

Complaint Investigation Report
Parent & Parent v. Portland May
30, 2008

Complaint # 08.069C
Complaint Investigator: David C. Webb
Date of Appointment: March 17, 2008

I. Identifying Information

Complainants: Parent & Parent
Address
City

Respondent: Jeanne Whynot-Vickers, Superintendent
196 Allen Avenue
Portland, ME 04103

Barbara Dee, Director of Student Support Services

Student: Student
DOB xx/xx/xxxx

II. Summary of Complaint Investigation Activities

On March 17, 2008, the Maine Department of Education received this complaint. The complaint investigator was appointed on March 17, 2008. The complaint investigator received 61 pages of documents from the respondents and 75 pages of documents from the parents. Interviews were conducted with the following people: Father and Mother; Barbara Dee, Director of Student Support Services, Portland School District; Kathleen Bouchard, Assistant Principal, King Middle School; Vicky Papageorge, Special Education Consultant, Hyperion Learning Services; and Barbara Dunham, Special Education Teacher, Portland School Department.

III. Preliminary Statement

The Student is xx years old and currently attends the King Middle School as an xx grader. (“District”). She has a diagnosis for a nonverbal learning disability and complex partial seizures and receives special education services under the exceptionality of Multiple Disabilities.

This complaint was filed by the Student’s parents (“Parent” or “Parents”) alleging that the District violated the Maine Unified Special Education Regulations (“MUSER”). After the receipt of the parent’s complaint, a Draft Allegations Letter was sent to the parties by the complaint investigator on March 24, 2008, alleging 13 separate violations of the MUSER. Mediation was held on March 27, 2008 and the parties were able to

resolve all but three of the initial allegations. Following the mediation, the parents requested that this matter move forward on the remaining unresolved issues. At the District's request, the complaint investigator extended the document due date to April 9, 2008. An extension of the timeline of the complaint investigation was required due to the extenuating circumstance of the complaint investigator's receipt of audio recordings from the Parents on April 25, 2008 of IEP Team meetings held in June 2007, September 28, 2007, October 17, 2007 and December 7, 2007.

IV. Allegations

1. Failure to identify within the IEP the specific special education services and supplementary aids and services to be provided to the Student in violation of MUSER §IX.3.A.(1)(d);
2. Failure to consider whether the Student needs assistive technology devices and services in violation of MUSER §IX.3.C.(2)(e);
3. Failure to specify within the Student's IEP the staff providing special education and related services in violation of MUSER §X.2.A.(5).

V. Summary of Findings

1. The Student is xx years old and currently attends King Middle School in Portland as an xx grader. She has a diagnosis for a nonverbal learning disability and complex partial seizures, and receives special education services under the exceptionality of Multiple Disabilities.
2. In an interview with the complaint investigator Vicky Papageorge, a Special Education Consultant with Hyperion Learning Services stated that she started working with the Student in October of 2006, utilizing the Sharma math method and the Lindamood-Bell Visualization and Verbalization reading program. Ms. Papageorge stated that the Student had the most severe non-verbal learning disability that she has seen in her 28 years of practice as a Learning Disability Specialist. Additionally, she said that based on the Student's testing results, she had made no measurable gains during the three years prior to instituting the Sharma math method and the Visualization and Verbalization reading program. Ms. Papageorge stated that since the Student has started with these methodologies she has made "huge gains". Ms. Papageorge stated that it is "critical" that the Student's programming include these methodologies.
3. In an interview with the complaint investigator, the Parents reported that the Student has made significant progress since she has been working with the Sharma Math method and the Linda-Mood Bell Visualization and Verbalization program as provided and coordinated with Hyperion Learning Center and Vicky Papageorge. The Parents reported that the IEP developed on December 7, 2007, however, did not reflect the actual

programming that the Student has been receiving, which the Parents contend was agreed to by the IEP Team.

4. The Written Notice prepared in connection with an IEP Team meeting on December 7, 2007, determined in relevant part that the Student would receive, on a weekly basis, the following Special Education and Supportive Services:
 - a) Three hours and 45 minutes of Specially Designed Instruction in reading;
 - b) Three hours and 45 minutes of Specially Designed Instruction in math;
 - c) Four hours of Specially Designed Instruction (unspecified);
 - d) 40 minutes of Speech and Language services; and,
 - e) Two hours of Tutorial Services (extended school day).

