

**Complaint Investigation Report**  
**Parents v. M.S.A.D. No. 38**  
October 19, 2007

Complaint # 08.016C  
Complaint Investigators: David Webb and Sheila Mayberry  
Date of Appointment: August 24, 2007

**I. Identifying Information**

Complainants: Parents  
Address  
City

Respondent: John Backus  
Superintendent  
44 Plymouth Road  
Carmel, ME 04419

Special Education Director: Lesley Snyder

Student: Student  
DOB xx/xx/xxxx

**II. Summary of Complaint Investigation Activities**

On August 24, 2007, the Maine Department of Education received this complaint. The complaint investigators were appointed on August 24, 2007. The complaint investigators received 73 pages of documents from the respondents and 120 pages of documents from the parents. Interviews were conducted with the following people: Lesley Snyder, Director of Special Services, M.S.A.D. No. 38; Marsha Moore, Special Education Teacher, M.S.A.D. No. 38; Cheryl Rice, Educational Technician, M.S.A.D. No. 38; Elizabeth Field, CCC-SLP, Autism Consultant; Parent; Lorri Day, former Director of Special Services, M.S.A.D. No. 38; Janice Sabine, In-Home Behavior Specialist, Charlotte White Center; and Jamie Willey, Case Manager, Charlotte White Center.

Mediation in this case was originally scheduled for September 10, 2007. At the District's request, the complaint investigators extended the documents due date to September 14, 2007 to allow the parties to explore resolution through the mediation process. Ultimately, the Parents withdrew their request for mediation on September 14, 2007, and requested that the complaint investigation move forward.

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### III. Preliminary Statement

The Student is xx years old and currently attends the Etna-Dixmont School (“District”). He receives special education services under the exceptionality of Autism. This complaint was filed by the Student’s parents (“Parent” or “Parents”) alleging that the District violated the Maine Special Education Regulations (“MSER”) in a number of ways set forth below.

### IV. Allegations

1. Failure to use the P.E.T. as the decision-making entity to determine the educational needs of the Student in violation MSER § 8.3<sup>1</sup>.
2. Failure to include the parents as equal decision-making participants in the P.E.T. process, in violation MSER § 8.11.
3. Failure to provide the Student with the Least Restrictive Educational Alternative, in violation of MSER §11.1, thereby resulting in the failure to provide a free and appropriate public education in violation of MSER § 1.3

### V. Summary of Findings

1. The Student is xx years old and lives in Etna, Maine with his Parents and his sister. The Student is enrolled at the Etna-Dixmont School as a xx grader, and receives special education services under the exceptionality of Autism. The Student has attended the Etna-Dixmont School since the year 2000, when he was transitioned from Child Development Services.
2. Pursuant to an IEP, developed on September 28, 2000, the Student was provided with 1:1 educational support from an Educational Technician and was to receive a full day of direct instructional services in academic, communication and behavioral support in the mainstream and in what was referred to as the “special classroom.” This IEP further provided that the Student would participate with non-disabled peers in the regular classroom for approximately 50% of the day, insofar as the Student’s “specific educational, behavioral and communication needs can only be met in a pull-out setting with strategies and materials specifically designed for his unique learning needs.” The IEP included detailed goals and objectives.
3. During the fall of 2000, the District created a semi-private, enclosed room for the Student where he was provided with 1:1 instructional support. This room was identified in subsequent IEPs as the “special room.” According to the Parent, the District created this room, which also became known as “[the Student’s] room” by converting a space that had been used as a storage closet.

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<sup>1</sup> Regulations in effect at the time of the alleged violation

4. An IEP developed on April 23, 2002, determined that the Student would receive 18 hours weekly of direct instruction in the “special room” and 12 hours weekly in the "reg. ed. room”, two hours weekly of Speech and Language services, 60 minutes weekly of Occupational Therapy services and a “one time monthly” Autism Consultation. Special considerations were noted as follows:

[The Student’s] autism creates behavioral problems that require a behavior plan to be in place; one-on-one assistance at all times. His condition interferes with his understanding of directions and content, remaining on tasks and coping with transitions in the general education program. [The Student’s] lack of social skills impacts his ability to work in structured settings and in small groups... [The Student] is easily frustrated if his daily schedule is changed.

