and in my hands ASAP, not sometime after the 11th. I recommend that the IEP be hand delivered to myself, (the Student) or our mail box rather than be mailed. Call me and leave me a message and I'll come by the school to get it. After the IEP is approved, Mrs. Granville and (the Student's) tutor can meet to discuss how best to get (the Student's) needs met."
13. In a letter to the Parent, dated July 5, 2007, Interim Superintendent of Schools, Omar Norton, confirmed the July 11, 2007 PET meeting to "amend (the Student's) IEP to reflect the provision of extended year services."
14. A Meeting Notice, dated July 5, 2007, indicated that a PET meeting was scheduled for July 11, 2007.
15. A PET meeting was convened on July 11, 2007. The team reiterated that tutoring would be provided for three hours a day, five days a week. The Team determined that the services would start on July 16, 2007 and end on August 31, 2007; the Parent, however, was not in agreement with this. The minutes of the meeting indicated that the Parent would not agree to begin tutoring until she had signed the IEP, nor would she agree to the ending date of the ESY service. The minutes also indicated that the Parent was informed that there was no requirement for a parent signature, although parental agreement was hoped for. The Prior Written Notice (PWN), dated July 11, 2007, also included these determinations. The PWN also noted the Parent's belief that the school was not a safe learning environment for the Student.

16. The IEP developed from the meeting on July 11, 2007 was the regular school year IEP, amended to reflect only the ESY services. The date for achieving ESY objectives was August 31, 2007.
17. In a letter to the parent, dated July 13, 2007, a letter which enclosed the IEP developed from the meeting on July 11, 2007, Janet Weston stated that since there had been no consensus regarding the start date for the ESY services, she was using her authority to determine the implementation date of July 16, 2007.
18. In a letter to Mr. Norton, dated July 24, 2007, the Parent stated that she was disappointed that he would not extend ESY services to September 25, 2007 instead of August 31, 2007.
19. In a telephone log, dated August 9, 2007, Janice Stanhope, assistant to the Special Education Director, reported that a PET meeting had been scheduled for August 27, 2007 and that the Parent had been notified of this. She stated that the Parent did not want the meeting on that day, but instead wanted to wait until Dr. Deering's neuropsychological evaluation had been submitted in order for the PET to review it. The Parent also requested that in-home tutoring continue until September 24, 2007, when the Student's IEP expired.
20. In a letter to the Student, dated September 10, 2007, the Student's tutor, Mrs. Newcomb, reported on the Student's progress during her ESY tutoring. The Student received an 83 ("C") in Language Arts, and a 97 ("A") in math. Both of these grades were given after reviewing errors and receiving help as needed, according to the tutor's comments. Without help, the Student would have received a 78 ("C") in Language Arts, and a 77 ("C") in math.
21. In an interview with the complaint investigator, Mrs. Weston stated that, at some time during the spring of 2007, she came to believe that the Student would be best served if an evaluation were done to determine what was going on with her. She stated that, although the reported harassment occurred during extra-curricular activities or outside of school programming, she felt that the District needed to assess the educational impact on the Student. Therefore, she suggested that an evaluation be performed. Mrs. Weston also stated that by that time, the trust between the District and the Parent had deteriorated and the Parent refused to have an evaluation performed by the District, instead scheduling one independently. She did not inform the District when it was to be done, except to say that it would be sometime in August 2007.
22. Mrs. Weston also reported that, although the Student made good progress during the ESY program, it was clear that the Student continued to have delays in math. She stated that the PET, which met on August 28, 2007, reviewed the reports and agreed that the Student needed special education in math. She also stated that the team designed an IEP for the 2007-2008 school year. However, she stated that the Parent did not agree to the IEP because she believed that the least restrictive placement for the Student was at home and that tutoring at home should continue. Mrs. Weston stated that the Team did not agree

with the Parent and determined that the Student should be at school. No consensus was reached on this matter.

23. In an interview with the complaint investigator, the Parent reported that she was very concerned about the lack of action on the part of the District regarding the reported harassment of the Student. She also stated that the Student had developed a lack of trust with her teachers and did not want to return to school. She stated that the Student did not feel safe at school and that is why she refused to send her to school on or about May 22, 2007.
24. The Parent also stated that until the Student had a safety plan, she would continue to refuse to send the Student to school when school began in the fall of 2007. She stated that her distrust of the District's administration had risen to the level that she felt compelled not to reveal when she was having a neuropsychological evaluation performed for fear that the District may try to interfere with it in some fashion. She stated that she refused to allow the District to have an evaluation performed due to significant lack of trust in how the District was handling the Student's programming, as well as the impact the harassment was having on her education.
25. The Parent also reported that, although the tutoring was not effective for the first two weeks, due to the lack of tutors, once the tutoring began in earnest in mid-July 2007, the Student made significant progress. She stated that the Student brought up her performance in all areas by the end of August.
26. In an interview with the complaint investigator, Emily Ginsberg, supervising case manager for Wings Case Management Services for Children with Mental Health Needs ("Wings"), stated that it was her professional opinion that it would be in the Student's best interest to attend school because it would help stabilize her life.

VI. Conclusions

Allegations No. 1 and 2: Failure to provide special education and related services which addressed the Student's Emotional Disability during the 2006-2007 school year, including failing to implement a behavior plan. MSER §§ 1.3, 8.3; 10.3(D). **VIOLATION**

The Individuals with Disabilities Education Improvement Act (IDEA) of 2004 and Maine law (20-A M.R.S.A. Chapters 301 and 303) entitle all school-age students with disabilities to an equal educational opportunity/free appropriate public education (FAPE). Maine Special Education Regulations, MSER § 1.3, further defines "free appropriate public education" as the following:

The guarantee of equal educational opportunity entitles each student with a disability residing in the State, including students with disabilities who have been suspended or expelled, to be provided with a free appropriate public education that emphasizes

special education and supportive services designed to meet their unique needs and prepare them for employment and independent living. This education includes special education and supportive services which are appropriate to the special needs of the student as defined in an Individualized Education Program.

Furthermore, an “appropriate” education must address the specific child’s “unique needs” in a way “reasonably calculated to enable the child to receive educational benefits.” *Bd. Of Educ. Of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206-07 (1982). Under IDEA, the implementation of a “free appropriate public education” is done through a student’s IEP. See *Lenn v. Portland School Committee*, 998 F.2d 1083, 1086. Therefore, the issue becomes “whether a proposed IEP is adequate and appropriate for a particular child at a given point in time.” *Burlington v. Department of Educ.*, 736 F.2d 773, 788 (1st Cir.1984), *aff’d*, 471 U.S. 359, 105 S.Ct. 1996, 85 L.Ed.2d 385 (1985).