5. The IEP developed on December 7, 2007 established the following annual reading comprehension goals:
 - a) The Student will improve overall reading comprehension skills from the 14th percentile to the 20th percentile by December 2008 through visualizing/verbalizing as measured by the WJ-III reading comprehension subtest;
 - b) Provided specialized instruction [the Student] will be able to visualize and verbalize with automaticity from 2 or more sentences at a time, and answer 4 out of 5 higher order thinking skills questions correctly;
 - c) Provided specialized instruction [the Student] will be able to visualize and verbalize with automaticity a whole paragraph and answer 4 out of 5 higher order thinking skills questions correctly;
 - d) Provided specialized instruction [the Student] will be able to visualize and verbalize with automaticity a whole page and answer 4 out of 5 higher order thinking skills questions correctly;
 - e) Provided specialized instruction [the Student] will be able to visualize and verbalize with automaticity notes from both lectures and written material, and answer 4 out of 5 higher order thinking skills questions correctly.

6. The IEP developed on December 7, 2007 established the following annual math calculation goals:
 - a) Provided direct instruction through manipulatives and pictorial representation, [the Student] will improve basic operation of addition from below the 1st percentile to the 10th percentile by December, 2008, as measured by the Key Math Diagnostic Test;
 - b) Provided direct instruction through manipulatives and pictorial representation, [the Student] will improve basic operation of subtraction from below the 1st percentile to the 5th percentile by December, 2008, as measured by the Key Math Diagnostic Test;

- c) Provided direct instruction through manipulatives and pictorial representation, [the Student] will improve basic operation of multiplication from below the 1st percentile to the 5th percentile by December, 2008, as measured by the Key Math Diagnostic Test;
 - d) Provided direct instruction through manipulatives and pictorial representation, [the Student] will improve basic operation of division from below the 1st percentile to the 5th percentile by December, 2008, as measured by the Key Math Diagnostic Test;
 - e) Provided direct instruction with the linguistics of math word problems and manipulatives, [the Student] will improve problem solving skills from the 1st percentile to the 10th percentile by December, 2008, as measured by the Key Math Diagnostic Test;
7. The IEP developed on December 7, 2007 indicated that the Student needs the following assistive technology devices and services: “The district will research and provide software products that focus on the executive function and organizational skills addressed in the extended day program.” Section 8 of the December 7, 2007 IEP addresses supplementary aids and services and provides that the Student will be allowed the use of a calculator/computer, as well as a word processor to complete written assignments.
8. The March 28, 2008 Written Notice prepared in connection with the IEP developed on December 7, 2007 stated, in relevant part, that the team determined the following:
- a) “The director of Student Support Services will attempt to identify an in-district person, trained in a specialized reading program, to provide the individualized reading program. If that is not possible, Portland Public schools will contract with a private agency person [sic] to provide these services”;
 - b) “The private math program provider will provide math support 5 X 45 minutes per week. The private reading program provider will provide reading support 5 X 45 minutes per week”;
 - c) Reading and math goals will be provided by the private math program provider;
 - d) [The Student’s] reading and math needs warrant individualized programming in order for her to make necessary gains. Portland Public Schools has contracted with a private provider to deliver these specialized math and reading services.
9. The March 28, 2008 Written Notice did not identify or mention either the “Visualization/Verbalization” reading program or the “Sharma” math program. Additionally, the Written Notice did not identify Hyperion Learning Center as the private math program provider.