The Recommended Method of Program Modifications included the use of “current behavior management plan in class and special room.”

5. The Student’s IEP dated November 12, 2002 determined that he would receive 18 hours weekly of Direct Instruction, designating the location as “SPED” and 12 hours weekly of “Ed Tech” services in the regular classroom. The IEP continued two hours weekly of Speech and Language services, 60 minutes weekly of Occupational Therapy services, and modified the Autism Consultation services to “1x quarterly.” The location designated for all such additional and supportive services was identified as “SPED”. The narrative documentation provided that:

...The Team feels [the Student] benefits from one on one direct instruction for pre teaching and academic concepts... he has difficulty understanding directions and content, remaining on task, and coping with transitions. He will participate in the regular education classroom for group activities, lunch, unified arts, recess and familiar activities. [The Student] participates with [sic] the regular education setting for 40% of his day.

The November 12, 2002 IEP stated that the Student’s communication needs included “visual cues and schedule boards to help with transitions and comprehension.”

6. No IEPs, PWNs or PET minutes were provided for the 2003-2004 school year. The Student's IEP, dated December 22, 2004, continued the amount and frequency of the Special Education and Supportive Services set forth in the November 12, 2002 IEP and continued to identify the Student's communication needs to include "visual cues and schedule boards to help with transitions and comprehension. The location of the Ed Tech services was changed from "regular" to "SPED". There is no explanation of this change in the IEP. The narrative documentation provided that:

[The Student] has difficulty in understanding directions, remaining on task and with transitions...due to these difficulties and accommodations needed he has difficulty participating in the general curriculum without individualized instruction on [sic] a one to one setting. He will participate in the regular third grade classroom for activities, unified arts, recess, familiar activities and independent work. He will participate in a guided reading group in a mainstream first grade classroom.

7. The Student's IEP, dated June 3, 2005, continued the levels of special education and supportive services set forth in the December 22, 2004 IEP, and added 120 hours of ESY direct instruction and 10 hours total of ESY Speech and Language services. The narrative portion of the IEP noted the Student's difficulty with transitions and confirmed the placement in a "one to one setting" for individualized instruction, with participation in the regular classroom for other activities. This IEP also stated that the Student's communication needs included "visual cues and schedule boards to help with transitions and comprehension."
8. In a report, dated October 8, 2005, Elizabeth Field, the Student's Autism Consultant, noted:

...do not expect long periods of time in the mainstream, which will be stressful and confusing to [the Student] because he works at a much earlier developmental level and requires considerable individual teaching to learn new skills. Having a semi-private classroom as a base of operations has been and continues to be an important factor in the progress [the Student] makes.

9. The Student's IEP, dated November 29, 2005, continued the levels of special education and supportive services as set forth in the June 3, 2005

IEP. The narrative portion of this IEP noted that the Student “has made good progress understanding directions, remaining on task and with transitions, he continues to require cueing to move from activity to activity throughout his day.” This IEP also identifies the need for visual cues and schedule boards to help with transitions.