Rowley instructs that when undertaking a FAPE analysis, a two-part examination must be set forth. First, it must be determined whether a school district complied with the procedural requirements of the IDEA. Second, it must be determined whether the IEP, which was the product of such procedures, is in substantive compliance with the student’s needs. *Rowley*, 458 U.S. at 206-07.

The issue that must be addressed under this allegation is whether the District complied with both the procedural and substantive requirements of the IDEA.

A. Unilateral Change in Monitoring Services

Maine Special Education Regulations (MSER)² § 8.3 delineates the PET’s responsibilities, including revising a student’s IEP and reviewing existing information available to determine what additional data, if any, are needed to develop appropriate programming. MSER § 10.3(D) requires the PET to develop strategies, including positive behavioral interventions, and supports to address behaviors that impeded the student’s learning.

This issue was raised by the Parent because the Student’s IEP, which was in place during the last portion of the 2005-2006 school year when she transitioned into the District from Swan’s Island, included 45 minutes a week of consultation services to address her Emotional Disability as it impacted her behavior in the classroom.

The IEP that was in place prior to the Student’s transition into the District, dated June 14, 2005, was specific in its language describing her behavior. It stated that her behavior “manifests itself in several ways including: fights, and arguments with other students, lack of work completion, not following directions and talking back to teachers. Given the difficulty with her behavior, (the Student) often has trouble maintaining focus on her academics. (The Student) also is unable to make and maintain personal relationships with her peers and at times teachers. While (the Student) has been able to make progress in her academics she often spends more time focusing on social situations instead of school work.”

² The relevant regulations in this case are those that were in effect prior to August 3, 2007.

The annual goal which addressed this issue stated, “The Student will demonstrate the ability to monitor her behavior in class and on the playground so that she had appropriate school behavior 95% of the week as measured by work completion, earning her daily classroom sticker for good behavior, and teacher observation by 9/06.” The IEP called for 45 minutes of monitoring a week.

When the PET met on May 2, 2006, after the Student had transitioned into the District, it reported that, “The only behavioral issue is that the Student occasionally speaks out; she does accept correction and complies with the teacher’s request.” No changes to the IEP were made. The 45 minutes per week of monitoring services remained in place.

Thereafter, on September 26, 2006, the PET met to discuss the Student’s progress and proposed changes to the IEP. The Team was concerned with the Student’s poor performance in math. The only reference to her behavior was that the Team “agreed that (the Student’s) strengths are that she has a good sense of humor, is willing to ask for help, is helpful in the classroom, is resilient and wants to succeed both academically and socially.” The Parent reiterated to the Team that the Student had an attachment disorder. It was agreed that involvement in an Equine Therapy Program would be beneficial to the Student. No other determinations were made by the PET with respect to changing the level of monitoring services she had received on Swan’s Island. The Prior Written Notice, dated September 25, 2006, did not indicate any reduction of services related to her behavior. However, the IEP, dated September 25, 2006, indicated that monitoring services had been reduced from 45 minutes per week to 10 minutes per week.

In February 2007, the Parent, although not protesting the change at the time, asked Dawn Granville, the Student’s Special Education Teacher, if the Student’s monitoring services could be increased to 25 minutes per week. Ms. Granville told the Parent that she could not comply because it was a PET decision. Mrs. Weston reported to the complaint investigator that she recalled the reduction in monitoring services was made in the IEP because no one had mentioned any serious behavioral issues with the Student during the PET meeting. She reported that the Student seemed to have transitioned into the school well, with few reported classroom problems.

However, since monitoring service was one of only a few special education services that the Student was receiving at the time, and based upon the Student’s historical behavioral and social problems in school, it is apparent that the reduction in the level of monitoring services “significantly” altered the IEP. As such, a PET meeting was required to approve the change (MSER § 10.4). The District did not have the unilateral authority outside of the PET process to reduce these services.

By the time the PET met on January 23 and again on May 22, 2007, the team had information to warrant consideration of increased monitoring, even if it had properly reduced it in September 2006. The Student’s teacher saw ADHD-like symptoms. She reported that the Student had trouble concentrating in class and rushed through her work. She also was observed to have poor social skills. The minutes from the May 22, 2007 meeting stated that, “part of the difficulty (the Student) has is that other students are unclear what (the Student’s) boundaries are

and what upsets her.” Mrs. Richardson, the Student’s Title 1 Educational Technician, reported that her social skills needed some “polishing” and that “(the Student) does not appear to be socially aware of how her actions look to others.” This information was very similar to the description in the Swan’s Island IEP. Given this information and the Student’s history, the PET should have responded by considering additional evaluations and increasing her monitoring.

In addition, the District included a Treatment Plan in the IEP dated September 26, 2006, sometime after the IEP was implemented. The Parent was completely unaware of this plan; there was no PET meeting to discuss the plan or the diagnosis of a Learning Disability. The District included it unilaterally and without regard to its significance in the Student’s programming. Apparently, none of the long term-or short-term objectives were monitored or assessed.

By the unilateral removal of 35 minutes of monitoring a week, and failure to address the Student’s poor social skills, the District failed to provide a FAPE to the Student.

B. Behavior Plan

The IEP dated September 25, 2006, included a behavior plan. In addition, amended minutes of the PET meeting on January 23, 2007, indicated that a behavior plan was part of the Student’s accommodations to address her classroom behavior, including her distractibility and ADHD-like behavior. Special Education Director Weston acknowledged that there had been an oversight in not developing a behavior plan for the Student. Given the acceleration of problematic behaviors noted by the Student’s teachers, which had historically been an issue on Swan’s Island, it was imperative that the District address the issue in a behavior plan. The fact that this was not done is not explained or justified by the District. Having a behavior plan may have alleviated many of the classroom behaviors observed by the teacher and noted in the PET meetings held in January and May 2007. The failure to develop and implement a behavior plan was a violation of the MSER § 10.3(D). As it was part of the Student’s IEP, failure to provide it was a denial of the provision of a FAPE. (MSER § 1.3)

Allegation No. 3: Failure to develop a plan to address safety as it affects the Student’s Emotional Disability during the 2006-2007 school year. MSER §§ 8.3, 10.3. **NO VIOLATION**