- 10.** The audio recording provided by the parents of an IEP Team meeting held on December 7, 2007 revealed that the IEP Team made the following determinations¹:
- a) The Student's social studies class would be eliminated from her program in order to participate in an individualized reading program using the "Visualization/Verbalization" methodology beginning in January, 2008;
 - b) The Student would receive individualized reading program support five days per week for 45 minutes per day;
 - c) The Director of Student Support Services will attempt to identify an in-district specialist trained in the "Visualization/Verbalization" methodology to provide the individualized reading program for the Student.
 - d) If the Director of Student Support Services was unable to identify an in-district specialist trained in the "Visualization/Verbalization" methodology, the District would contract with a private agency to provide these services;
 - e) A specialist from Hyperion Learning Services would provide math support services five days per week for 45 minutes per day;
 - f) A consultant from Hyperion Learning Services would provide the Student's formal reading and math goals and objectives using the "Sharma" math methodology for math goals and the "Visualization/Verbalization" methodology for the Student's reading goals.
 - g) The Hyperion Consultant will consult with the private reading specialist to review the specific reading goals and objectives.
- 11.** The parents reported that the District notified them two weeks after the December 7, 2007 IEP team meeting that they were unable to find an in-district reading specialist trained in the Visualization/Verbalization methodology; therefore, the decision was made to hire a reading specialist from Hyperion Learning Services.
- 12.** In an interview with the complaint investigator Barbara Dee, Director of Student Support Services, stated that the IEP Team agreed to provide the Student with the Lindamood-Bell Visualization and Verbalization reading program and the Sharma math method. Ms. Dee stated that the District is currently using both of these programs for the Student. She further stated that there may be other appropriate programs for the Student, and feels that the District should have flexibility with regard to the methodologies used for the Student.
- 13.** In an interview with the complaint investigator, Kathleen Bouchard, Assistant Principal, King Middle School, stated that there was no finding by the IEP Team that the Lindamood-Bell Visualization and

¹ Transcribed text of audio recordings detailed in discussion below.

Verbalization reading program and the Sharma math method were the only methodologies that would enable the Student to receive a FAPE. She said that in her opinion, the Visualization and Verbalization is not that unique, and that there are other methodologies that would allow the Student to access her educational programming.

14. In an interview with the complaint investigator, Barbara Dunham, Special Education Teacher for the Portland School Department, reported that she worked closely with Vicky Papageorge as a consulting teacher facilitating the implementation of the Sharma math program for the Student. Ms. Dunham reported that in her experience, the Sharma Math program is “absolutely the best, most effective” program for the Student, and that after using these methodologies for the student during the 2006-2007 school year, she witnessed “major improvements” in the Student’s math performance by August of 2007. She was present at the IEP team meeting held on September 18, 2007, and said that although she doesn’t recall a specific decision made at this meeting regarding math methodology, she does remember reporting that the program was working very well for this Student.

VI. Conclusions

Allegation # 1 Failure to identify within the IEP the specific special education services and supplementary aids and services to be provided to the Student in violation of MUSER §IX.3.A.(1)(d); and **Allegation # 3** Failure to specify within the Student’s IEP the staff providing special education and related services to the Student in violation of MUSER §X.2.A.(5). **PROCEDURAL VIOLATIONS FOUND**

MUSER §IX.3.A.(1)(d) provides in relevant part as follows:

- (1) In general. The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes:
 - (d) A statement of the special education (*Section X of this rule*) and related services (*Section XI of this rule*) and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:
 - (i) To advance appropriately toward attaining the annual goals;

- (ii) To be involved in and make progress in the general education curriculum in accordance with (a) and to participate in extracurricular and other nonacademic activities; and
- (iii) To be educated and participate with other children with disabilities and non-disabled children in the activities described in this subparagraph;

MUSER §X.2.A.(5) provides in relevant part as follows:

- (5) *Qualified Staff. Special education and/or related services provided to a child with a disability shall be considered as a part of the child's special education program, shall be specified in the child's IFSP/IEP and shall be provided by appropriately certified education personnel, or licensed contractors. An Educational Technician approved by the Office of Certification of the Department may provide special education services when supervised in accordance with requirements of Chapter 115. See Section XVIII(1)(C) of this rule for costs of qualified personnel.*

If a school administrative unit is unable to hire qualified staff for the provision of related services, the unit shall make an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel to provide related services to children with disabilities. In a geographic area of the State where there is a shortage of qualified personnel who meet the requirements of this section, the unit may hire the most qualified individuals available who are making satisfactory progress toward completing, within three years, the applicable course work necessary to meet the licensing standards described in Chapter 115.