10. In an interview with the complaint investigators, the Parent reported that in September, 2006, she began to observe significant behavior changes in the Student, including hitting, throwing and angry verbal outbursts at home. She also reported that the Student was suddenly having disrupted sleep patterns.
11. The Parent also reported that in early October 2006, she received a call from Cheryl Rice, the Student’s Ed Tech, who informed her that the Student’s direct instruction location had been moved from his private room to a partitioned section of the resource room. The Parent stated to the complaint investigators that she had not previously been informed of the decision to move the Student, and that the onset of the Student’s behavior outbursts at home began at the time that she was advised the move occurred. The Parent expressed concern that she was not previously notified, and that the District did not transition the Student more gradually into the new space. The Parent was told by the District that they needed the Student’s room for another student.
12. In an interview with the complaint investigators, Cheryl Rice, the Student’s Ed Tech, stated that she had been working with the Student for a total of approximately 10 years; first at CDS and then at his current placement at the Etna-Dixmont School. She said that the decision was made to change the Student’s room in September, 2006 from a private room to a partitioned section of the resource room. She said that partitions in the resource room had been set up in a way so that the Student could not see any windows, which can be a distraction for the Student. She said that the partitioned space in the resource room was the Student’s own space, with his own materials, set up in a manner similar to his previous space. While she noted that there were usually between six to eight other students in the resource room, who were “quite chatty” at times, the Student did not seem to be distracted and he was able to complete his school tasks in the same manner as before. She said that she noticed some “slight” changes in his behavior over the past year, but had not seen any behaviors that indicated that he was upset about his new space.
13. In an interview with the complaint investigators, Janice Sabine, the Student’s In-Home Behavior Specialist since 2000, stated that when she learned about the change in the classroom, it “explained a lot” about changes she had seen in the Student’s behavior beginning in mid-

September 2006. She said that she observed the Student crying and “pacing back and forth” for no apparent reason, hitting his sister, and having a “far away look”. She stated the Student would shout words and phrases that he apparently heard from other children and teachers at school, such as “sit down!” and “time to line up!” She said that she was able to redirect this behavior, and that the Student ultimately seemed to get back on track with his home behavior in January or February of 2007.

14. In an interview with the complaint investigators, the Parent reported that in early October 2006, she received notice from the District that Cheryl Rice’s time with the Student had been reduced in half, and that another Ed Tech had been hired to work with the Student for the other half of the day. She said that she had not been notified of this change prior to implementation.
15. In a letter dated November 1, 2006, the Parent wrote to the Special Education Director requesting the Student be “returned to the program, which includes placement and teacher, to be returned to the program agreed upon by [the Student’s] team for the last seven years.” The Parent added that “the Student’s best interest was not taken into consideration, especially with the importance of routine and consistency in the life of a child with autism.”
16. In a Prior Written Notice (PWN), dated November 1, 2006, the District notified the Parent that it had rejected the Parent’s request to return the Student to “the individual self-contained classroom setting which had been his placement for the past 7 years.” Instead, the PWN proposed “new goals and objectives...to reflect progress on the IEP”, based on the Student’s “progress on daily work and IEP objectives, achievement testing, OT, PT, Speech and classroom observations.”
17. In an interview with the complaint investigators, Lesley Snyer, the District’s Director of Special Services, stated that an administrative decision was made in September 2006 to move the Student from his private room to a partitioned area of the resource room. She said that the Student was familiar with the resource room, and that a private area was created for him with his familiar school materials. She said that the reason for the move was that the private room was needed for another function. With regard to the staffing issue, she said that she wanted to afford the Student the opportunity to work with other teachers, while still leaving Cheryl Rice as the lead Educational Technician for the Student. Ms. Snyer acknowledged that the District should have notified the Parents about these changes. Ms. Snyer said that she accepts responsibility for the communication error, and has apologized to the Parents. Ms. Snyer emphasized that, despite the change in location and

teaching staff, there was no loss of services to the Student, who has continued to make academic gains. With regard to the behavioral issues, she noted that the Student has had more outbursts at school, and she was aware that the Student had scratched himself on one occasion. She said that she believed these incidents were unrelated to changes at school, insofar as she has seen, on the whole, and that the Student has shown continued success with respect to the academic and social aspects of his program.