The District’s investigation report submitted upon request from the Disability Rights Center indicated that, based upon late reporting and a lack of information about the incidents described by the Student, no violation of the District’s policy was found. However, the District’s superintendent believed that the Student had been bullied by her peers. The issue is whether any special education regulations were violated by not having a safety plan for the Student. The Parent argues that the Student’s Emotional Disability was aggravated by the bullying, which, in turn, affected her educational performance. However, to establish the nexus between the bullying and any aggravation of the Student’s Emotional Disability, the District needed evidence that one caused the other. The Parent made it difficult for the PET to handle the matter. The Special Education Director agreed to look further into the matter at the January 2007 PET meeting. However, before Mrs. Weston could report on her findings, the Parent cancelled the March 2007 meeting. The Parent withdrew the Student from school prior to the conclusion of the District’s investigation into the matter. The Parent refused the Special Education Director’s June 2, 2007

offer to have an assessment performed to gain insight as to how the bullying might have been affecting the Student. Without proper, objective information, the PET could not perform its duty in determining how the bullying was affecting the Student's Emotional Disability. Therefore, no violation of the special education regulation can be established. However, it is suggested that the District heed the recommendation in the Complaint Investigation Report in Case No. 07.107C, which urges that the District and the Parent develop a protocol for reporting any harassment that may occur in the future.

Allegation No. 4: Failure to implement reasonably calculated ESY services for the 2007 summer. MSER § 10.5. **NO VIOLATION**

The Parent's claim under this allegation was that, at the beginning of the summer 2007, ESY services were not delivered as planned.

During the PET's deliberation of the Student's ESY program at its meeting on May 22, 2007, there was no agreement as to when the services would begin. An additional PET meeting was needed to decide these details, but some tutoring began before that. On June 3, 2007, the Parent, operating under the misapprehension that she would be the one to select a tutor, submitted to Ms. Weston a list of tutors that the Student would like to have. In another letter, dated June 17, 2007, the Parent acknowledged that she was "intervening to delay the start of in home one to one services" because of the Student's anxiety over there being "no plan or person, yet." She requested a meeting with District staff in order to interview tutors.

On June 18, Ms. Weston spoke with the Parent about arranging to have a tutor, Brenda Sullivan, meet the Parent and the Student. Ms. Sullivan began tutoring the Student on June 20, 2007 for one and a half hours per day, but did not have proper materials, since the Student's regular teacher, Mrs. Newcomb, was on vacation and had not yet put together the program for the summer. Ms. Sullivan subsequently found the home setting to be distracting and requested that the tutoring take place in a different setting. When the Parent would not agree to this, Ms. Sullivan elected, on July 2, 2007, to stop tutoring the Student. In a generally addressed letter dated July 3, 2007, the Parent stated, incorrectly, that a new tutor "cannot start her job until an IEP is developed and it has been approved by myself, (the WINGS case manager), and (the Student)." It was not until the PET met on July 11, 2007, that the PET finalized the details of the ESY program. Agreement with the Parent still could not be reached on when and how long tutoring would take place. Thereafter, Special Education Director Weston decided that tutoring would begin on July 16, 2007 and end on August 31, 2007. Although the Parent had complaints about the prior weeks that were not as productive as they could have been, the IEP established clear beginning and ending dates for the ESY service. The Student did well in tutoring and raised her skills in order to perform at grade level, except in math. At an IEP meeting on August 28, 2007, the PET determined that, in fact, the Student needed continued special instruction in that area beginning in the fall of 2007.

No violation occurred with respect to the provision of ESY services.

VII. Corrective Action Plan

1. The District shall convene an IEP team meeting to determine whether evaluations should be performed to assess the Student's need for special education and services as it relates to her behavior and social development. The PET shall also determine whether an evaluation is required to determine whether the Student has a Learning Disability. The Written Notice, detailing the decision of the PET, shall be submitted to the Due Process Office, the Parent and the complaint investigator.
2. The District shall develop and propose to the IEP team a behavior plan for the Student, which, after it is approved, shall be attached to her IEP. A copy of the behavior plan shall be sent to the Due Process Office, the Parent and the complaint investigator.

Appendix – Summary of Findings

Complaint Investigation Report
Parent v. Eastport (Union #104)
Date: July 31, 2007

Complaint #07.107C

Complaint Investigator: Jay Bartner
Date of Appointment: May 23, 2007

Summary of Findings

1. The Student, born on xx/xx/xxxx, is xx years old. She lives with her biological paternal grandmother who legally adopted her on November 23, 1998, when she was xx years old. The Student moved from Swan's Island in April 2006 to Eastport, Maine and presently attends the xx grade at Eastport Elementary School.
2. According to a May 12, 1997 Evaluation at The Spurwink Clinic, the Student was placed in the custody of the Department of Human Services in November of 1995 "following witnessing the death of her then 8-month-old sister at the hands of her mother, who is now serving a prison sentence. The Student was xx when this death occurred." According to the evaluation, her "father's whereabouts are not clear, however DHS' plan is to terminate parental rights. There is a possibility the paternal grandmother may seek custody." At the time of the evaluation the Student was living in her third foster home. Diagnostic impressions from Spurwink's May 12, 1997 evaluation indicate that the student was experiencing "developmental delays, delays in expressive and receptive language, and had a previous diagnosis of reactive attachment disorder and post traumatic stress disorder."
3. On June 8, 1998, at the age xx, the Student was evaluated by the Spurwink Clinic. The examiner strongly recommended that "DHS resolve the Student's long-term custody and placement needs as soon as possible. The Student needs to live in a permanent home with nurturant parent figures who are able to make a long-term commitment to the Student's complex emotional needs." The examiner noted that, "while the Student has made many nice gains cognitively and emotionally, she continues to be a little girl at risk given her complex early history and ongoing emotional needs. Her overall development and behavior should be closely monitored and reassessed as needed." The Student received play therapy, developmental therapy, and speech and language therapy through Child Development Services (CDS).