The Parents contend in this case that the District violated MUSER §IX.3.A.(1)(d) and MUSER §X.2.A.(5) by failing to adequately describe the Student's special education services and by failing to identify the persons responsible to provide the services within the Student's IEP. The District, on the other hand, asserts that Educational methodology and staff falls within the discretion of the school district as long as the method chosen offers a FAPE, and the staff is qualified.²

² In connection with the remaining issues considered herein, there is no allegation that the Student has been denied FAPE.

A student's IEP is "the centerpiece of the IDEA's education delivery system for disabled children." *Honig v. Doe*, 484 U.S. 305, 311 (1988). Federal regulations require that the public agency must (1) provide special education and related services to a disabled child in accordance with the child's IEP; and (2) make a good-faith effort to assist the child in achieving the goals and objectives or benchmarks listed in the IEP. 34 C.F.R. § 350(a)(1)(2). Furthermore, the school department must ensure "that all services set forth in the child's IEP are provided, consistent with the child's needs as identified in the IEP." 34 C.F.R. § 300, App. A, Q.31.

Unless the method is either distinctive or exclusive, educational methodology generally falls within the discretion of the school district. *Central Bucks School District* 40 IDELR 106, 103 LRP 52413, Pennsylvania State Educational Agency, November 13, 2003; see also, *Medina Valley Independent School District*, Texas State Educational Agency, 106 LRP 29730 October 10, 2005; *Brougham v. Town of Yarmouth*, 823 F. Supp. 9, 16 (d. Me. 1993), quoting *Lachman v. Illinois State Board of Education*, 852 F.2d 290, 297 (7th Cir.), *cert. denied*, 109 S.Ct. 308 (1988). "A major part of the task of local and state officials in fashioning what they believe to be an effective program for the education of a handicapped child is the selection of the methodology or methodologies that will be employed." *Lachman* Id. at 296. "[P]arents, no matter how well-motivated, do not have a right under the [Act] to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child." Id. at 297.

Likewise, school districts typically have the sole discretion to assign staff. See e.g., *Manalansan v. Bd. of Educ. of Baltimore City*, 35 IDELR 122 (D.Md.2001) (stating that, when the provision of an aide is included in a student's IEP, the provision of an aide is mandatory, but that does not afford the student to the assistance of a particular aide); *Bd. of Educ. of Scotia-Glenville Central Sch. Dist.*, 3 IDELR 727 (SEA N.Y.1995) (rejecting a claim that a disabled student required the services of his mother as an aide, and finding that the services of any appropriately trained individual were sufficient). School districts generally have the prerogative to assign staff to provide educational services without parental consent. See, *Moubry By and Through Moubry v. Indep. Sch. Dist.* 696, Ely, Minn., 951 F.Supp. 867, 885 (D.Minn.1996)

In the present case, however, neither the Parents nor the District contest the adequacy of the methodology or the staff selected in the Student's current program. The issue is solely whether the specific methodology and staff should be identified on the Student's IEP. The Parents assert that the written IEP should include the "Visualization/Verbalization" methodology and the "Sharma" math methodologies since the Parents contend that these specific methodologies were agreed upon at the December 7, 2007 IEP Team meeting. The parents also contend that the IEP team agreed that Hyperion Learning Center would provide math consultation services to the Student and therefore this provider should be specifically identified within the Student's IEP. The Parents object to the general reference to methodology in the IEP which lists special

education services as “Specially Designed Instruction” in reading and math, and the person responsible as “Other.”

The District disagrees, noting that the methodology and staffing decisions are left to Districts, as noted above. In addition, the District asserts that the State’s required IEP form lists specifically enumerated types of special education services to be included in the section of the IEP identifying “Special Education and Related Services” MUSER §X.2.A. The District notes that if the IEP team wishes to articulate the specially designed instruction in a content area, it may do so. *Response to Questions from SAU’s and Parents Regarding the Maine Unified Special Education Regulations*, page 57, January 2008.