18. In an interview with the complaint investigators, Marsha Moore, the Student's Special Education Teacher, said that she had been working with the Student for two years. She stated that before the move in September of 2006, the room the Student occupied was sometimes used by the Student and his educational technician exclusively, and that "most afternoons" another student and an educational technician shared the space. She said that there was no specific "behavioral" reason that the Student needed to be in that particular space; rather, he was in that space "because he had simply always been there." She indicated that, since the Student had been moved to the new space, he has not been "disrupted or over stimulated", and he has made a "fine transition". She said that recently his Personalized Alternate Assessment Portfolio (PAAP) test results came back showing that he had done quite well. She stated that he met the standards for reading, and almost met them for math and science. She said that by the end of last year, the Student had moved up two levels in his reading program, which also was a good indicator that the current program was working for the Student. Ms. Moore attributed his difficult behaviors to more typical behaviors seen in boys his age, including hormonal changes.
19. In an interview with the complaint investigators, Lorri Day, the former Director of Special Education at the Etna-Dixmont School, stated that, although autistic students have difficulty with transitions, it is encouraged that students be exposed to more than just one educational technician. She also said that the Student didn't necessarily "need" a private classroom; rather this location was used insofar as it was available. She indicated that the partitioned space within the resource room, where the Student could more freely interact with other students, was equally, if not more, appropriate for this Student.
20. A PET meeting was held on November 20, 2006 to "hold an annual program review and re-evaluation IEP meeting for the Student." The minutes of the meeting noted:

Parent expressed her disappointment that changes were made regarding the location of the Student's program in the building and the time Mrs. Rice was

with the Student each day. She stated that she felt that the Student had made great progress in the last year...and she didn't want anything to interfere with his progress. She also indicated that the Student was not the same at home since the end of September and that he was not sleeping well.

The November 20, 2006 PET minutes (corrected version dated February 2007) also reflected the following:

1. A comment by Lesley Snyder, Director of Special Education, that the Student's program had remained the same, even though his location and personnel had changed.
2. A comment by Cheryl Rice that the Student was "thriving" in school, and that even though the "change was abrupt," it would "not be in the Student's best interest to go back to the previous setting and staffing."
3. A comment by Special Education Teacher Marsha Moore, who said that the Student had demonstrated "increasingly tense behaviors which indicated agitation and stress" during a recent observation in the regular classroom setting. She recommended that the Student's time in the regular classroom be limited to 20-30 minute intervals.

21. The Student's IEP, developed on November 20, 2006, (amended on January 26, 2007), determined that he would receive the following Special Education and Supportive Services<sup>2</sup>:

- a) 18 hours weekly of Direct Instruction,
- b) two hours weekly of Speech and language services,
- c) 60 minutes weekly of Occupational Therapy services,
- d) 30 minutes per week of Physical Therapy, and
- e) 15 hours annually of Autism Consultation services.

The "narrative documentation" within the November 20, 2006 IEP stated:

Stimulus in the regular classroom is a source of agitation for [the Student] and he is not able to maintain calm, tick [sic]-free behavior in a room with several other children moving and talking for more than 20 to 30 minutes at a time. [The Student] finds it hard to focus in the regular education

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<sup>2</sup> None of the programming identified in the November 20, 2006 IEP included time in the regular classroom, and the "Ed Tech" services were included within the 18 hours a week of Direct Instruction. (The previous IEP had listed 12 hours a week of "Ed Tech" services in the "SPED" classroom.) The subsequent IEP, dated February 5, 2007, included the 12 hours per week of "Ed. tech support in regular ed. and SPED" as a separate category under the heading "Supportive Services".



setting, especially in a room with windows. These challenges impact [the Student's] ability to access the general curriculum and his ability to spend time in the regular classroom setting.

22. The Student's IEP, developed on February 5, 2007, continued the levels of special education and supportive services set forth in the November 20, 2006 IEP, including 12 hours per week of Ed. Tech support in regular ed. and "SPED" classroom. This IEP also added ESY services as follows: "120 hours over 7 weeks of direct instruction by a Special Ed. teacher, and 6 hours over 6 weeks of Speech Therapy."
23. In a report, dated October May 11, 2007, Elizabeth Field, the Student's Autism Consultant, noted:

During the school year, [the Student's] program has changed somewhat, but continues to be very individualized and appropriate. He now has a walled-off section of the resource room as his "office" instead of a private room, and works with a different educational technician in the afternoons. His program is still carefully orchestrated by Cheryl Rice who works with him in the mornings, and Marsha Moore, resource room teacher. This provides [the Student] with more exposure to other students and adults while maintaining his predictable and functional routines...He is eager to come to school and seems comfortable there most of the time. There have been some cycles of agitation, with... some aggressive gestures. Although these are not new, and are manageable, they have resulted in less time in mainstream classrooms.

