

Complaint Investigation Report
Parent v. M.S.A.D. # 61
February 7, 2008

Complaint # 08.047C
Complaint Investigator: David C. Webb
Date of Appointment: November 13, 2007

I. Identifying Information

Complainant: Mother

Respondent: Frank Gorham, Superintendent
SAD # 61
900 Portland Road
Bridgton, Maine 04009

Lisa Hanson, Special Education Director
SAD # 61
877 Poland Spring Road
Casco, Maine 04015

Student: Student
DOB xx/xx/xxxx

II. Summary of Complaint Investigation Activities

On November 9, 2007, the Maine Department of Education received this complaint. The complaint investigator was appointed on November 8, 2007. The complaint investigator received 40 pages of documents from the respondents and 41 pages of documents from the parents. Interviews were conducted with the following people: the Student's Parents; Lisa Hanson, Director of Special Services, M.S.A.D. #61; Peter Mortenson, Principal, Lake Region Middle School (M.S.A.D. #61); Lisa Shane, Special Education Coordinator, M.S.A.D. #61; Marge Bachelder, the Student's Special Education Teacher, (Lake Region Middle School); Kathleen Traggert, Science Teacher, (Lake Region Middle School); Robin Kimball, Educational Technician, M.S.A.D. #61; Jeannine Roy, Teacher, Stevens Brook Elementary School (M.S.A.D. #61); Sue Hunt, Director of Special Services, Richmond School District; Susanne Meuse, former Special Education Teacher, M.S.A.D. #61 (Stevens Brook Elementary School); and Linda Bennett, LCPC, Clinical Counselor, M.S.A.D. #61.

Mediation in this case was originally scheduled for November 29, 2007, and then continued to December 3, 2007. The mediation was cancelled due to a winter storm. At

the District's request, the complaint investigator extended the document due date to December 10, 2007. The parties were unable to reschedule the mediation within the statutory time frames and the child's mother requested that the complaint investigation move forward.

The complaint investigation report was delayed due to the parties' original willingness to participate in mediation and then, once the investigation was moving forward, the unavailability of several witnesses prior to the initial report due date.

III. Preliminary Statement

The Student is xx years old and currently attends the Lake Region Middle School in MSAD #61 ("District") as a xx grader. She has a diagnosis for ADD and a Learning Disability, and receives special education services under the exceptionality of a Specific Learning Disability. This complaint was filed by the Student's mother ("Parent") alleging that the District violated the Maine Special Education Regulations (MSER) and the Maine Unified Special Education Regulations ("MUSER") as set forth below.¹

IV. Allegations

1. Failure to use the IEP process as the decision-making forum in which to determine the educational needs of the Student in violation of MSER §8.11 and MUSER §VI.2.I.;
2. Failure to review existing evaluation data and classroom-based assessments and observations in violation of MSER §8.3.(A);
3. Failure to determine the present levels of performance and educational needs of the child in all affected academic and non-academic areas in violation of MSER §8.3.(B);
4. Failure to develop or revise an IEP for the Student thereby depriving the Student of a FAPE in violation of MSER §8.3(D) and 10.3;
5. Failure to adequately consider the concerns of the parents in the IEP decision-making process in violation of MSER §8.11 and §10.3;
6. Failure to provide the Student with Extended School Year Services (ESY) in violation of MSER §5.9; and
7. Failure to provide the Student with a Free Appropriate Public Education in violation of MSER §11 and MUSER § X.2.B.

¹ During the course of the investigation, it became apparent that the dates of most of the alleged violations occurred prior to the adoption of the Maine Unified Special Education Regulations (MUSER) in August, 2007. For purposes of this report, the MSER shall be applicable to any violations occurring prior to August of 2007 and the MUSER shall apply to violations occurring after August, 2007.

V. Summary of Findings

1. The Student is xx years old and currently attends the Lake Region Middle School as a xx grader. She has a diagnosis for ADD and a Specific Learning Disability. She receives special education services under the exceptionality of a Specific Learning Disability.
2. The Student transferred to Lake Region Middle School as a xx grader in January, 2007 from the Marcia Buker Elementary School in Richmond, Maine. The Student had attended school in Richmond since the xx grade, where she had received special education services under the exceptionality of a Specific Learning Disability.
3. In November of 2003 and January of 2004, a neuropsychological evaluation was performed by Dr. Bennett S. Slotnick. Dr. Slotnick's report noted that the Student was encountering problems with regard to academic achievement, and was noted to function "two and a half years behind the same age classmates with respect to reading, with some difficulty as well with respect to arithmetic computation."
4. With regard to the Student's behavior and psychological challenges, Dr. Slotnick's report noted:

[The Student] required a substantial amount of externally provided structure, cues and prompts in order to address motor overflow, restlessness and inattentiveness...[she] displayed difficulty in terms of maintaining or sustaining attention without substantial adult monitoring or supervision, [and was] easily distracted by extraneous stimuli emanating from outside of the testing room...when encountering tasks in which she either anticipated or experienced difficulty, she was noted to display a degree of anxiety, apprehension or stress. Oftentimes she was noted to escape, avoid or withdraw from those tasks which proved to be challenging. This was manifest [by comments uttered by the Student] such as "I won't" or "I can't" or "I don't like it." This then reflects what her mother describes as instances of recalcitrance or noncompliance particularly within the context of circumstances in which she either anticipates or experiences difficulty. Those tasks which necessitated processing of language-based material tended to evoke the greatest level of stress..., [and] she is likely to experience difficulties particularly

within a performance demand environment or any milieu that is unfamiliar, changeable, or one which necessitates processing of multiple stimuli simultaneously...She displays inefficiency with regard to tasks which require her to remain attentive, focused and free of distraction...From an academic perspective, it is likely this neurocognitive inattention has a deleterious impact upon the efficiency with which she is then able to mobilize cognitive resources on behalf of learning and academic achievement.