4. In 1999, the Student entered xx at the Swan's Island School. The Swan's Island School PET terminated her eligibility for CDS services because it was felt that she had made enough progress that a special program was no longer warranted. The Student attended xx grade in Bridgton, Maine. She returned to the Swan's Island School at the beginning of xx grade. In January 2002, when the Student was in the xx grade, she was referred to Special Education by the Parent and her teachers. The referral stated that "(the Student) has had persistent problems with lying to her peers and teachers. She has been caught stealing on numerous occasions, which has caused a lot of mistrust with her peers. The Student also demonstrates violent behavior such as pushing, kicking, biting, hitting and occasionally spitting." The referral concluded that "(the Student's) behaviors do interfere with the school learning environment, both for her classmates and herself."
5. On March 25, 2002, a PET meeting was held to review the referral that was in process for the Student. The parent signed consent for academic and achievement testing but did not sign consent for psychological testing. The parent said that she wanted Nancy Decatur, the Student's Play Therapist, to do the evaluation, explaining that she would feel more comfortable with that. At the end of the meeting the Parent signed consent for the school to work with Nancy Decatur to complete aspects of the psychological evaluation.
6. At a PET meeting on August 29, 2002, it was determined that the Student was eligible for special education services. Stephen E. Benson, Ph.D. determined the Student met the criteria "for a DSM diagnosis for posttraumatic stress disorder of the chronic variety." Her primary disability was Emotional Disability. An Individualized Education Program (IEP) was written on August 29th, prior to her entering xx grade. The Student was placed in the regular classroom with 20 minutes per day of direct special education instructional services. The stated annual goal was that the Student "will develop skills to help her control her behaviors during school activities." A daily behavior checklist was developed.
7. On September 12, 2003, at the beginning of the Student's xx grade year, the PET met and developed a new IEP. The IEP stated that "(The Student) participates in all subjects at grade level." The IEP also stated that the Student "often has a difficult time knowing personal boundaries. She has some trouble with behaviors especially in social situations with peers." The Student continued to receive special education direct instruction 20 minutes per day. The Annual Goals in the IEP were as follows:
 - The Student will learn to read facial expressions, body language and social cues so that she has successful academic and social interactions 90% of the school week by 9/04 as measured by teacher observation, and self-monitoring.
 - The Student will demonstrate the ability to monitor her behaviors in class and on the playground so that she has appropriate school behavior 95% of the week as measured by work completion, earning her daily classroom sticker for good behavior, and teacher observation by 9/04.
8. On June 4, 2004, prior to the beginning of the Student's xx grade year, the annual IEP was written. Special education services were unchanged. The Student's new annual goals stated that the Student "will demonstrate the ability to monitor her behaviors in class and on the playground personally, without the aid of a teacher monitored sticker chart. She will display appropriate school behavior 90% of the time, as measured by teacher observations and a personal monitoring system."

9. The Student's triennial evaluation took place on June 14, 2005, at the end of her xx grade year. Margarita N. Marnik, M.Ed., CAGS, Psychologist, conducted the psychoeducational evaluation. On the WISC-III, the Student's Verbal IQ was 94; her Performance IQ was 104; and she had a Full Scale IQ of 99. Ms. Marnik stated in her report that "though (the Student) has made significant progress through the years, she continues to demonstrate a high number of problematic behaviors relative to same age peers. I was surprised to see the high correlation with DSM-IV criteria for ADHD." Ms. Marnik recommended that the family consult with their physician to "determine the need for further diagnostic assessments to rule out ADHD." The Student's school evaluation was completed by Tara McKernan, Special Education Teacher and Case Manager. According to Ms. McKernan, the Student "received help in reading, spelling and social skills as part of her special education services. Most of the direct instruction that (the Student) receives is geared to help her with social skills and managing her behavior. (The Student) has been on a behavior plan over the last few years." The Woodcock Johnson Test of Achievement-III (WJ-III) and work samples were employed to determine the Student's academic achievement. Behavioral rating scales were used to evaluate the Student's social skills and in-school behavior.
10. According to the Evaluation Report, the Student showed strong academic growth during the last three years. Highlights of the WJ-III include:

	Grade Equivalent (5/05,5 th grade)	Grade Equivalent (2/02, 2 nd grade)
Broad Reading	6.4	1.9
Basic Reading	4.8	2.0
Reading Comp	9.1	1.9
Broad Math	6.3	3.3
Math Calc	7.0	2.7
Math Reasoning	5.5	3.5
Broad Written Lang	6.2	1.8
Basic Writing Skills	5.1	1.8
Written Expression	9.1	2.0
Total Achievement	6.3	2.2
Oral Language	8.3	3.1
Oral Expression	8.5	4.7
Spelling Sounds	4.1	2.6

11. The Student's Individualized Education Plan was written on June 14, 2005, following the triennial evaluation. The IEP indicated that the Student was doing well academically and had made great gains over the last couple of years, but still struggled with spelling, especially in her everyday writing. The IEP also noted that the Student "often has a difficult time knowing personal boundaries. She has some trouble with behaviors especially in social situations with her peers. (The Student) needs help maintaining appropriate behaviors as well as help with social skills." The Student was mainstreamed in the regular classroom. In addition, she received consultation services 45 minutes per week in the regular classroom from a special education teacher. Her teachers used "1-2-3 Magic" as a consistent method to help the Student stop inappropriate behaviors such as talking back to teachers and not following directions. The IEP stated that the Student would take the MEA and district wide assessments in a separate location.

12. The IEP addressed the Student's behavioral needs by citing her present level of performance and by establishing an annual goal. The IEP stated:

"(The Student) currently has difficulty with her behavior at school. This manifests itself in several ways including: fights and arguments with other students, lack of work completion, not following directions and talking back to teachers. Given her difficulty with her behavior, (the Student) often has trouble maintaining focus on her academics. (The Student) also is unable to make and maintain personal relationships with her peers and at times teachers. While (the Student) has been able to make progress in her academics she often spends more time focusing on social situations instead of schoolwork."

Annual Goal:

"The Student will demonstrate the ability to monitor her behavior in class and on the playground so that she has appropriate school behavior 95% of the week as measured by work completion, earning her daily classroom sticker for good behavior, and teacher observation by 9/06."

Short Term Objectives:

- Student will follow teacher directions without having to be counted past 1 (using 1,2,3 magic) by 11/05
- Student will follow teacher directions without having to be counted (using 1,2,3, magic) at all 90% of the time by 6/06
- Student will fill out an assignment log without teacher assistance and turn in her work 90% by 6/06
- Student will keep track of all parts of her project, meet assignment deadlines and turn in her project without teacher assistance by 6/06
- Student will interact with her peers in an age appropriate manner including playing by group rules, sharing during games and maintaining personal space by 6/06

13. After the third quarter of xx grade, the Student moved from Swan's Island to Eastport. When she moved, the Student had been earning passing grades in all subject areas. On April 26, 2006, Janet Weston, Director of Special Education for Union #104, informed the Parent by letter that the school had received the Student's records from Swan's Island and that the IEP developed at the previous school would continue to be used until the PET could meet.