24. In an interview with the complaint investigators, Elizabeth Field, the Student's Autism Consultant, stated that she has worked with the Student since xx. She said that, although the school should have communicated better with the Parent, she noted that he still has a very individualized program, and that the District has maintained the same schedule and routine for the Student. From her observations, she believed that the Student appeared to be adjusting quite well to his new space in the resource room. She noted that, if the Student had problems with a move of this nature, the Student would have demonstrated this through a lack of participation in his program, or resistance to school or to the new room (e.g. running back to the old room). She said she's seen none of this behavior from the Student. She added that the Student has

not acted more stressed at school, nor has he had problems focusing on his work. Further, in light of his success in the new space, she noted that it would likely be detrimental for the Student to return to the private room. She also noted that the previous semi-private space was less appropriate, insofar that it afforded fewer opportunities for interacting with other students and adapting to a more mainstream learning environment. With regard to the Student's problematic behaviors, Ms. Field stated that it was "hard to say" if the changes at school were the cause. She said that the change in teachers, rather than the change in physical location, would more likely cause any of the behavior changes in the Student. She said that some of the behavior changes could be hormonal, relating to puberty, or some other changes in the family context.<sup>3</sup>

## VI. Conclusions

**Allegation # 1** Failure to use the PET as the decision making entity to determine the educational needs of the Student in violation MSER § 8.3<sup>4</sup>. **Allegation # 2** Failure to include the parents as equal decision making participants in the P.E.T. process in violation MSER § 8.11. **PROCEDURAL VIOLATIONS FOUND**

MSER § 8.3 addresses a school district's obligation to properly conduct a PET and provides, in relevant part as follows:

The major responsibilities of a Pupil Evaluation Team are:

B. To determine the present levels of performance and educational needs of the Student in all affected academic and non-academic areas.

D. To develop or revise an Individualized Education Program (I.E.P.) to provide each identified Student with a disability a free appropriate public education...

F. To determine the least restrictive educational alternative in which to implement the student's I.E.P.

In Parent v. Augusta School Department 102 LRP 9493 (August 14, 2001), the matter of PET responsibility was addressed as follows:

The Pupil Evaluation Team, which includes the parent as an integral part, is responsible for ... the development of an individualized Education Program appropriate for the Student ... It is the responsibility of the PET to make determinations, based on

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<sup>3</sup> Ms. Field said that while sometimes autistic children will delay their reaction to anxieties, most of the time behavior is connected to the place in which they are at the time of the behavior, e.g. if the behavior outbursts happen at home, more likely it is a reaction to something happening at home, not at school.

<sup>4</sup> Regulations in effect at the time of the alleged violation

objective data and discussion, of the needs of Students, with parent participation.

In the present case, there is no indication in any of the records that the Student's private space needed to be of a certain type or location, or that the space needed to be the Student's exclusive space.<sup>5</sup> The Student's educational plan simply called for the use of a "special room" and "semi-private" space for direct, one-on-one instruction.<sup>6</sup> Although the District moved the Student from his semi-private room to a partitioned area of the resource room, the District maintained the frequency and level of services provided to this student as called for in his IEP<sup>7</sup>.

Despite the consistency with programming, however, the District procedurally violated MSER § 8.3 and §8.11 by failing to involve the Pupil Evaluation Team in the *transition* of this Student to his new space. MSER § 8.3 provides that the Pupil Evaluation Team is responsible to determine the present levels of performance and educational needs of the Student in all affected academic and non-academic areas. In addition, MSER § 8.11 specifically established the PET meeting as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding:

- A. the student's needs and appropriate goals;
- B. the extent to which the student will be involved in the general curriculum and participate in the regular education environment and state and district wide assessments; and
- C. the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the Pupil Evaluation Team must consider the parents'

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<sup>5</sup> Lorri Day, the former Director of Special Education at the Etna-Dixmont School said that the Student didn't necessarily "need" a private classroom; rather she indicated that the partitioned space within the resource room, where the Student could more freely interact with other students, was equally, if not more, appropriate for this Student.