Although the IEP developed on December 7, 2007 did not specify the specific Linda-Mood Bell Visualization Verbalization reading program, it did specify within the annual reading comprehension goals that improvements in the Student’s reading comprehension would be achieved “through visualizing/verbalizing”. The December 7, 2007 IEP also set various reading goals for the Student, indicating that she would be able to “visualize and verbalize” with greater frequency and accuracy in a number of specific areas.³

Additionally, the December 7, 2007 IEP set various math goals for the Student, specifying improvements in addition, subtraction, multiplication and division by way of direct instruction “through manipulatives and pictorial representation”⁴.

³ The IEP developed on December 7, 2007 established the following annual reading comprehension goals:

- a) The Student will improve overall reading comprehension skills from the 14th percentile to the 20th percentile by December 2008 through visualizing/verbalizing” as measured by the WJ-III reading comprehension subtest;
- b) Provided specialized instruction [the Student] will be able to visualize and verbalize with automaticity from 2 or more sentences at a time, and answer 4 out of 5 higher order thinking skills questions correctly;
- c) Provided specialized instruction [the Student] will be able to visualize and verbalize with automaticity a whole paragraph and answer 4 out of 5 higher order thinking skills questions correctly;
- d) Provided specialized instruction [the Student] will be able to visualize and verbalize with automaticity a whole page and answer 4 out of 5 higher order thinking skills questions correctly;
- e) Provided specialized instruction [the Student] will be able to visualize and verbalize with automaticity notes from both lectures and written material, and answer 4 out of 5 higher order thinking skills questions correctly;

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The IEP developed on December 7, 2007 established the following annual math calculation goals:

- a) Provided direct instruction through manipulatives and pictorial representation, [the Student] will improve basic operation of addition from below the 1st percentile to the 10th percentile by December, 2008, as measured by the Key Math Diagnostic Test;

An audio recording provided by the parents of an IEP Team meeting held on December 7, 2007, however, reveals that the IEP Team reached consensus on more specific determinations regarding the “Visualization and Verbalization” program and “Sharma Math” methodology, as well as the identification of the staff that would implement the methodologies.⁵ The relevant portion of the December 7, 2007 IEP Team meeting are as follows:

Lynn Sylva (Assistant Director of Student Support Services): “Barbara [Dee, Director of Student Support Services] is going to look into the V and V [Visualization/Verbalization] personnel, in-District personnel, who can do the V and V and we’ll know next week by Friday...If no one from the District [can do it], she will look elsewhere and contract that out.”⁶”

(Unknown): “Goals should show up on the IEP.”

Lynn Sylva: “They are.”

Parent: “Going back to the V and V, that’s to start when? At the beginning of the calendar year, the V and V?”

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- b) Provided direct instruction through manipulatives and pictorial representation, [the Student] will improve basic operation of subtraction from below the 1st percentile to the 5th percentile by December, 2008, as measured by the Key Math Diagnostic Test;
 - c) Provided direct instruction through manipulatives and pictorial representation, [the Student] will improve basic operation of multiplication from below the 1st percentile to the 5th percentile by December, 2008, as measured by the Key Math Diagnostic Test;
 - d) Provided direct instruction through manipulatives and pictorial representation, [the Student] will improve basic operation of division from below the 1st percentile to the 5th percentile by December, 2008, as measured by the Key Math Diagnostic Test;
 - e) Provided direct instruction with the linguistics of math word problems and manipulatives, [the Student] will improve problem solving skills from the 1st percentile to the 10th percentile by December, 2008, as measured by the Key Math Diagnostic Test;

⁵ Transcripts of audio tapes and minutes of IEP meetings relied on to establish scope of discussion and decision making at IEP meetings. See *Gwinnett County School District, Plaintiff v. J. B., by and through her parents, D.B. and W.B., Defendant*, 45 IDELR 60, 105 LRP 56207, 398 F. Supp. 2d 1245 U.S. District Court, Northern District of Georgia, October 21, 2005 and *Antelope Valley Union High School District 106 LRP 8323* (California State Educational Agency October 19, 2005).

⁶ The parents reported that the District notified them two weeks after the December 7, 2007 IEP team meeting that they were unable to find an in-district reading specialist trained in the Visualization/Verbalization methodology; therefore, the decision was made to hire a reading specialist from Hyperion Learning Services.

