

Complaint Investigation Report
Parent v. South Portland April
26, 2006

Complaint # 06.014C

Complaint Investigator: Sheila Mayberry
Date of Appointment: February 10, 2006

I. Identifying Information

Complainant: Parent

Respondent: Wendy Houlihan
Superintendent
130 Westcott Road
South Portland, Maine 04106

Special Education Director: Judith True

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

On February 9, 2006, the Department of Education received this complaint from the Student's mother. The complaint investigator was appointed on February 10, 2006. On or about March 6, 2006, the complaint investigator received 210 pages of documents from the complainant and 96 pages from the District. Interviews were conducted with the following: Jim Schoonover, Special Education Case Manager; Jessica Kulis, Speech and Language Consultant; Sharon Bouchard, Psychological Consultant; Kathleen Cox, former Acting Special Education Director; Judith True, Special Education Director; Debra Marcoux, Special Education Teacher; Carol Marcoux, Instructional Support Service Coordinator; and the Student's mother. The complaint investigator determined that a complaint investigation meeting was unnecessary and was not held.

III. Preliminary Statement

The Student is xx years old and attends South Portland High School (District). She receives special education services under the category of Specific Learning Disability. She has been diagnosed with a language learning disability affecting her reading, reading comprehension, spelling and narrative writing. She also has been diagnosed with Neurodevelopmental Attention Deficit Disorder (ADD), and Adjustment Reaction with mixed emotional features. The complaint alleges that the District failed to implement the Student's literacy program, among other things.

IV. Allegations

1. Failure to provide a free appropriate public education (FAPE) with respect to implementing an appropriate literacy program. MSER § 1.3;
2. Failure to use the PET process before changing the Student's individualized education program (IEP) MSER § 8.3;
3. Failure to provide an appropriate placement. MSER §§ 11.2, 11.3;
4. Ancillary Issue: Failure to include a statement of transition services in the Student's IEP immediately after the Student turned 14 years of age. MSER § 10.2(I)

V. Summary of Findings

1. The Student was born on xx/xx/xxxx and is xx years old. She lives with her mother and younger brother in South Portland, Maine and attends South Portland High School (SPHS). The Student's parents are divorced. The Student's father lives in California and does not maintain contact with the Student. The Student, diagnosed with Attention Deficit Disorder (ADD), is medicated with Adderall.
2. The Student began receiving special education services, including direct instruction in reading and writing, in xx grade. Testing at that time determined that she had difficulty learning to read due to weaknesses in abstract verbal reasoning and auditory memory. Although she had superior nonverbal problem-solving abilities, academic testing in xx grade found weaknesses in abstract verbal reasoning and other variable auditory cognitive processing deficits which affected her ability to acquire certain basic academic skills.¹ She continued receiving services throughout elementary school and participated in extended year services (EYS). Throughout her elementary school years she received reading instruction using the Wilson Program.
3. Subsequent evaluations in 1999 and 2000 indicated that the Student continued to have weaknesses in auditory memory and sequencing, and academic weaknesses in reading and written language.² However, her high average to superior nonverbal problem-solving skills were also reported. Scores on the WISC III test indicated that the Student had a Full Scale IQ of 108, with a Verbal IQ score of 101 and a Performance IQ of 115. According to Suzanne Jones, the District's psychologist who administered the test, the discrepancy between the scores indicated that the Student continued to demonstrate her cognitive potential best in the visual-perceptual-motor mode. The use of accommodations and modifications

¹ Conclusions were reported by Suzanne S. Jones, M.Ed., in her Psychological Evaluation, dated November 1996.

² Conclusions were reported by Suzanne S. Jones, M. Ed. in her Psychological Evaluation, dated November 1999; and by Susan Blethen, M.A., Speech/Language Pathologist, in her Speech/Language Evaluation, dated January 2000.

continued to aid in reading and writing tasks and assignments, as well as her ability to focus on and organize assignments.³