5. Dr. Slotnick noted that “within the context of structure, redirection reminders [sic] and extra time, she was able to maintain a greater level of persistence.” He recommended that because the Student “learns more effectively when information can be demonstrated or displayed visually”, her education program should be “substantially and intensely language-based in order to address the difficulties...with regard to reading and writing,” and also to initiate programs that have a more “hands-on component.” Dr. Slotnick also noted that the Student was “quite responsive to success, mastery, affirmation and positive feedback” and recommended a “process approach” system where the Student could use a word processor, graphic organizers, and techniques that could help her to address quality control and self-monitoring. Finally, he recommended that psychotherapeutic counseling and psychopharmacologic consultation be considered to assist with “anxiety and attentional difficulties.”
6. A PET meeting was convened on May 1, 2006 at the Richmond School Department for the purpose of conducting the Student’s annual review. The minutes of this meeting stated in relevant part:
 - a) The Student currently receives direct instruction for math, reading and written language, including the reading and writing involved in content area instruction.
 - b) Although the Student’s behavior has improved, a student-initiated “time out” process and behavior contract were used to help the Student “identify her mounting frustration and allow her to calm herself appropriately.” The PET minutes provided that “a copy of the current contract would be given to next year’s Resource teacher.”
 - c) Due to the Student’s memory issues, Extended Year Services would be beneficial.
7. Pursuant to the May 1, 2006 PET meeting, it was determined as follows:

- a) The Student would receive direct instruction in language arts for 135 minutes per day;
 - b) Support for other content areas would be provided through a guided study beginning September 2006;
 - c) Extended Year Services would be provided for two hours per day for five weeks during the summer of 2006; and,
 - d) Accommodations for state and local assessments (with the exception of the local writing prompt), alternative setting, extended time, reader/scribe where allowed, and directions read aloud and clarified.
8. In an interview with the complaint investigator, Susan Hunt, Special Education Director for the Richmond School District, stated that while the Student was in the Richmond schools, she was able to participate in regular education classes, but that she needed “significant modifications” which included approximately two hours per day of direct reading, writing and math instruction with the Special Education Teacher. She said that the Student was very concerned about being successful, and was anxious about what she was “not learning”. She said that although the Student did not have a specific behavior plan or Social Work consultation, the Special Education staff incorporated features of such services within their work with the Student.
9. In January of 2007, the Student transferred from the Richmond, School District to M.S.A.D. #61, where she was enrolled in the Stevens Brook Elementary School as a xx grader.
10. A PET meeting was convened on January 29, 2007, to review the Student’s program in light of her transfer from the Richmond School District. Minutes from the meeting reflect the following:
- a) Mrs. Meuse, the Student’s Special Education Teacher, reviewed the current IEP from the sending school (Richmond, ME)
 - b) Mrs. Meuse stated that “It can be difficult to instruct [the Student] because of [her] oppositional behavior.” She also noted that “she has a tough time sitting still and can be easily distracted.”
 - c) Jeannine Roy, the Student’s regular classroom teacher, stated that the Student “was not meeting grade level standards independently...she doesn’t feel comfortable with oral reading because of her difficulty ...she has had some difficulty with respecting peers and adults.
 - d) Ms. Roy also said that she uses a “class behavior monitoring system” (sticker incentives).

The January 29, 2007 PET determined that the sending school IEP was appropriate without change in the Student’s programming.

11. An IEP developed in connection with the January 29, 2007 PET noted the following with regard to the Student's present level of educational performance:

[The Student] transferred from Richmond, Maine schools to SAD 61 in 1/2007...she receives services as a student with a learning disability,...[including] past occupational therapy and speech and language services. Neuropsychological evaluation (1/2004, WISC-III) measures low average range of intellectual functioning: Verbal IQ 79, Performance IQ 98, Full Scale IQ 86. Also noted: Neurodevelopmental attention deficit disorder (inattentive type), impulsivity and a level of emotional distress. Difficulty with language processing, especially written language in the area of encoding, mechanics, spelling and steps needed for narrative writing...The Student has difficulty remaining seated, is easily distracted, [has] difficulty sustaining attention to tasks and... due to ADD [the Student] has difficulty maintaining or sustaining attention without substantial adult monitoring or supervision. [The Student] has frequent somatic complaints and a tendency to employ resistance, avoidance or escape when encountering tasks in which she either expects or experiences strain.

The IEP noted the concerns of the Parents to be "social and transitional issues as she moves on to Middle School." The IEP reflects that the Student's mother stated, "I feel [the Student] is behind emotionally, socially and academically and wondered if children with special needs are recommended for retention."

The January 2007 IEP did not include a behavior intervention plan, stating that the "student's behavior did not impede her learning or that of others." The IEP determined that the Student would receive Direct Special Education instruction in math for 225 minutes per week, in reading for 275 minutes per week, and in writing for 275 minutes per week, for a total of 775 minutes per week. No other special education or supportive services were included in this IEP.

12. A PET meeting was convened on April 23, 2007, to review the Student's program. The PET minutes reported that:
 - a) The Student was at a xx grade instructional level;

- b) Her silent reading level fell at a xx grade level;
- c) Spelling has improved with the practice she is getting through her multi sensory approach to reading;
- d) She was not fluent with her math facts, and she is not at the same level as that of her peers;
- e) Her sustained attention impacts her in her work and her frustration level is high. [The Student's] emotional turmoil does impact her especially within the area of social skills.

The PET minutes did not reflect any discussion about ESY services.

13. The April 23, 2007 PET determined as follows:

- a) Special Factors were considered for the new program. None Needed.
- b) Services to include: Direct Special Education instruction in math for 225 minutes per week, in reading for 225 minutes per week, and in writing for 225 minutes per week (for a total of 675 minutes per week.)
- c) Classroom modifications and assessment accommodations were agreed upon;
- d) Goals and objectives were agreed upon;
- e) Annual Review-4/22/08; Reevaluation-4/22/08;
- f) Updated evaluation data is needed within one year for eligibility status to include Intellectual/Cognitive testing, Observation, Psychological Evaluation and ADD/ADHD Assessment.

14. Although the 100 minute weekly reduction of direct instruction in the areas of reading and writing was addressed in the PWN, the April 23, 2007 PET meeting minutes did not reflect any discussion with regard to this reduction.² The PWN did not contain a reason for the reduction.

15. In an interview with the complaint investigator, Lisa Hanson, Special Education Director at M.S.A.D. No. 61, said that the reduction in direct instruction in the areas of reading and writing was designed solely for scheduling issues, in order to allow the Student's schedule to fit with the classes at the middle school.

16. An IEP developed on April 23, 2007 noted the following with regard to the impact of the Student's disability on General Curriculum Participation:

² The January 29, 2007 IEP provided for direct instruction in reading for 275 minutes per week, and in writing for 275 minutes per week. The April 23, 2007 IEP reduced weekly direct instruction in these two areas to 225 minutes per week to reading, and 225 minutes per week in writing.

The Student's below grade level skills in language arts makes participation in general education classes challenging. She is unable to read and understand grade level text...[the Student's] math skills are more than 2 years below grade level... [she] has difficulty remaining seated, she is easily distracted, has difficulty awaiting her turn to speak and she often answers at inappropriate times.