<sup>6</sup>The IEP developed on September 28, 2000 determined that the Student's "specific educational, behavioral and communication needs can only be met in a pull-out setting with strategies and materials specifically designed for his unique learning needs"; The IEP developed on April 23, 2002 determined that the Student would receive 18 hours weekly of Direct Instruction in the "special room"; Autism Consultant Elizabeth Field notes in her October 8, 2005 report: "Having a semi-private classroom as a base of operations has been and continues to be an important factor in the progress [the Student] makes."

<sup>7</sup> Student's IEP, dated November 29, 2005 and November 20, 2006, determined that he would receive 18 hours weekly of Direct Instruction, 12 hours weekly of "Ed Tech" services, two hours weekly of Speech and language services, 60 minutes weekly of Occupational Therapy services, and 15 hours annually of Autism Consultation services. The November 20, 2006 IEP, however, added 30 minutes per week of Physical Therapy.

concerns and the information that they provide regarding their child in determining eligibility, developing, reviewing and revising I.E.P.s and determining placement.

The Supreme Court has stated that the first question to be addressed when considering the appropriateness of a student's IEP is whether the school has "complied with the procedures set forth in the Act," *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 206 (1982), including the requirement of parental involvement in the P.E.T. process. 20 U.S.C. 1414(d)(1)(B)(i), §1414(3)(A)(1), 34 C.F.R. §300.345. (emphasis added). In *M.S.A.D. No. 15*, 03 LRP 36774 (Maine SEA 2003), the hearing officer noted that parents must be treated as "equal participants" in making joint, informed decisions regarding the student's needs, goals, participation in the general curriculum, participation in regular education and various assessments and the services needed to support that involvement and participation and progress towards the agreed-upon goals.

As pointed out in the District's September 13, 2007 memorandum, MSER § 10.4 requires a District to convene a PET meeting and provide notice to parents in the event a student's IEP may be terminated or significantly altered. The specific language of MSER § 8.3 and § 8.11, however, addresses the PET process concerning the issue of the student's needs, separate from proposed changes in the services or programming the Student receives.<sup>8</sup> (emphasis added). In this case, the District knew this Student was especially sensitive to transitions,<sup>9</sup> and the Student's programming has consistently addressed transition planning and accommodations within his IEPs. Where a particular student, like the Student in the present case, has a foreseeable and identifiable need in order to access his IEP, the District has an obligation to convene a PET pursuant to MSER § 8.3 and §8.11. In fact, it appears that the lack of transition planning may have contributed to some of this Student's behavior changes beginning in September, 2006.<sup>10</sup>

In *San Dieguito Union High School District 41 IDELR 112, 104 LRP 8799* (California State Educational Agency, January 13, 2004), the Hearing Officer found that, although the IEP was appropriate, there was no transition plan in place to ease the student

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<sup>8</sup> MSER § 8.3 provides that the Pupil Evaluation Team is responsible for determining *educational needs of the Student in all affected academic and non-academic areas* (emphasis added).

<sup>9</sup> The IEP developed on April 23, 2002 noted the Student's difficulty "coping with transitions in the general education program... [and The Student] is easily frustrated if his daily schedule is changed." In addition, the IEPs developed on November 12, 2002, December 22, 2004 and June 3, 2005 each documented that the Student "has difficulty understanding directions and content, remaining on task, and coping with transitions."