4. A PET meeting was convened in February 2002 to review the Student's programming. The Student's xx grade Special Education teacher, Laury Maass, reported that the Student continued to have difficulty in remembering when to use short vowels and was unable to consistently decode words of more than three syllables. The Team agreed that she needed increased services in direct reading instruction. The Student's IEP for xx grade and part of xx grade included 100 minutes per week of speech/language services that addressed difficulties with auditory memory and writing skills. Also included in the IEP were 500 minutes of reading and writing instruction per week through the co-taught class and a structured reading program. The Wilson Program was continued throughout the Student's middle school years.
5. The minutes from a PET meeting held in October 2002 indicated that the Student had been progressing, but also noted some difficulties in writing abilities and turning in assignments on time. It was agreed that direct instruction was needed to focus on improving written language skills. The IEP was amended to reflect 60 minutes a week of speech/language services.
6. In February 2003, a Speech/Language evaluation was performed by Shannon L. Huckaby, the District's Speech/Language therapist. Results indicated low average receptive vocabulary and average expressive vocabulary knowledge. There was also a significant discrepancy between her Contrived Writing ability and Spontaneous Writing ability. She noted that the discrepancy was due to the Student's processing weaknesses.
7. In February 2003, a psychological evaluation was performed by Stephen T. Ferguson, M.S., the District's service provider. He administered the Comprehensive Test of Phonological Processing (CTOPP) and the Gray Oral Reading Test-III (GORT-III). Results from the CTOPP indicated that the Student had scores of "very poor" to "below average." Her greatest weakness was in rapid naming, a domain that measures automatic retrieval of information.⁴ The "deficient" and "below average" scores from the GORT-III indicated that the Student continued to struggle with basic reading skills, including decoding, fluency, and comprehension. Mr. Ferguson stated that, "She misses detail as much as she has trouble making inference about information or concepts within the stories." He summarized that the Student, although bright, needed continued direct instruction in phonological awareness, particularly, segmentation and

³ Special Education Teacher Report Form, Robert Northrup, January 24, 2000.

⁴ Results of the tests were as follows: Phonological Awareness: 76 (Poor); Phonological Memory 85 (Blow Average); Rapid Naming: 59 (Very Poor). Results of the supplemental subtests were as follows: Blending Nonwords: 9 (Average); Segmenting Nonwords: 5 (Poor); Rapid Object Naming: 7 (Below Average); Rapid Color Naming: 9 (Average).

- manipulation tasks, as well as work in fluency. He also stated that comprehension needed to be addressed and modifications were needed in content areas.
8. In a PET meeting held on March 23, 2003, the team agreed to discontinue speech/language services, since sufficient progress had been made. The Student had tested in the average range on a speech/language evaluation performed in February 2003. The IEP, implemented on March 26, 2003, included 200 minutes biweekly of direct instruction in a resource room setting. It also included accommodations that allowed test retakes if necessary, alternatives to open-ended test questions, the use of graphic organizers and assistive technology. The IEP did not include a transition plan. The Student turned xx on xx/xx/xxxx.
 9. A PET meeting was convened on October 16, 2003, after the Student entered her first year as a xx at SPHS. A consensus was reached on an increased level of direct reading instruction to address IEP goals. Accommodations and modifications were kept in place. The PET agreed to increase the Student's services to 425 minutes biweekly, which included 135 minutes of one-on-one reading instruction. All content classes were held in mainstream classrooms.
 10. During the first three quarters of the 2003-2004 school year, limited progress was reported on many of the objectives in the IEP relating to word decoding, spelling, sentence writing, and word pronunciation. However, sufficient progress was noted in all areas of reading and writing in March 2004.
 11. A PET meeting was held on March 8, 2004. Teachers expressed concern about the Student's lower grades, her lack of focus, and her difficulty keeping up with assignments. She was receiving a "D" in math, a "C" in English, and a "C" in Earth Science. The mother noted that the Student spent hours at night on homework and midterm exam studies. She was concerned about her poor vocabulary and lack of speech services. The team agreed that support services should be increased to 680 minutes bi-weekly, including 530 minutes of direct academic instruction and 120 minutes of direct reading instruction using a multi-sensory phonetically-based approach. The PET also agreed that the Student should continue to have access to supplemental aids, including assistive technology for written work, a graphic organizer for written assignments, and books on tape or similar materials when possible.
 12. The Student underwent an occupational therapy assessment in August 2004. The evaluator, Mary Morris, MOTR/L, associated with the Maine Medical Center, Division of Psychiatric Occupational Therapy, administered the assessment. In the initial interview with Ms. Morris, the Student reported that she was having academic difficulties in xx school as opposed to xx school where she was consistently an honors student. The Student stated that she was getting "Ds" in high school due to low midterm grades. She stated that the classes were twice as long and she would lose focus after a while. She did not understand some of the reading in English. Two and a half hour tests and long test essays were also

difficult for her. Ms. Morris reported that performance on a standardized attention assessment indicated that the Student had difficulty attending to tasks that required auditory processing. The Student could not accurately follow verbal directions on some tasks. Her scores on visual perception were normal, which indicated to Ms. Morris that the Student's difficulty in reading was not due to vision problems. Ms. Morris recommended the use of strategies to help the Student's ability to focus in school. Other recommendations included:

- a. repeating instructions in class;
- b. completing one task before beginning another;
- c. administering only one test a day;
- d. breaking down large tasks into smaller parts;
- e. incorporating breaks into the day;
- f. encouraging active participation in class;
- g. incorporating movement in class, such as passing out papers in class;
- h. taking notes;
- i. asking for cues when experiencing difficulty focusing;
- j. engaging in physical activity before performing a thinking task.