17. The April 23, 2007 IEP also noted the following with regard to the Student's present level of reading performance:

[The Student's] reading scores are below grade level expectations. On a developmental reading assessment, the Student was an independent reader at level 24. (equivalent to a mid second grade level.) 'Oral Independent Reading level-grade 3, Silent Independent Reading Level-grade 3.'

18. The April 23, 2007 IEP noted the following with regard to the Student's present level of math performance:

[The Student's] math scores are below grade level. Development of math skills are impacted by memory deficits...She has not mastered her basic multiplication and division facts and uses supports...

19. The April 23, 2007 IEP indicated that the Student's behaviors did not impede her learning or that of others, and no Behavior Intervention Plan was attached to the IEP. No other special education or supportive services were included in this IEP, and there is no indication that ESY services were discussed or included in this IEP.

20. In an interview with the complaint investigator, the Student's mother reported that during the April 23, 2007 PET meeting she had requested ESY programming for the Student. She said that the Student had received ESY programming every summer since first grade. She said that the District told her at this meeting that "there was no ESY program" at this District and therefore she did not further pursue this issue until initiating this complaint investigation process. The Parent's request for extended school year programming was not included in the minutes. The Student's mother said that she was not aware that her request was not included in the minutes. The Student's mother did not request an amendment of the PET minutes.

21. The April 23, 2007 PET meeting minutes reflect that the Parents had “social and transitional concerns as [the Student] moves to the middle school.”
22. Jeannette Roy, the Student’s xx grade teacher at Stevens Brook Elementary School, also attended the April 23, 2007 PET meeting. In an interview with the complaint investigator, she said that while she had heard that regular education summer school was being discontinued, she doesn’t remember any discussion about ESY services at this PET meeting. Ms. Roy stated that the Student, in her opinion, would struggle if confronted with “keeping up” with her same-age peers. She said that the Student exhibited “young” behavior, and would often “tattle” on her peers. She said that the entire academic curriculum was modified to fit the Student’s needs so that she could still understand the content area, and have a feeling of success, which she said was “very important” for the Student.
23. In an interview with the complaint investigator, Susanne Meuse, the Student’s xx grade Special Education Teacher at Stevens Brook Elementary School, reported that she worked with the Student between January and June of 2007. She said that the Student had “lots of challenges,” and that it could take “a while” for a program to work with the Student. She said that one of the Student’s challenges was that she did not accept help on a consistent basis.
24. Ms. Meuse also reported that the level of the Student’s behavior “wasn’t at the point where you couldn’t work around it. [The Student’s challenging behaviors] could be handled with a call to her mother or through a classroom behavior contract.” Ms. Meuse said that the Student’s behavior was manageable, and “not really impacting her ability to work.”
25. While Ms. Meuse said that she didn’t see a need for more behavior programming for the Student at the elementary school, she acknowledged that additional behavior planning could have been helpful in conjunction with the Student’s transition to Middle School, due to the larger and different environment that the Student would be facing. She said that the April 23, 2007 PET meeting was designed to be a transition meeting, but she does not remember any specific discussion about behavior planning for the Student. She also did not remember any discussion about ESY services for the Student although she said that the District had only had the Student for several months, and it would have been hard to evaluate the question of her propensity for regression in the absence of ESY programming.

26. In an interview with the complaint investigator, the Student's father said that the Student had always received summer programming at her school in Richmond, because of the Student's propensity "to go backwards" with her academic skills. The Student's father participated in the April 2007 PET meeting by phone, and he said that he does not remember ESY services being discussed at this meeting or being mentioned in the minutes of the meeting. He said that he did not follow up with the District because he thought that ESY services were a "current part" of the Student's IEP and there was no indication that the ESY services would be discontinued.
27. Lisa Shane, Special Education Coordinator at M.S.A.D. # 61, stated in an interview with the complaint investigator that the PET determined at the April 23, 2007 meeting to reduce the Student's allotted time for direct education services by 100 minutes per week in order to allow for scheduling, and that the PET agreed that the change would not interfere with the Student's IEP goals. She did not recall any discussion at the meeting regarding the Student's need for ESY programming. She said that while the District offered ESY for special education students, funding had been cut for summer school for regular education students.
28. In an interview with the complaint investigator, Lisa Hanson, Special Education Director at the District, said that the District staff attending the April 23, 2007 PET meeting did not feel the Student needed or required an ESY program, even if it was part of the Student's IEP at the Richmond School District. She said that there was no indication in the minutes that the Parents had requested ESY services, nor did she hear from the Parents about ESY programming options prior to their initiation of this complaint investigation.
29. A "Consent to Conduct Individual Re-evaluations" form for the Student was prepared by the District and signed by the Parent on April 23, 2007. Evaluations were identified in the following categories:
 - a) Academic testing;
 - b) Intellectual/Cognitive testing;
 - c) Observation;
 - d) Psychological Evaluation; and,
 - e) ADD and ADHD Assessment.
30. In May, 2007, the Student was given the Iowa Test of Basic Skills; her reading score placed her in the twelfth percentile and her overall score placed her in the eighth percentile, which was referenced as "well below average for the xx grade."
31. In an interview with the complaint investigator, the Student's mother reported that she received a letter from the District directing the Student,

along with all other students entering the xx grade, to participate in a summer reading program, where the Student was instructed to read several books by certain authors and prepare a written report on the books. The Student's mother reported that there was no indication that this summer program was geared for the Student's reading or writing ability levels. The Student's mother reported that she felt the reading assignment was inappropriate for the Student's skill and ability level, and that the Student became very frustrated as she attempted to do this project because "she could not complete the assigned work."

- 32.** A letter dated June, 2007 was sent by the District to the Student which stated in relevant part:

Dear Student,... We expect xx grade students to read at least twenty minutes each day... you must read three books. One must be a Roald Dahl book. The other two books must be by authors listed on the attached sheet. For each book you read, you must complete a project... Do your best work because this will be your first language arts grade. Bring your work first day of school...

- 33.** The June 2007 letter to the Student also had an attached list of Authors and a "Book Project Cover" assignment that stated, in relevant part:

Written information should include... character labels and main events... pictures should communicate genre, setting, characters and events related to your book. Presentation of this cover should be neat, artistically balanced and colorful. Written text should be mechanically correct.

On a separate page, the Student was given an assignment: "Using a cartoon block format, retell the story of one book that you read... including setting, main events and character description."