14. On May 2, 2006, a PET meeting was held at the Eastport Elementary School, the Student's new school. The purpose of the meeting was to "transition the Student from Swan's Island School to Eastport Elementary and to review the most recent Individual Education Plan dated June 14, 2005." In attendance were Maureen Pottle, Principal; Peggy Davis, Teacher; the Parent; and Judy Knapp, Special Education Teacher. Ms. Davis reported that the Student "is making friends. Academically, she tries hard and asks questions as needed. The only behavioral issue is that the Student occasionally speaks out; she does accept correction and complies with the teacher's request." On the March 2006 MEA, the Student met the standard in English/Language Arts-Reading but did not meet the standard in Math. The parent recognized that the Student had made "huge gains socially" but remained concerned that the Student "may need some one-to-one attention from special education." The PET made the following determinations by consensus:

- Mrs. Knapp will contact Tara Mckernan, special education teacher at Swan's Island School, regarding the Student's program.
- Mrs. Davis will give the Student a planner and explain that all students are required to use them. Mrs. Davis will send home a classroom schedule.
- The Equine Therapy Program was recommended for school year 2006/07.
- The team will reconvene before school closes in June, or in early September, to update the Student's Individual Education Plan.

Prior Written Notice was sent to the Parent on May 3, 2006.

15. On September 25, 2006, the beginning of the Student's xx grade year, the PET met to conduct an annual review of the Student's program. In attendance were: the Parent; Trudy Newcomb, Teacher; Judy Knapp, Special Education Teacher; and Janet Weston, Director of Special Education. The Parent reported that the Student had done poorly in math at the end of her xx grade year. The parent had requested, and the District provided, Extended School Year services during the summer of 2006. Ms. Newcomb reported that the Student completed one of eleven assignments this year. Ms. Newcomb made an initial referral to the Student Assistance Team. She noted that the Student "is delineated as a student with an emotional disability because of her very difficult early childhood." The parent said that the Student "refuses to go to counseling" but will participate in equine therapy. Ms. Newcomb reported the Student's grades to date. The Student earned passing grades in English (83), reading (81) and social studies (82). She was not turning in assignments in science and dropped to a grade of 69.
16. The September 25th PET determined that the Student would continue to have a goal of "maintaining her daily planner, maintaining passing grades and monitoring of her social situations." The Parent said that the Student had a "detachment disorder and there is presently a protection from abuse order against the Student's mother." She said that her goals for the Student were "to be happy and not have to worry about her family." The PET made the following determinations:
 - The Student's Individual Education Plan was reviewed and will be implemented.
 - The Student will be referred for Title I services.
 - The Student will receive daily monitoring by special education staff.
 - The Student will have classroom and testing accommodations.
17. An IEP was written at the September 25, 2006 PET meeting. The areas of strength noted in the IEP included that the Student "is resilient and is not afraid to ask for help. She is aware of her disability and knows what to do about it. She wants to be successful. She also likes to be helpful." The IEP stated that the Student had a behavior plan. The Student had been monitored in a mainstream program for 10 minutes per week and the IEP stipulated the following classroom accommodations and modifications:
 - Simple vocabulary; check for student comprehension ; use synonyms
 - Visual processing
 - Hands on
 - Assignments shortened with full credit

- Behavior Plan
- No penalty for spelling errors on daily work only

Annual goals for the Student were "to maintain passing grades" and "interact with her peers appropriately." The measurable objectives included:

- The Student will keep an assignment planner and have it signed by her Nana and her teacher as measured by weekly monitoring by Special Ed. Teacher throughout the 06-07 school year.
- The Student will maintain passing grades in the regular education classroom as measured by quarterly report cards through the 06-07 school year.
- The Student will interact with her peers in an age appropriate manner including playing by group rules, sharing during games and maintaining personal space. This will be measured quarterly by weekly monitoring by the Special Ed. Teacher throughout the 06-07 school year.
- The Student will use the Special Education room as a place to settle herself down when necessary.

18. Prior Written Notice was sent to the Parent on September 25, 2006. It stated the following:

- Special Education staff will monitor the Student's mathematics program to see that she is keeping up with her work. Manipulatives and visuals will be used as much as possible in teaching the Student. Mrs. Newcomb will refer the Student to the Student Assistance Team for Title I help in math. The Student will keep two of her old goals for her new IEP as well as add two new ones.
- Although the Student's test results indicate average intelligence and academic skills, she is struggling to keep up with xxx grade math.
- The Student will be involved with the Equine Therapy Program.

19. In September 2006, the Student entered the Horse Assisted Therapy Program at Eastport Health Care. On November 29, 2006, Dawn Granville, Special Education Teacher, reported that the Parent had removed the Student from the program.

20. The PET met on January 23, 2007. The PET minutes stated that the purpose of the meeting was to discuss the Parent's concerns regarding the Student's academic performance. In attendance were: the Parent; Trudy Newcomb, Teacher; Dawn Granville, Special Education Teacher; Joshua Rhodes, WINGS representative; and Janet Weston, Special Education Director. Ms. Weston noted that the Student's IEP goals "were in the area of behavior and the team has continued goals in the same area." She noted that the Student had not displayed problematic behavior at Eastport Elementary School. Mrs. Newcomb noted that the Student "has some characteristics of Attention Deficit Hyperactivity Disorder." Ms. Newcomb commented that the Student "does not pay attention to details, she monitors everyone else around her and she rushes through her work." The Parent expressed the need for the Student to receive extra help in Math. Mrs. Weston indicated that "test scores and class performance don't indicate a need for special education instruction in mathematics." She noted that the Student was receiving Title I assistance in math. The PET determined that the Student "will have Maine Education Assessment and classroom testing accommodations." On January 24, 2007, the Student's IEP was amended to allow an accommodation for testing in the special education room, if needed. Prior Written Notice was sent to the Parent on February 5, 2007.