13. In September 2004, a neuropsychological assessment was completed by Dr. Bennett Slotnik. Tests that were administered included the Wechsler Intelligence Scale for Children IV (WISC IV), Wechsler Individual Achievement Test, Children's Memory Test, and several other tests which measured attention issues and writing ability. In his report, Dr. Slotnik noted that the Student was a socially and physically active teenager, involved in music and sports. He indicated that she has been consistently described and characterized by school personnel as diligent, conscientious, hard working, and uniformly pleasant and socialable with peers and adults. He also noted her psychotherapeutic counseling from Community Counseling Services. Results of the WISC IV indicated a full scale IQ of 100, placing her in the average range. However subtests indicated varying scores. She earned a Verbal Comprehension Index, or IQ equivalent of 106, Perceptual Reasoning Index of 112, Working Memory Index of 83, and Processing Speed of 88. Oral language comprehension and self-expression had a high average range at the 84th percentile in verbal abstract reasoning. However, she scored in the 37th percentile with respect to her ability to provide definitions for words of increasing difficulty.
14. Dr. Slotnik reported that the Student's scores on the Wechsler Individual Achievement Test II were low. Her processing of written language, single word reading and decoding scores were equal to an IQ of 78 (7th percentile) and pseudo- word decoding equal to an IQ of 80 (9th percentile). Reading comprehension was scored equal to an IQ of 95 (37th percentile). Spelling was measured equal to an IQ of 88 (21st percentile). Dr. Slotnik opined that these scores represented the Student's difficulty in processing the written language as compared to her optimal level of cognitive efficiency. He stated, "The results, therefore, appear to be entirely commensurate with the presence of a

neurodevelopmental language learning disability and, therefore, the formulation is entirely consistent with previous assessments conducted through the school system.”

15. Dr. Slotnik’s recommendations included pursuing a special education consultation to determine whether an individually designed literacy program using reading and phonetic tools, such as the Wilson program the Student had in earlier years, would be appropriate and available. Books on tape, both for pleasure and academic content, were also recommended. He also recommended counseling due to the Student’s high expectations for herself which were leaving her at risk for increased anxiety, frustration, that could lead to depression.
16. The Student entered her xx year at SPHS in September 2004. At that time, the Student’s IEP included 680 minutes biweekly of direct support, including 530 minutes of direct academic support and 120 minutes of direct reading instruction. It also included 30 minute consultation with mainstream teachers. Sometime during the fall of 2004, the Student stopped attending her direct reading instruction sessions. James Schoonover, the Student’s special education teacher, reported that the Student wanted to focus more on her homework than on her reading skills because she was stressed about completing her assignments. He believed that she had told her mother.
17. Mr. Schoonover reported to the complaint investigator that at a November 2004 parent teacher conference, he discussed the change with the mother. He stated that she did not object to this decision. However, no PET meeting was held to make a final decision.
18. In an interview with the complaint investigator, the mother stated that Mr. Schoonover never told her about the change in the Student’s programming and was concerned that it was made outside of the PET process.
19. The second quarterly IEP progress report, submitted in January 2005, indicated that goals and objectives in the areas of direct reading instruction using a multi-sensory, phonics-based reading program were noted as “not addressed” for the reporting periods of November 2004 and January 2005.
20. In a letter dated March 15, 2005, the Student’s mother submitted several complaints regarding the Student’s program to the District. She expressed concern that the Student’s progress had declined. She complained that: 1) direct reading services had been improperly discontinued without approval by the PET; 2) improper changes were made in hours of services; 3) there was a lack of a reading specialist at the high school to provide proper reading instruction in the Wilson reading program; 4) improper references were made in evaluations; 5) evaluations were improperly administered; and 6) the District failed to develop a transition plan.