- 34.** At no place does the June 2007 letter indicate that students at different reading levels may modify their assignment. Additionally, the letter does not indicate that the list of authors includes authors who have written books at different reading levels.

- 35.** On August 28, 2007, the Student's mother wrote a letter to the District, stating in relevant part:

[The Student] struggles... with reading and writing, however she received the same exact assignment all other students not in 'special ed' got... with much help [the Student] did read two books... [she] is unable to read at the level that all of the required books/authors are.

36. In an interview with the complaint investigator, the Student's mother reported that for the first two to three weeks at the beginning of the Student's xx grade year, the Student was bringing home assignments that were inappropriate for her skill and ability level, which was causing the Student a great deal of anxiety and frustration. The Student's mother expressed concern that the Student's IEP was not being followed and that no special education services were provided to the Student during this time.
37. In an interview with the complaint investigator, the Student's father said that he worked on the summer reading assignment with the Student while she stayed with him at his home in Florida for approximately 5 weeks during the summer of 2007. He said that during that time, they were able to find books by the assigned authors that matched her reading level, and although she struggled, he felt that she was able to "get through" with the project.
38. Lisa Hanson stated that the summer reading program was designed for students with different reading levels, as it involves authors who have written books at a variety of different reading levels.
39. A "Parent/Team Conference" was requested by the District on September 8, 2007. The notes from this conference state in relevant part:

Mom was concerned about the summer reading program [and that the Student]...is not being pulled out for her academics. At this point all students are being assessed. We reviewed the special ed goals. The IEP is not specific to skills...No summer school is offered.
40. Lisa Shane, Special Education Coordinator for the District, also said that during the first part of the fall semester, all incoming xx grade students are intentionally kept together, including students receiving special education services. She said that the purpose for keeping all students together is for the school to make assessments on the students, and additionally for the students to feel like they are part of a team. She said that Marge Bachelder, the Student's Special Education teacher and Robin Kimball, the Student's Educational Technician, were both in the classroom providing the direct services as called for in the Student's IEP.
41. In an interview with the complaint investigator, Peter Mortenson, Principal of Lake Region Middle School, stated that a decision was

made, with input from the Parents, to place the Student on the “Sebec” xx grade team, which was for students that were not in the “highest need” category. He said that the District and Parents had rejected placing the Student on the “Penobscot” team, designed for “higher needs” students, as this team had a student with whom the Student had some previous conflicts. Mr. Mortenson said that in early September 2007, in response to the Parent’s concerns, the District offered to transfer the Student to the Penobscot team, but the Parents rejected this offer.

42. In an interview with the complaint investigator, Marge Bachelder, the Student’s Special Education Teacher, said that all of the incoming xx grade students are given the same “home reading assignment” at the end of their xx grade year, and that there is no special information or instruction given to special education students or their parents regarding this reading project. She said that the District selects authors who have written books for readers at different skill levels, but that the District does not advise parents or students that the authors have different books for different reading levels.
43. Ms. Bachelder said that she did not discuss the Student’s programming with any of the Student’s xx grade teachers. She said that the Student was grouped together with all other regular education xx grade students on her team for the first week or so of school for purposes of conducting an “assessment” of the students. She said that she and the Educational Technician were in the main classroom with the Student, and coordinating her work with the Student’s regular education teachers.
44. Ms. Bachelder said that the Student’s behaviors were quite oppositional and disruptive and that she behaved more like a “xx grader”: arguing with her teachers, making inappropriate comments, refusing to do work or assignments. As a result of these behaviors, Ms. Bachelder said that it was difficult for the Student to access her regular education program.
45. Ms. Bachelder said that she devised a “chart” or “point system” whereby she would try to address the Student’s behaviors through a system of rewards. She said that this worked well for a while, but then stopped working. She was not sure why her “point system” stopped working, but she said that the Student’s behavior has improved since she has been working with the Social Worker and a Behavior Intervention Plan has been developed and implemented.
46. In an interview with the complaint investigator, Kathleen Traggert, the Student’s current regular education science teacher, stated that although the Student is only at a xx or xx grade level with her reading, she is able to access the educational programming through the modifications and accommodations that have been put in place. She said that the Student

has an Educational Technician with her to help read things to her, and that she is given constant cues and reminders. She said that with this support, she is able to complete her assignments with 80-90% accuracy. Ms. Traggert said that the Student can be very disruptive to other students, but that she has addressed some of the Student's behavior issues by giving her preferred seating at the front of the class, and in close proximity to the Educational Technician.

47. On September 20, 2007, the District sent an Advance Written Notice of IEP Team Meeting to the Parents notifying them of the October 4, 2007 IEP meeting to request a Social Work Evaluation.
48. An IEP Team meeting was convened on October 4, 2007, to review the Student's program. The Parents had requested the IEP team meeting to determine the need for social work support services for the Student. The IEP discussion summary included the following:
 - a) Ms. Bachelder, the Student's Special Education Teacher, stated that "the Student is making an effort to engage in her lessons but is frequently redirected due to distracting behaviors usually social in nature. She requires a moderate level of adult redirection and cueing to initiate tasks";
 - b) Lenny Fox, the Student's social studies teacher, reported that "she is having trouble initiating most tasks without adult support, and that she has requested to go to the nurse three times since the beginning of school which corresponded with a test or quiz";
 - c) The Student's mother shared that she is "very concerned" that the Student is socially well below that of her peers, and that there has been little growth over the past years both socially and academically;
 - d) The IEP team agreed that there is moderate concern that the Student's weaknesses in social development are impacting how she participates in the school setting;
 - e) The IEP team agreed to conduct a social work evaluation within 60 calendar days.
49. A Written Notice dated October 4, 2007, documented the IEP request for a social work evaluation. The notice explained that the evaluation was needed to explore additional supports to the Student's IEP due to the "manifestation of her disability." The notice added that the Parents and rest of the IEP team agreed that "the Student's limited social growth are [sic] having a negative impact on her school performance." The notice indicated that the "Parents may explore further options for additional counseling for [the Student]."

50. A Social Work evaluation was conducted on October 22 and 29, 2007 by Linda Bennett, LCPC. In her report, Ms. Bennett noted the following history:

...the Student had transferred into the District in January of 2007, she was reported to be inattentive, ... by the end of the xx grade, [the Student] was reading at a xx grade level...problems with social skills with both peers and adults were reported on and off throughout grade school...there was a classroom contract for taking time outs for frustration in xx grade. After transferring into [the District, the Student] was reported to be inattentive, her frustration was high and she was emotionally reactive. She was a reluctant reader, oppositional and argumentative to staff at times and easily distracted.