<sup>10</sup> The Parents and the Student's In-Home Behavior Specialist reported significant behavior changes beginning in September, 2006, including disrupted sleep patterns, hitting, throwing, self-injurious behavior, scratching and angry verbal outbursts. The "narrative documentation" within the November 20, 2006 IEP stated that "Stimulus in the regular classroom is a source of agitation for [the Student] and he is not able to maintain calm, tick-free [sic] behavior in a room with several other children moving and talking for more than 20 to 30 minutes at a time." Lesley Snyder, the District's Director of Special Services, noted that the Student has had more outbursts at school, and was aware that the Student had scratched himself on one occasion.

into his new placement. The hearing officer ordered the district to convene the IEP team to develop a transition plan because of a student's long-term placement in home-hospital instruction, and his anticipated difficulty transitioning into the school setting without a specific plan in place. The Hearing Officer specifically noted that:

an appropriate transition plan would include, but is not limited to, the IEP team's consideration of the student's previous school history; his difficulties with conduct, socialization, attention, depression, and aggression; his current assessment results; the need to observe the student in the classroom and make recommendations for a behavior plan, if necessary; and his need to be introduced into a new learning environment after being in home instruction for three years. *Id.*

As in the *San Dieguito Union High School District* case, the present case underscores the importance of communication between schools and parents *before* such changes are implemented, especially for this Student who is sensitive to changes in daily routines and has difficulty adjusting to transitions.

**Allegation # 3** Failure to provide the Student with the Least Restrictive Educational Alternative in violation of MSER §11.1, thereby resulting in the failure to provide a free and appropriate public education in violation of MSER § 1.3. **NO VIOLATION**

The First Circuit Court of Appeals has declared that determinations about least restrictive programming are unavoidably part of the determination of an "appropriate" program for a student. See *Lenn v. Portland School Committee*, 998 F. 2d 1083, 1090 n.7 (1<sup>st</sup> Cir. 1993) (questions about least restrictive programming are "an integral aspect of an IEP package (and) cannot be ignored when judging the program's overall adequacy and appropriateness.").

The Least Restrictive Environment (LRE) requirement reflects the IDEA's preference that "[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled." See 20 U.S.C. §1412(a)(5); *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 330 (4th Cir. 2004). MSER §11.1 addresses the issue of LRE and provides as follows:

To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, shall be educated with students who are not disabled, and special classes, separate schooling, or other removal of students with disabilities from the regular educational environment shall occur only when the nature or severity of the disability of a student is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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The court in *Bd. Of Educ. Of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206-07 (1982) 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 here is whether the change in placement to the resource room was in substantive compliance with the Student's needs.

It appears that, despite the District's failure to convene a P.E.T. prior to the change in location, the Student continued to receive educational benefit in the least restrictive educational alternative after he was placed in the resource room. As noted, the change in physical location of the Student's room was done in a manner that allowed the Student to more freely interact with other students. Other staff working with the Student reported that despite elevations in disruptive behaviors, the Student has adjusted well to his new space in the resource room. Elizabeth Field, the Student's Autism Consultant, noted that the new space "provides [the Student] with more exposure to other students and adults while maintaining his predictable and functional routines...He is eager to come to school and seems comfortable there most of the time." For the behaviors that are occurring at school, the District has taken steps through the PET process to modify the Student's IEP in connection with the time the Student spends in the regular classroom.

There would be a different outcome in the case if the Student were not benefiting from the exposure to other students in the new settings and continued to have behavioral problems in school because of the setting. Since he appears to have adjusted to his new placement, however, it is apparent that, not only has the Student's educational progress been unaffected, he has been successfully exposed to more of his peers. In this regard, the District has appropriately placed the Student in a less restrictive environment appropriate for his needs.

Under these circumstances, there has been no deprivation of FAPE since the Student has continued to receive appropriate educational benefits that addressed his unique needs. *Rowley*, 458 U.S. at 206-07 (1982).

## **VII. Corrective Action Plan**

1. The District shall issue a memorandum to all pertinent administration and staff regarding the District's obligation under MUSER §§ XVI.2.J and XVI.2.I (formerly MSER §8.3 and § 8.11) to:
  - (a) convene an IEP meeting when any change of program or transition is being contemplated for a student, and

(b) include the parents in all discussions pertain to any aspect of a student's transition, in advance of the transition.

Copies of the memorandum shall be submitted to the Due Process Office, the Parents and the Complaint Investigators.

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