Lynn Sylva: “Well, yes. I think it would have to start in January because that’s when we dropped the social studies, so we’re assuming that we’re going to have someone by then, so we’ll do it after the Christmas break, right.”

Parent: “Is that in the determinations? I just want to make sure that the timing of that is...”

Lynn Sylva: “I’ll put it in there.”

Parent: “Which means that we’ll have to have personnel identified before that”

Lynn Sylva: “I changed that the Team recommended eliminating social studies, and that V and V will start in that block after Christmas break...Dates of new IEP will be today through next year at this same date.”

Vicky Papageorge (consultant from Hyperion Learning Services): “Also with the addition of a specialist coming from Hyperion Learning Services to provide the one session of math after school...”

(Unknown): “so math would be 225 minutes per week...from Hyperion Learning Center...that incorporates the whole ...”

Lynn Sylva: “I got it...so Hyperion Learning Services will provide the one session of math after school...in addition to what we have...”

Vicky Papageorge: “to support the five sessions per week”

(Unknown): “I would just rewrite it... ‘will provide five sessions and travel’...”

Lynn Sylva: “that’s what I’ll do...five times 45 per week”

(Unknown): “Hyperion Learning Center is going to do Sharma math goals and V and V goals...and you can include that once the specialist has been hired, then Hyperion will consult with the specialist to transition goals to specialist.”

Based on the history of this Student, it is clear that the IEP Team was referencing the Lindamood-Bell Visualization and Verbalization reading program that the Student had been receiving at the district since 2006.⁷ The audio recording also reveals that the Team reached consensus that Hyperion Learning Center would provide “Sharma” math services and goals. It is clear that the IEP Team made an explicit decision to make it a

⁷Barbara Dee, Director of Student Support Services stated that the IEP Team agreed to provide the Student with the Lindamood-Bell Visualization and Verbalization reading program and the Sharma math method. Ms. Dee stated that the District is currently using both of these programs for the Student. Vicky Papageorge advised that she has been utilizing the Sharma math method and the Linda Mood-Bell Visualization and Verbalization reading program since October of 2006.

part of the Student's IEP.⁸ Therefore, the District was obliged to honor it. *See Raymond School Department, Complaint #05.129C, January 19, 2006.*

In *DeKalb County School District*, 21 IDELR 426, 21 LRP 2873, (August 5, 1994) the Georgia State Educational Agency addressed the issue of IEP team consensus and decision making in connection with the provision of an aide for an 18-year-old student with traumatic brain injury.

In *DeKalb*, the student's parents wanted him to receive an aide, asserting that the IEP had reached consensus on the issue. A due process hearing was convened to determine whether an enforceable agreement existed with an IEP team meeting. The minutes of the IEP meeting noted that two of the school system's representatives disagreed with the rest of the committee that the student required an aide. The Administrative Hearing Officer therefore held that no consensus was reached and therefore no enforceable agreement existed between parents and the district. In reaching this conclusion, the *DeKalb* decision analyzed the process of decision making within the context of IEP meetings:

In order to determine whether the parties have entered into an enforceable agreement regarding the provision of an aide to supplement the student's I.E.P., the matter must be considered on both traditional legal contract grounds and within the context of special education law and proceedings... As with all contracts, the cardinal rule of interpreting agreements is to attempt to ascertain the intention of the parties, which is generally determined from a consideration of the entire contract... It is undisputed by both parties that had the committee reached a "consensus" as to the provision of an aide, then such would be a binding obligation on behalf of the County...the principle of consensus as the proper decision-making tool at a staffing is supported by the IDEA...which states the purpose of an I.E.P. meeting is to enable parents and school personnel as equal participants to *jointly* decide the issues.⁹

In *Letter to Anonymous*, 9 IDELR 258, 5 ECLPR 123, 108 LRP 2296 (September 24, 2007), the Office of Special Education Programs noted in the context of IFSPs that if the IFSP includes a specific methodology, the State would need to ensure that services are provided in accordance with that specific methodology.