21. The "Individual Education Plan Team Meeting Summary" -- an amended copy of the January 23, 2007 PET minutes -- was written by Ms. Weston. This summary contained parental feedback on the content of the PET minutes. Janet Weston responded to the Parent in a February 26, 2007 letter and amended the minutes. Several additions were made, including a concern by the Parent that the Student was "being the object of physical and verbal abuse, not feeling safe at school and that it is possible that her academic success was suffering because of this." Classroom accommodations were also addressed. The minutes were amended to note that "classroom accommodations include teacher checking for understanding, teacher presenting materials visually as well as using hands-on activities, testing in the special education room if needed, shortened assignments with full credit if needed, a behavior plan and no penalty for spelling errors on daily work." Ms. Weston ended her February 26th letter by stating "My changes are an attempt to acknowledge your concerns and perceptions while still following appropriate procedures and regulations. I will seek out more information about the Student's status in the classroom for the purpose of deciding if we need to meet again to make more specific plans to assist her socially." An amended Prior Written Notice which reflected the changes was sent to the Parent.
22. According to the phone log of Dawn Granville, Special Education Teacher, on January 29, 2007, she returned a phone call to the Parent concerning two issues. The Parent expressed concern that the Student's grades had dropped and wanted the Student to receive additional time to work with a special education teacher. Ms. Granville explained to the Parent that an IEP change needs to occur to increase her time. It was decided to monitor the Student for two weeks and call for a meeting if her grades did not improve. The Parent also requested a new Woodcock Johnson test. The Parent believed that retesting would demonstrate the need for additional special education time. They agreed to monitor the Student's progress. Ms. Granville reported that the Student was having her planner signed according to the plan.
23. Beginning February 1, 2007, a monitoring log was kept to record special education contact hours with the Student. Records indicate that for an eight week period the Student was seen an average of 75 minutes per week, which exceeded the 10 minutes per week in her IEP.
24. On March 14, 2007, a Title I Progress Report stated that "it would help her immensely if she would memorize her multiplication facts." The Parent responded, in writing, "What have your attempts been to help her achieve this goal?"
25. On March 24, 2007, the Parent notified the District in writing that she did not want Dawn Granville, Special Education Teacher, to have any contact with the Student. She did not cite a reason in the letter.
26. A PET meeting was scheduled for March 29, 2007, by the District to review the Student's program and write a new IEP. The meeting was cancelled by the Parent. The Parent contacted Ms. Weston, Special Education Director, and informed her that it was

cancelled on the advice of Josh Rhodes, Case Manager, WINGS. Ms. Weston encouraged her to reschedule the meeting.

27. In April 2007, the Parent filed a request with the Disability Rights Center to investigate "incidences [sic] of possible harassment against the Student at Eastport Elementary School" and to advocate for her "personal safety." According to an April 19, 2007 letter to Karen Farber of the Disability Rights Center, the Parent's concerns included:

- An alleged incident on 11/19/06 when the Student was cornered in a girl's locker room by two girls. Reported to Trudy Newcomb, teacher.
- An alleged incident on 11/26/06 when someone spit on the Student. Reported to Athletic Director.
- Ongoing alleged verbal abuse toward the Student by members of the girls' basketball team. Reported to Athletic Director.
- Alleged failure of the school to supervise the girl's locker room where abuse was taking place.
- Failure to receive adequate and appropriate services from the special services department.

28. On May 4, 2007, the Student received a progress report that indicated that she was failing Reading, Math and Science. She had a D average in Social Studies and a C average in Spelling and English. In the comment section of the report it was noted that the Student was not handing in work or redoing assignments for a higher grade. Comments also addressed the Student's frequent refusal of assistance. Her teacher was hopeful that following a discussion with the Student, she would begin to complete her work and improve her grades.

29. On May 6, 2007, the Parent authored her own "Individual Education Plan" for the Student. In this plan, she cited herself as a case manager for the Student in addition to WINGS, and stated:

Disability Determination - Emotional Disability

Student Strengths - The Student is a resilient girl who is not afraid to ask for help. She is aware of her disability and knows what to do about it. She wants to be successful. She also likes to be helpful.

Parent/Student Concerns - The Parent wants the Student to be happy and not be concerned about her family of origin. She wants to see her smiling and proud of her report card.

Special Education and Related Services - Tutorial at home provided by DRC, WINGS and family (5 days per week, 3 hours per day). Beginning May 14, 2007.

Goal - The Student will achieve grade level 8.1. She will interact with her peers in an age appropriate manner by participating in after school sports.

A copy of the Plan was sent to Nancy Decater, former Swan's Island therapist, members of the Eastport School Board, and WINGS.

30. On May 7, 2007, the Parent called Janice Stanhope, District Special Education Administrative Assistant, and requested the May 6th IEP, written by her, the Parent, be typed and signed by Arthur Wittine, Superintendent, and placed in the Student's file. Ms. Stanhope informed the Parent that this required permission from Mr. Wittine, who was

out of the office. In a later conversation, Mr. Wittine informed Ms. Stanhope that this action could not be taken.

31. On May 8, 2007, notice of a PET meeting scheduled for May 22, 2007, was sent by the District to the Parent and other members of the PET. It stated that the purpose of the meeting, which was requested by the Disability Rights Center, was to review the Student's program and write a new plan, if needed. The Parent, in a May 18, 2007 letter to the District, requested that Dawn Granville, Special Education Teacher, not be present at the PET meeting because "her services have been terminated in regards to contact with the Student and are not needed." The Parent also requested in a May 21, 2007 letter that the Student's Title I Teacher, Ms. Richardson, be present at the PET meeting.
32. On May 15, 2007, Karen Farber, an advocate for the Disability Rights Center (DRC), sent a letter to the superintendent on behalf of the parent, requesting that the District conduct an investigation into several incidents of possible harassment of the Student at school, within 21 business days of receiving the DRC's complaint. An investigation was initiated by the principal, Ms. Wormell, as required under the school committee's Student Discrimination and Harassment Complaint Procedure (ACAA-R).
33. In a letter written May 21, 2007, Janet Weston, Special Education Director, responded to the Parent's requests. Ms. Weston replied that Judy Richardson, Title I Educational Technician, would attend the PET on May 22, 2007. Ms. Weston also stated that Dawn Granville, Special Education Teacher, would attend the PET meeting because "she is the special education teacher of record. She has special education certification which no one else in the building has. We are also required by regulation to have a special education teacher at the meeting."
34. The Parent contacted Arthur Keenan, of the Certification Office in the Maine State Department of Education. In a letter to Mr. Keenan on May 16, 2007, the Parent wrote:

"My position is that Dana Bowen (athletic director at the Eastport Elementary School) is guilty of child endangerment and failure to protect. Mrs. Weston's mishandling of the Student's School Union 98's IEP and her failure to provide appropriate special education services to the Student rises to a level of maleficence [sic]."
35. In a letter dated May 18, 2007, written by the Parent to the faculty of Eastport Elementary School, the Parent raised her concern that the faculty "has made a second attempt to extract information from the Student regarding adult documentation. The first attempt was on 3/21/07 and you did it again today." The Parent continued, "(The Student) does not want to discuss this with any of you and has stated so. She has also instructed you to call me. She has also had to leave your area to avoid questioning and was fearful that she would receive a detention for doing so. I advise you to direct all of your questions to me and leave the Student alone." Copies of the letter were sent to the DRC, DOE, WINGS and the Chair of the School Board.
36. Prior to the PET meeting, on May 21, 2007, the Parent wrote a letter to the Eastport Special Education Department that requested a "specific list of tutors who are qualified

under IDEA to provide the Student with a reasonably calculated program thus ensuring her advancement back into the general curriculum on an xx grade level." The Parent added that "extending the Student's school year and providing the Student compensatory education would be the remedy to meet the Student's needs and satisfy the requirements of the law." Janice Stanhope, Special Services Administrative Assistant, responded by informing the Parent to "hold your request until after the Individual Education Plan team meeting on Tuesday, May 22nd, at 1:00pm when your request will be addressed by the team."

37. On May 21, 2007, the Parent wrote a letter to the District that stated that the Student "would be allowed to participate in after school activities. She will be unable to attend school until her safety can be assured, in writing, to her, to my-self and to others by Mr. Wittine." According to attendance records, the Student stopped attending school on May 21, 2007.

38. A PET meeting was held on May 22, 2007. According to the meeting's minutes, the purpose was to address the Parent's concern regarding the Student's present educational programming. The Parent discussed her perception of the needs of the Student which included:

- The Student will feel academically successful and will feel positive about her academic achievement.
- The Student will have a free and appropriate public education (FAPE).
- The Student will be educated in an environment that is conducive to FAPE.
- The Student will receive content area assistance with schoolwork
- The Student will receive assistance in developing her organization skills and ability to manage her time productively.
- The Student will learn in a safe, nurturing environment
- School staff will function as a resource to meeting community needs.

Results of Key Math, a diagnostic inventory of essential math skills administered to the Student on May 14, 2007 were discussed. The Student scored in the 82nd percentile in Basic Concepts, the 34th Percentile in Operations and the 53rd percentile in Application. The Parent stated that "in order to meet some of the Student's needs, she needed home tutoring for three hours per day for five days a week during the summer, beginning June 4, 2007." The parent said that she had scheduled a neuropsychological evaluation for the Student in August to identify some of the Student's needs. Ms. Weston said that they "would have difficulty offering tutoring at home, beginning June 4, because school is still in session and is defined as the least restrictive environment." When asked how the Parent picked that date, the Parent stated "that would be the day they would be back from their Florida trip." There was discussion about the impact on the Student if she did not return to school this year. The parent said that the Student's former therapist thought that it "will be emotionally upsetting for the Student to return to school." According to the minutes, Emily Ginsberg, LCSW, WINGS, stated that the Student not returning to school this year "will reaffirm her feeling of being different and she will think something is wrong with herself." The parent indicated that the Student "does not think there is anything wrong with herself." She said that the

Student thinks that the other students have problems" and that "she is going to try to move to another school district for the Student's xx grade year."

39. At the May 22, 2007 PET meeting the team agreed that the Student would receive tutoring for three hours a day, five days per week. The minutes indicated that one-on-one instruction, combined with the neuropsychological evaluation, might help resolve the issue of what the Student was capable of doing and what she was choosing to do or not to do. Mrs. Weston stated that the only issue was when the tutoring would begin "because school is the least restrictive environment." She said that if the Parent could "provide a letter from the Student's former therapist stating that the Student would be emotionally upset by returning to school, the Student could begin home tutoring on June 4, 2007. According to the minutes, Mrs. Weston stated that she needed some documentation in order to place the Student in a more restrictive environment. The parent said that she would "not ask the Student's former therapist for a letter because the former therapist is busy with her own life." Consensus was reached on the following issues:

1. The Student's individual education plan was reviewed and will be implemented
2. The Student will begin extended school year services. The date which these services will commence is to be decided.
3. The Student will have three hours per day, five days a week of tutoring when ESY services begin.

40. Prior Written Notice was sent to the Parent on May 31, 2007. It stated:

- The Student will have Extended School Year Services. These services will consist of three hours per day, five days a week of home tutoring. The dates on which tutoring will commence and end have not yet been agreed upon.
- The Student has not been academically successful in all content areas during the present school year. The Student's parent does not think that Eastport Elementary staff has provided sufficient remedial and one-on-one assistance for the Student to be successful.
- The options agreed upon were determined to provide a reasonable assurance that the Student would increase her academic proficiency in school.
- The Parent thinks that the school is not a safe learning environment for the Student.

41. Following the May 22, 2007 PET meeting, the Parent wrote a letter to Ms. Weston, Special Education Director, which stated, "There was consensus reached by the entire PET team including you. The consensus was that (the Student) would be provided an ESY with tutorial services 3 hrs per day, 5 days a week in all her subject areas, for 35 days. Your demand for a letter from the Student's retired former therapist, whom she has not seen in over a year, was unreasonable and not required under statute. Your failure to provide a FAPE and appropriate services for the Student has been and remains illegal." In this letter, the Parent also requested "to take your demand off the table and type up the IEP exactly the way that was consented to, immediately."

42. In an interview with the complaint investigator, the Parent said that when the Student attended school on Swan's Island things went well. The IEP provided 45 minutes per week of special education services. This was usually exceeded. The Parent reported that when the Student moved to Eastport Elementary School, the PET determined that the Swan's Island IEP was to be followed until a new IEP was written. The Parent reported

that the District failed to follow the original IEP and did not provide the same amount of services and support stipulated in the IEP.

The Parent said that the Student was penalized because the Student was doing well on Swan's Island. The Student's performance started to decline with the reduced services and support in Eastport.

The Parent said the Student was penalized because the Student was doing well on Swan's Island. The Student's performance started to decline with the reduced services and support in Eastport. The Parent said that after the Student's new IEP was written, 10 minutes of monitoring per week were provided for special education services, which was inadequate. Eastport Elementary School did not have a counselor or program to deal with her social/emotional issues. The Parent said that she removed the Student from the Horse Assisted Therapy Program because the Student, who had been in other similar programs, said that it was unsafe and it made her nervous. The Parent observed the program, agreed with the Student, and removed her. She planned to enroll the Student in an alternative riding program.