51. Ms. Bennett's evaluation included behavioral observations while the Student was in class. In her report, she noted that "the Student's activity level was higher than her peers, and it seemed to take her longer to settle down to work when given an assignment." Ms. Bennett also noted that "when [the Student was] given multi-step directions, she carried out the first part, and then couldn't complete the whole without further instruction."
52. Ms. Bennett recommended that the Student receive treatment for her ADD, including both medication and counseling. She also recommended continued use of the classroom behavior contract, visual aids of multi-step directions, hands-on learning opportunities and the use of "fidget toys."
53. In an interview with the complaint investigator, Ms. Bennett noted that the Student has been enrolled in three different schools in the last year, and that it can be hard for districts to "catch-up" with students who have "moved around." She said that she is now working with the Student for 30 minutes per week, and addressing issues relating to the Student's ADD. She said that she is currently working with her to have a "better attitude" about accepting help. Ms. Bennett said that the Student is "not really connecting" with other students, but seems to be less argumentative since she has been working with her. She said that she is unsure if the Student has an emotional disability. She has recommended that the Student undergo a medical evaluation to address the issues relating to her anxiety and "mood fluxuations [sic]."

54. On December 4, 2007, a Behavior Intervention Plan (BIP) was developed for the Student. The BIP established behavioral goals, interventions and reinforcements with regard to two identified skill deficits: 1) The Student's oppositional and argumentative behavior, and 2) the Student's difficulties independently shifting attention from one activity/issue to another.
55. On December 12, 2007 an IEP team meeting was held for the purpose of conducting an annual review and to review the Social Work evaluation conducted on October 22 and 29, 2007. The Written Notice prepared in connection with the December 12, 2007 IEP team meeting proposed that, as a result of the social work evaluation, 30 minutes of weekly social work services would be added to the Student's IEP. In addition, the existing writing goal was amended and a Behavior Intervention Plan was added to the IEP. The notice also indicated that further comprehensive testing and evaluations would be completed within 60 days of the report.

VI. Conclusions

Allegation # 1: Failure to use the PET process as the decision-making forum to determine the educational needs of the Student in violation of MSER §8.11 and MUSER §VI.2.1; and,

Allegation # 5: Failure to adequately consider the concerns of the parents in the PET decision-making process in violation of MSER §10.3 and MSER §8.11.

PROCEDURAL VIOLATIONS FOUND

MSER § 8.11 addresses the PET decision-making process, and provides, in relevant part:

The PET meeting serves 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 IEP Team must consider the parents' concerns and the information that they provide regarding their child in determining eligibility; developing, reviewing, and revising IEPs; and determining placement.

The Pupil Evaluation Team should work toward consensus, but the S.A.U. has ultimate responsibility to ensure that a student is appropriately

evaluated; that the I.E.P. includes the services that the student needs in order to receive F.A.P.E.; and that the student's placement is in the least restrictive educational alternative. It is not appropriate to make evaluation, eligibility, I.E.P. or placement decisions based upon a majority 'vote.' If the team cannot reach consensus, the S.A.U. must provide the parents with prior written notice of the school's proposals or refusals, or both, regarding their child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing...

In Franklin School Department, 102 LRP 71730 (February 26, 2001), a recent Maine case addressing MSER § 8.11, a multi-handicapped student had been receiving the services of a one-on-one aide prior to a PET meeting held in May of 2000. Following this PET meeting, the school principal gave the student's mother a copy of the PET meeting minutes, and stated that "his interpretation of the minutes was that student would no longer have the full-time services of a one-on-one aide." There was no evidence, however, that there was any discussion at the PET meeting about the level of Educational Technician support.

The Hearing Officer in the *Franklin School Department* case held that the school "failed to meet the procedural dictates of the Maine Special Education Regulations." In her report, the Hearing Officer held:

As Maine Special Education Regulations state, 'The PET meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding [the student's] program.' MSER § 8.11 (C). Therefore, it was the responsibility of the school department to present an explanation of this change at the May 15, 2000 PET meeting, in order to allow the family and the student's providers to discuss the change and give the family the opportunity to agree to, or contest, the change.

In the present case, the District similarly failed to adequately present an explanation of the Student's needs and appropriate goals in connection with several key decisions that impacted the Student's IEP. First, although the April 23, 2007 IEP reduced by 100 minutes of the Student's weekly direct instruction, there is no evidence of any discussion of this reduction in the PET minutes or within the IEP. Rather, the minutes of this meeting and the IEP indicate that the Student's "silent reading level fell at a xx grade level" and "The Student's below grade level skills in language arts makes participation in general education classes challenging. She is unable to read and understand grade level text..."

While the District's Special Education staff stated in subsequent interviews that the reduction of the Student's allotted time for direct instruction was made to allow for the "scheduling" of her middle school classes, there is no reference to scheduling in the PET minutes, the PWN or the IEP. The importance of such open communication

between parents and SAU's, as contemplated by MSER § 8.11, is especially important in light of this Student's particular challenges in the area of reading and writing, the two areas where direct instruction was reduced. In short, the District should have had an open discussion during the PET meeting about what this reduction in programming would mean for the Student's IEP goals and objectives, along with an explanation of how the Student's IEP goals and objectives could be met by other means.

The District also violated MSER §8.11 in connection with decision-making concerning the Student's Extended School Year Services. The January 29, 2007 PET determined that the Student's IEP from the Richmond School District, which included ESY services, was appropriate "without change in the Student's programming."³ There was no record, however, of any discussions of ESY programming at either the January 29, 2007 or the April 23, 2007 PET meetings nor was there any reference to ESY programming in the IEPs developed from these meetings.⁴

Lisa Hanson, Special Education Director at M.S.A.D. #61, said that the District staff attending the April 23, 2007 PET meeting did not feel the Student required an ESY program, even if it was part of the Student's IEP at the Richmond School District. She said that there was no indication in the minutes that the Parents requested ESY services, nor did she hear from the Parents about the lack in ESY services until this request for a complaint investigation was filed.

Despite the lack of any written record of the discussion of ESY services, MSER § 8.11 makes clear that the PET serves as "a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding the student's needs and appropriate goals." In addition, § 8.11 makes clear that a District has the "ultimate responsibility to ensure that the I.E.P. includes the services that the student needs in order to receive F.A.P.E." In this case, the transferring school included ESY services as part of the Student's IEP, and there was evidence that the student might have been a candidate for ESY services to continue through the summer of 2007.⁵ Even if ESY services were ultimately not appropriate for the Student, the District violated MSER § 8.11 by failing to discuss at the PET meeting the elimination of ESY services for this Student.