⁸ Because there is no allegation that the Student's current programming is inappropriate or has otherwise deprived her of a FAPE, it is unnecessary to consider whether the IEP Team decision was appropriate.

⁹ The DeKalb decision also cites *Burlington School Committee v. Department of Education*, 471 U.S. 359, 105 S. Ct. 1996 (1985) which recognized the term "consensus" as the proper decision making tool at an I.E.P. meeting, noting that either party has the right to a due process hearing if consensus is not met.

The district in the present case contends that there may be other methodologies, that the “Sharma” and the “Visualization and Verbalization” methods are not unique and that there are other methodologies that would enable the Student to receive a FAPE. Certainly, if the District had made clear at the IEP team meeting that it was exploring a particular methodology and retained the right to select other appropriate methodologies, the particular methodology discussed at the IEP team meeting would not be identified within the Student’s IEP. However, the decisions reached at this Student’s IEP team confirm that both of these methodologies and service providers were identified as part of this student’s IEP, and therefore as a necessary part of the free appropriate public education provided to the Student. See *Stratham School District v. Beth and David P.*, 4 ECLPR 422, 103 LRP 4317, District Court, New Hampshire.

Allegation # 2 Failure to consider whether the Student needs assistive technology devices and services in violation of MUSER §IX.3.C.(2)(e); **NO VIOLATION**

MUSER §IX.3.C.(2)(e) provides in relevant part:

C. Development of IEP.

(2) Consideration of Special Factors.--The IEP Team shall:

(e) Consider whether the child needs assistive technology devices and services.

The Parents contend in this case that the District violated MUSER §IX.3. C.(2)(e) by failing to consider whether the Student needed assistive technology devices and services. In addition, the Parents contend that the District violated this section by failing to mention the Student’s need for a laptop computer in the IEP form.¹⁰

There is only minimal discussion of the Student’s assistive technology needs in the audio recordings reviewed in connection with this complaint.¹¹ There is no reference to assistive technology during the team determination discussions at the December 7, 2007 IEP meeting.

Despite a lack of discussion on the Student’s assistive technology needs, the December 7, 2007 IEP indicates in section 3 (I) that the Student needs assistive technology devices and services, and that “the district will research and provide software products that focus on the executive function and organizational skills addressed in the extended day program.” Section 8 of the December 7, 2007 IEP addresses

¹⁰There is no allegation that the Student has been denied a FAPE as a result of any lack of assistive technology support.

¹¹ Audio recordings of IEP Team meetings held in June 2007, September 28, 2007, October 17, 2007 and December 7, 2007 revealed only one reference to assistive technology. At the conclusion of the September 28, 2007 IEP meeting when there is a comment made by an unknown source that the Student “needs a graphic organizer due to executive functioning issues.”

supplementary aids and services and provides that the Student “will be allowed the use of a calculator/computer, as well as a word processor to complete written assignments.”

Regulations require that the IEP Team consider the Student’s needs for assistive technology devices and services, along with "a statement of the program modifications or supports for school personnel that will be provided to the student to participate in extracurricular and other nonacademic activities ... " see, MUSER §IX.3.C.(2)(e); *Jay School Department*, 103 LRP 36766, 39 IDELR 259 Maine State Educational Agency, November 13, 2002. Per the Maine Education and School Statutes (2007-2008 Edition), § 19102(2)(F), all public school eighth grade students are included in an annual learning technology plan and are provided with laptop computers. As an eighth grader, the Student has access to a laptop computer as part of her general education curriculum, and therefore it is not necessary to identify this computer within her current IEP. The current IEP, however, addresses the specific assistive technology needs of this Student by requiring the District to research and provide the Student with computer software that focuses on executive functioning and organizational skills.

VII. Corrective Action Plan (CAP)

1. The District shall immediately amend the student’s current IEP to specifically identify that the student shall receive:
 - a) a specialized reading program using the Lindamood-Bell “Visualization/Verbalization” reading program, provided by staff trained in the Visualization/Verbalization program; and,
 - b) a specialized Math program using the “Sharma” math methodology, provided by staff from the Hyperion Learning Center;
2. Copies of the revised IEP will be submitted to the Due Process office and the complaint investigator.