The Parent commented that the school was not dealing with the Student's academic and social problems and placed fault with the Student. She said that the Student had been harassed repeatedly. The Parent said because the school is unsafe for the Student, she would not send her to school until there is a safety plan in place. She said the School Board Chair stated that a safety plan would be in place in 21 days.

The Parent said that, at the May 22nd PET, there was consensus on a home tutoring program for the Student. The Parent wanted the home tutoring program to begin on June 4th. At the end of the PET meeting, Ms. Weston said that school was the least restrictive environment and unless she had a letter from the Student's former therapist stating that she needed to be educated at home, the Student needed to finish the school year at school and could be tutored there. The Parent said that the school was not safe and the school must provide tutoring at home. She filed a complaint with the Due Process Office after the May 22nd meeting.

43. In an interview with the complaint investigator, Dawn Granville, Special Education Teacher, stated that she is the only special education teacher in the school. She started working with the Student in October 2006, when she first came to Eastport Elementary School. Ms. Granville stated that she monitored the Student for 10 minutes per week as specified in the IEP. She checked in with the teacher and sometimes the Student. She said that the Student had an assignment book that needed to be signed by the Parent and the teacher. There were accommodations in the IEP but no behavior plan. She said that the Parent wrote a letter to the District in March 2006 stating that she, the Parent, did not want Ms. Granville to have any contact with the Student. Ms. Granville was not certain of the Parent's rationale, but thought it was based on the Parent's belief that Ms. Granville was taking secret notes on the Student. From her perspective, Ms. Granville believed she had a positive relationship with the Student. Ms. Granville reported that the Student spoke to her about being harassed in gym and other places in school, but well after the

occurrences. Ms. Granville advised the Student to immediately report any harassment to the adult in charge. Ms. Granville believed that the Student's grades declined after the Parent requested the monitoring to stop and refused services. She felt that school is a safe place for the Student.

44. In an interview with the complaint investigator, Judy Richardson, Title I Educational Technician, said that she saw the Student in Math for 30 minutes each day. She said that the Student did well in some aspects of math but regressed in basic operations, such as multiplication facts. She said the Student did not like to be told what to do and had some social problems in her class. She said that the Student did not have a good sense of other student's reactions and did not know when to change her behavior. At times, intervention was needed between students but she managed and kept students on task. Ms. Richardson reported that everyone was in agreement regarding tutoring at the May 22nd meeting. When the Director requested verification from the Student's former therapist regarding home tutoring, the Parent became angry. Ms. Richardson believed the Parent agreed that the Student's academic and social skills needed improvement.
45. In an interview with the complaint investigator, Trudy Newcomb, the Student's Teacher and Assistant Principal, said that the Student struggled with organization but earned average grades when she completed her work. The Student had a planner that went between the parent and school to ensure coordination. She said that the Student had little involvement with special education, with no direct service. She said the Student is good with computers. Her best friends in the class recently left to be home-schooled. Ms. Newcomb said the Student is socially challenged and does not pick up social cues easily. She said that when she heard of a harassment issue, it was usually long after it happened and was difficult to follow up. Ms. Newcomb has 26 students in her larger class in the afternoon and it caused the Student anxiety at times. She said there are no social workers/counselors or social skills support program at the school. The Student had no formal behavior plan. She felt that in many ways the Student's behaviors were typical xxx grade behaviors. Ms. Newcomb believes the school to be a safe place for the Student. Ms. Newcomb said that at the May 22nd PET meeting, the Director of Special Education needed verification from the Student's therapist to permit tutoring at home. Other than that issue, the PET was in agreement.
46. In an interview with the complaint investigator, Ann Gosselin, Case Manager at WINGS, said that although she had worked with the Student for a short time, the Student had been involved with WINGS for a number of years. She said that the Parent felt there were safety issues with the Student at school and did not want to send her back until the school could ensure her safety. She attended the May 22nd PET and said that there was agreement on the tutoring and the Student's program except for the location of the tutoring. She said that during the meeting, the Parent said that the Student's former therapist said that it would be advantageous for the Student to be tutored at home. The Director asked the Parent to get a letter of verification from the therapist stating this. Ms. Gosselin said that the Parent said that she did not know if she could get a letter. The meeting ended without a decision on the location of the tutoring. She thought that the

Parent tried to contact the therapist but did not get a letter. She felt that if the tutoring location could have been resolved, the complaint could have been settled.

47. In an interview with the complaint investigator, Tina Wormell, Principal, said that the Parent brought several harassment issues to the school's attention. Ms. Wormell said that the Parent did not provide sufficient information in a timely manner to allow for a thorough investigation of these issues. She said that the affirmative action officer was involved along with the Student's coach. The parent removed the Student from school but still wanted her to be involved in sports. Ms. Wormell did not perceive a safety issue for the Student. She did not know why the Parent did not want the special education teacher to work with the Student. Ms. Wormell said that the Student is a typical xxx grader in many ways. She was disorganized and had missing assignments. The Student did not have many friends. She was a good athlete. She said that the Parent did not want the Student to stay after school for extra help when it was offered. Ms. Wormell said that the Parent felt that the school was not following the Student's IEP. She said that the Parent wanted the Student to start tutoring at home on June 4th, but the Director of Special Education needed verification that home was the least restrictive environment.
48. On June 6, 2007, Principal Wormell submitted a report of her investigation to the DRC. The report indicated that she was limited in the scope of the investigation she was able to conduct because the Parent prohibited her from speaking directly with the Student. The report addressed each of the alleged incidents noted in the DRC's letter and found that in each case, school personnel had responded in a timely manner once they were made aware of a problem. Ms. Wormell noted,

“It is clear to me that (the Student) has been subjected to some unkind behavior from some classmates during the school year, but this behavior is better characterized as bullying rather than illegal harassment based on her disability. Of course, bullying behavior is also unacceptable in our schools. I believe that each incident was addressed appropriately at the time it occurred and there have been no reports of further incidents since February [2007].”

Ms. Wormell indicated in her report that she would be willing to re-open the investigation and revise her findings, if warranted, in the event that the Parent agreed to allow the Student to be interviewed before the end of the school year; otherwise, the investigation of the DRC's complaint would be considered closed. On the basis of her findings, Ms. Wormell indicated that she believed it was in the Student's best interest to return to school.