Finally, the District violated MSER § 8.11 and MSER §10.3 by failing to adequately consider the concerns of the parents in the PET decision-making process.

³ The May 1, 2006 IEP from the Richmond School District provided Extended School Year services to the Student for two hours per day for five weeks during the summer. The minutes from this PET meeting stated in relevant part: "Due to the Student's memory issues, Extended Year Services would be beneficial."

⁴ The Student's mother asserted that she requested ESY programming at the April 23, 2007 PET meeting. She said that the District told her at this meeting that "there was no ESY program" at this District. As a result, she did not further pursue this issue until filing for this complaint investigation. None of the other interviewed participants at the April 23, 2007 PET meeting had any recollection of ESY services being discussed.

⁵ April 23, 2007 IEP noted the following with regard to the Student's Present level of math performance: [The Student's] math scores are below grade level. Development of math skills are impacted by memory deficits...

MSER § 8.11 (C) addresses parental involvement in the PET process and explicitly provides:

Parents are considered equal partners with school personnel in making these decisions, and the Pupil Evaluation Team must consider the parents' concerns and the information that they provide regarding their child in determining eligibility; developing, reviewing, and revising IEPs; and determining placement.

MSER § 10.3 provides as follows:

P.E.T. Considerations in Developing an I.E.P.

In developing or revising each student's I.E.P. the P.E.T. shall:

A. Consider the strengths of the student and the concerns of the parents for enhancing the education of their student;...

The minutes of the April 23, 2007 PET meeting reflect that the Student's mother had "social and transitional concerns as [the Student] moves to the middle school." These concerns were corroborated by Jeannette Roy, the Student's xx grade teacher at Stevens Brook Elementary School, who stated that the Student exhibited "young" behavior. Ms. Roy expressed concern that the Student "would struggle if confronted with keeping up with her same-age peers."

Despite the concerns noted by the Parents, there was no record of any further discussion related to these issues or the Student's behavior, suggesting that the District failed to address these parental concerns when developing the Student's IEP in violation of MSER § 8.11 (C) and MSER § 10.3.

Allegation # 2: Failure to review existing evaluation data and classroom-based assessments and observations in violation of MSER § 8.3(A). **NO VIOLATION**

Allegation # 3: Failure to determine the present levels of performance and educational needs of the child in all affected academic and non-academic areas in violation of MSER § 8.3.B and MUSER §VI.2.J.(2). **NO VIOLATION**

MSER § 8.3 (A) and (B) provide as follows:

Major PET Responsibilities

The major responsibilities of a Pupil Evaluation Team are:

A. To review, as part of an initial evaluation (if appropriate) and as part of any reevaluation of a student, existing evaluation data including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and supportive services providers observation to determine, with

input from the child's parents, what additional data, if any, are needed to determine whether a student is a student with a disability as defined in Part 3, Students With Disabilities, of these rules.

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

In School Union #51 26 IDELR 1193, 26 LRP 4557, (Maine, 1997), a case addressing the PET responsibilities under MSER § 8.3, the Hearing Officer found that a school district denied a 15-year-old ninth grader a FAPE when it committed a number of procedural violations, including a failure to review an evaluation of the student. In the School Union #51 case, the Hearing Officer held:

It is the responsibility of the PET to review all the existing evaluations in developing the program for a student [and]... The PET must develop the goals and objectives in the I.E.P. so as to provide the student with an appropriate education. MSER § 8.3... There is no evidence that the PET ever sat down, reviewed all the existing evaluations, coupled with their collective knowledge of [the student], and developed the goals and objectives of his I.E.P.

In contrast to the School Union #51 case, there is no evidence that the PET failed to review the Student's existing evaluations or failed to discuss their collective knowledge of the Student. The minutes from the January 29, 2007 PET meeting indicated that the team reviewed the Student's IEP from the sending school, which the PET determined to be appropriate for the Student. The IEP developed from the January 29, 2007 PET meeting referenced Dr. Slotnick's 2004 neuropsychological evaluation, and the April 23, 2007 PET meeting minutes indicated that the District reviewed information concerning the Student⁶ and took steps to further evaluate the Student.⁷

Allegation # 4: Failure to develop or revise an IEP thereby depriving Student of a FAPE in violation of MSER § 8.3(D) and MSER § 10.3. **VIOLATION FOUND**

MSER § 8.3 (D) provides as follows:

The major responsibilities of a Pupil Evaluation Team are:

⁶The April 23, 2007 PET meeting minutes reflect that the Parents had "social and transitional concerns as [the Student] moves to the middle school." The April 23rd IEP reported the following with regard to evaluation and observation data: "The Student was at a xx grade instructional level; her silent reading level fell at a xx grade level; spelling has improved with the practice she is getting through her multi sensory approach to reading; she was not fluent with her math facts, and she is not at the same level as that of her peers."

⁷The District prepared a "Consent to Conduct Individual Re-evaluations" for the student which was signed by the Parent on April 23, 2007. Evaluations were identified in the following categories: Academic testing; Intellectual/Cognitive testing; Observation; Psychological Evaluation; and, ADD and ADHD Assessment. The Student was given the Iowa Test of Basic Skills in May, 2007, where her reading score placed her in the twelfth percentile and her overall score placed her in the eighth percentile.

- D. To develop or revise an Individualized Education Program (IEP) to provide each identified student with a disability a free appropriate public education.

MSER § 10.3 provides as follows:

P.E.T. Considerations in Developing an I.E.P.

In developing or revising each student's I.E.P. the P.E.T. shall:

- A. Consider the strengths of the student and the concerns of the parents for enhancing the education of their student;
- B. Consider the results of the initial or most recent evaluation of the student;
- C. As appropriate, the results of the student's performance on any general state or district-wide assessment;
- D. In the case of a student whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
- E. In the case of a student with limited English proficiency, consider the language needs of the student as these needs relate to the student's I.E.P.;
- F. In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the Pupil Evaluation Team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;
- G. Consider the communication needs of the student, and in the case of a student who is deaf or hard-of-hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and
- H. Consider whether the student requires assistive technology devices and services.

The First Circuit Court of Appeals has declared that “the IDEA entitles qualifying children to services that “target ‘all of [their] special needs,’ whether they be academic, physical, emotional, or social.” Lenn v. Portland Sch. Comm., 998 F.2d 1083, 1089 (1st Cir. 1993) “Educational performance in Maine is more than just academics.” Mr. and Mrs. I v. Maine School Administrative District No. 55, U.S. Court of Appeals, First Circuit 06-1368 06-1422 107 LRP 11344, March 5, 2007.

In Roland M. v. Concord Sch. Comm., 910 F.2d 983, 989 (1st Cir. 1990), the First Circuit Court held:

Congress indubitably desired “effective results” and “demonstrable improvement” for the Act’s beneficiaries. *Burlington II*, 736 F.2d at 788. Hence, actual educational results are relevant to determining the efficiency of educators’ policy choices... The key to the conundrum is that, while academic potential is one factor to be considered, those who formulate IEPs must also consider what, if any, “related services,” 20 U.S.C. § 1401(17), are required to address a Student’s needs. *Irving Independent School Dist. V. Tatro*, 468 U.S. 883, 889-90 (1984); *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir.), cert. denied, 464 U.S. 864 (1983).

Among the related services which must be included as integral parts of an appropriate education are “such development, corrective, and other supportive services (including psychological services . . . and counseling services) as may be required to assist a handicapped child to benefit from special education.” 20 U.S.C. § 1401(17).

In *County of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1467-68 (9th Cir. 1996), the Ninth Circuit Court held:

The placement must also include "educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." *Rowley*, 458 U.S. at 189...[G]oals are not limited to academic benefits, but also include behavioral and emotional growth...Educational benefit is not limited to academic needs, but includes the social and emotional needs that affect academic progress, school behavior, and socialization.

In the present case, the District failed to address the Student’s need for behavioral supports and strategies at both the January 29, 2007 and April 23, 2007 PET meetings. Minutes from the District’s initial PET meeting on January 29, 2007 reflect that the District was aware of the Student’s behavior difficulties⁸, and the IEP developed on January 29, 2007 noted the following:

The Student has difficulty remaining seated, is easily distracted, [has] difficulty sustaining attention to tasks and... due to ADD [the Student] has difficulty maintaining or sustaining attention without substantial adult monitoring or supervision. [The Student] has frequent somatic complaints and a tendency to employ resistance, avoidance

⁸ Mrs. Meuse, the Student’s Special Education Teacher, stated that “It can be difficult to instruct [the Student] because of [her] oppositional behavior.” She also noted that “she has a tough time sitting still and can be easily distracted.” Jeannine Roy, the Student’s regular classroom teacher, stated that the Student “has had some difficulty with respecting peers and adults.”

or escape when encountering tasks in which she either expects or experiences strain.

Dr. Slotnick's 2004 neuropsychological evaluation, referenced in the January 29, 2007, IEP, states as follows with respect to the Student's behavior:

[The Student] displayed difficulty in terms of maintaining or sustaining attention without substantial adult monitoring or supervision, [and was] easily distracted... when encountering tasks in which she either anticipated or experienced difficulty, she was noted to display a degree of anxiety, apprehension or stress. Oftentimes she was noted to escape, avoid or withdraw from those tasks which proved to be challenging. Those tasks which necessitated processing of language-based material tended to evoke the greatest level of stress...She displays inefficiency with regard to tasks which require her to remain attentive, focused and free of distraction...

The District was also aware of the Student's behavior issues while she was enrolled in the Richmond School District.⁹ Minutes from the Student's May 1, 2006 PET meeting at the Richmond School District identify the Student's challenging behaviors and the impact these behaviors had on her ability to access her educational program:

Although the Student's behavior has improved, a student-initiated 'time out' process and behavior contract were used to help the Student 'identify her mounting frustration and allow her to calm herself appropriately.' The PET minutes provided that 'a copy of the current contract would be given to next year's Resource teacher.'

The Student's behavior issues were again noted in the IEP developed on April 23, 2007, which provided in relevant part:

[The Student] has difficulty remaining seated, she is easily distracted, has difficulty awaiting her turn to speak and she often answers at inappropriate times.

An IEP must be evaluated in terms of what was objectively reasonable when the IEP was developed. Fuhrmann v. East Hanover Bd. Of Education (3d Cir. 1993) 993 F. 2d 1031, 1041.) Moreover, IEP's must anticipate a child's goals and needs. Tennessee State Educational Agency 106 LRP 7800 (1998).

⁹ The minutes from the January 29, 2007, PET meeting report that Mrs. Meuse, the Student's Special Education Teacher, reviewed the current IEP from the Richmond School District at this meeting.

In the present case, even if the District was able to manage the Student's behavior issues during the 2006-2007 academic year, it was reasonably foreseeable that behavior planning would be a necessary part of the Student's IEP as she transitioned to Middle School. Susanne Meuse, the Student's xx grade Special Education Teacher, acknowledged that "additional behavior planning could have been helpful in conjunction with the Student's transition to Middle School, due to the larger and different environment that the Student would be facing."

Despite the evidence of the Student's behavioral challenges, however, the District failed to address any behavior-related planning, goals or services in either the January 2007 or the April 2007 IEP's.¹⁰

In fact, the record shows that the Student's behavior issues have continued into the present school year. The Student's current Special Education Teacher, Marge Bachelder, said that these oppositional and disruptive behaviors include: "arguing with her teachers, making inappropriate comments, refusing to do work or assignments and behaving more like a xx grader." Ms. Bachelder said that these behaviors have made it "difficult for the Student to access her regular education program." At an IEP Team Meeting on October 4, 2007, Lenny Fox, the Student's social studies teacher, reported that the Student is having trouble "initiating most tasks without adult support, and that she has requested to go to the nurse three times since the beginning of school which corresponded with a test or quiz."

A Social Work evaluation was performed on October 22 and 29, 2007 by Linda Bennett, who observed that the Student "seemed more distracted...she talked out loud more and was more frequently arguing with the teacher. She noted that "when [the Student was] given multi-step directions, she carried out the first part, and then couldn't complete the whole without further instruction.

Finally, on December 4, 2007, approximately 11 months after the Student transferred to the District, a Behavior Intervention Plan (BIP) was developed for the Student. The BIP established behavioral goals, interventions and reinforcements with regard to two identified skill deficits: 1) The Student's oppositional and argumentative behavior, and 2) the Student's difficulties independently shifting attention from one activity/issue to another. Ms. Bachelder the Student's current Special Education Teacher, said that the Student's behavior has improved since she has been working with the Social Worker and the Behavior Plan has been instituted.

Allegation # 6: Failure to provide the Student with Extended School Year Services in violation of MSER § 5.9. **PROCEDURAL VIOLATION FOUND**

MSER § 5.9, which addresses a school administrative unit's obligation to provide ESY Services, provides as follows:

¹⁰ While Ms. Roy said that she uses a "class behavior monitoring system", there is no mention of this system, or goals associated with it, in the IEP.

Each school administrative unit shall ensure that extended school year services are available to each student with a disability to the extent necessary to ensure that a free appropriate public education is available to the student. Pupil Evaluation Team determinations to provide extended school year services, including special education and supportive services beyond an administrative unit's normal school year, shall be made on an individual basis and *based on the probability that the student is at risk of losing skills previously mastered and unable to recoup those skills within a reasonable period of time.* (emphasis added).

Extended school year services shall be a part of the student's Individualized Education Program, shall be provided at no cost to the parents and meet the standards for provision of special education and supportive services specified in these rules.

An S.A.U. may not limit extended school year services to particular categories of disability nor unilaterally limit the type, amount or duration of those services.

As noted above, the January 29, 2007 PET determined that the Student's IEP from the Richmond School District, which included ESY services, was appropriate "without change in the Student's programming." There was no record, however, of any discussions of ESY programming at either the January 29, 2007 or the April 23, 2007 PET meetings nor was there any reference to ESY programming in the IEP's developed from these meetings.

Accordingly, the District procedurally violated MSER § 5.9 by failing to adequately discuss or document the Student's need for ESY services. Although a procedural violation is found, it is not possible, from the record, to conclude that the Student was denied FAPE as a result of the lack of ESY services during the summer of 2007.¹¹

Allegation # 7: Failure to provide the Student with the Least Restrictive Educational Alternative in violation of MSER § 11 and MUSER § X.2.B. **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 (1st Cir. 1993) (questions about least restrictive programming are "an integral aspect of an

¹¹ Reference is made to the Corrective Action Plan in Section VII, *infra*, requiring the IEP Team to convene to consider the need for extended school year programming according to the standards promulgated by MUSER §X.2.A (7).

IEP package (and) cannot be ignored when judging the program's overall adequacy and appropriateness.”).

With regard to the question of “appropriate programming”, the Lenn court noted:

The IDEA does not promise perfect solutions to the vexing problems posed by the existence of learning disabilities in children and adolescents. The Act sets more modest goals: it emphasizes an appropriate, rather than an ideal, education; it requires an adequate, rather than an optimal, IEP. Appropriateness and adequacy are terms of moderation. It follows that, although an IEP must afford some educational benefit to the handicapped child, the benefit conferred need not reach the highest attainable level or even the level needed to maximize the child's potential. See Rowley, 458 U.S. at 198, 102 S.Ct. at 3046-47; Roland M., 910 F.2d at 992.

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.

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.

It appears that, despite the District's procedural violations noted above, the Student's program, on the whole, allowed the Student to receive educational benefit in the least restrictive educational alternative. Jeannette Roy, the Student's xx grade teacher, said that despite the Student's behavior challenges, the Student could still “get the content area” in light of modifications made to the academic curriculum. Susanne Meuse, the Student's xx grade Special Education Teacher, reported that the “[Student's] behavior wasn't to a point where you couldn't work around it.” Kathleen Traggert, the

Student's current regular education science teacher, stated that the Student is able to access the educational programming through the modifications and accommodations that have been put in place.¹²

VII. Corrective Action Plan (CAP)

1. The District shall arrange the following comprehensive testing and evaluation:
 - a) Psychological testing, including behavior and ADHD assessments, classroom observation, and an assessment of the Student's need for counseling and other supportive services.
 - b) An assessment of academic, intellectual & learning development, with a specific assessment of any deficiencies or decreases in the Student's current level as a result of lack of any ESY programming or behavior planning for the Student.

The compliance documentation for this shall be: copies of the evaluation reports. The documentation shall be sent to the Complaint Investigator, the Due Process Office, and the parent.

2. The IEP Team shall convene to consider the need for extended school year programming. This assessment shall be made based on the standards promulgated by MSER § 5.9 for the summer of 2007 and MUSER §X.2.A (7) for the summer of 2008, including:
 - a) A review by the child's IEP Team of relevant information including, but not limited to, progress reports and relevant assessments, parent reports, observations or documentation;
 - b) Consideration by the child's IEP Team of the significance of the child's disability, progress toward IEP goals; and
 - c) Consideration of the impact of previous service interruptions and the probability that the child is unable to recoup, in a reasonable amount of time, skills previously mastered.

When assessing the Student's need for ESY services, the IEP team shall consider the Student's record at the Richmond School District. The IEP team shall also consider the use of a tutor to compensate the Student for any lack of access to her IEP due to the absence of ESY services during the summer of 2007.

3. In addition, the IEP Team shall convene within 2 weeks of the District's receipt of the assessments referred to in CAP #1 above in order to:

¹² Even the Student's "assessment" in the regular classroom with all other seventh grade students for the first week of school was done in a manner that provided the Student with the direct instruction called for in her IEP from both the Special Education Teacher and the Educational Technician, who remained with the Student in the classroom during the assessment period.

- a) Review the recommendations of the evaluators, determine all necessary educational supportive services that the Student requires, and amend the IEP accordingly.
- b) Determine what, if any, compensatory education and services should be provided to the Student for equity in light of the violations, taking into consideration the possible need for extended school year programming based on the standards promulgated by MUSER §X.2.A (7). If compensatory education services are found to be needed, the IEP team shall, in particular, consider the use of a tutor to compensate the Student for any lack of access to her IEP due to the absence of a behavior plan. The IEP shall be amended to reflect any such modifications of programming or services.

If it is determined that compensatory education services are required, the compliance documentation for such services will be: a provider-signed log of the services provided, including the dates and hours of services and the skill area(s) and materials covered in the services. The documentation shall be sent to the Complaint Investigator, the Due Process Office, and the parent.

4. The following compliance documentation for Items # 2 and 3 shall be sent to the Due Process Office, the parent and the complaint investigator:
 - a copy of the Advance Written Notice of IEP Team Meeting;
 - a copy of the IEP; and
 - a copy of the Written Notice (WN).

VIII. Recommendation:

For the pre-xx grade summer reading assignment, DOE recommends that the District review and amend, if necessary, the practices and documents vis-à-vis their appropriateness for students with Specific Learning Disabilities in reading and language arts.