21. A PET meeting was held on March 15, 2005. The Student's mother presented her letter of March 15, 2005 to the team. Absent from the meeting was Special Education Director, Cathleen Fries. James Schoonover indicated that he would submit the mother's letter to Ms. Fries. The mother agreed to this action. The Team then discussed a transition plan and decided to develop one. They also decided to revise and expand the Student's accommodations and modifications. It was also decided that the Special Education Director would speak directly to the parent outside of the PET process regarding other issues raised in the mother's letter of concerns.
22. As a result of the PET meeting on March 15, 2005, the IEP was modified to include a transition plan with coordinated activities regarding preparation for taking the SAT and gathering college information. Up until this modification, no transition planning had been added to the IEP. No other changes to the IEP were made. The mother also reported to the complaint investigator that the Student's direct reading instruction was resumed after March 15, 2005.
23. A PET meeting was held on June 2, 2005. The discussion centered on the Student's reading weaknesses, questioning whether the Wilson reading program was the most appropriate for her. It was agreed that an assessment should be performed, as well as a speech language evaluation. It was also agreed that 240 minutes a week of extended year services (EYS) would be offered. There was also an agreement to provide 30 minutes a week of social work services in order to improve the Student's self-advocacy skills and help her promote her own development. Finally, the PET agreed to have a technology consultation performed to address the issue of assistive technology for the Student.
24. An academic evaluation was performed in July 2005, by Rachel Knight. Using the Woodcock-Johnson III Tests of Achievement, the Student's performance was low in basic reading skills, and average in reading comprehension, written language and written expression. Her knowledge of phoneme-grapheme relationships was low average.
25. A psychological evaluation was performed in July 2005 by Sharon Bouchard, M.S. The evaluation report noted a history of reading deficits from xx grade. In summary, Ms. Bouchard stated:

(The Student) ... has demonstrated a consistent pattern of ability and weaknesses that include average to high average intellectual ability, phonological processing deficits and significant delays in reading. Currently (the Student) displays delays in her reading and writing achievement. Weak decoding skills and reading fluency are likely to impede (the Student's) comprehension and will need to be addressed.

Ms. Bouchard recommended continued direct instruction in a multi-sensory reading program to further develop basic word attack and phonics skills. She suggested the use of Lexia, another phonic-based reading program, on a daily basis to reinforce skills. She also recommended routine practice in reading fluency. Materials suggested included Great Leaps, Read Naturally, and Quick Reads. Teaching tools were also suggested. The use of assistive technology, such as Kurzweil, a read aloud computer program, and taped books were recommended. Ms. Bouchard also noted that the Student was best able to remember information that was clearly organized and presented in a visual manner. Recommendations were also made to help with the Student's memory deficits.

26. A PET meeting was held on August 29, 2005 to review the Student's IEP. The team agreed to refer the Student to the Literacy Specialist at the SPSH. There was also an agreement to administer speech and language testing and to reconvene once the results were made available.
27. A PET meeting was held on September 7, 2005 to review the evaluations. Upon confirming the weaknesses in reading and righting, the PET agreed that speech-language testing was important to further explore oral language skills. In addition, a decision was made to refer the Student to the new Literacy Specialist at the SPSH in order to refine a plan that met her needs in the areas of reading and writing. It was also noted that the Student, given that she was an older student and a xx in high school, needed skills to advocate for herself in the classroom in order for teachers to respond to her specific needs and to provide accommodations.
28. In October 2005, a Speech and Language evaluation was performed by Jessica Kulis, the District's Speech and Language consultant. Results of the evaluation demonstrated that the Student had below average to average language ability with some relative strengths and weaknesses throughout her language development. According to the evaluation, her relative strengths included listening comprehension and spoken language. Her relative weakness was her lack of knowledge and use of vocabulary, a weakness that extended to her knowledge of how words are related. This deficiency was possibly affecting her reading comprehension and tasks in which she needed to go beyond the words to assess, compare and contrast, and pull in associated knowledge. Several recommendations were made with respect to developing the Student's vocabulary.
29. The PET reconvened on November 7 and 14, 2005. All evaluations were discussed. In discussing the results of the reports, the team concluded that the Student still needed the 680 minutes of biweekly direct reading instruction and self-advocacy skill building. Also, a speech and language consultation would be added to the IEP for one hour per month. Additional classroom modifications were made and the transition plan was updated. The team also decided that the direct instruction would focus skill and drill components of the Student's

programs. Reading instruction would focus on decoding and encoding words using a multi-sensory, phonics-based program as well as reading fluency. Self advocacy skills would address strategies for completing assignments, test taking and teacher check-ins.

30. Progress on goals and objectives in the Student's IEP were reported on January 6, 2006. With respect to reading skills, it was reported that she made limited progress, with one exception: she performed satisfactorily in the objective that allowed the Student to use reading guides to provide an overview of novels. No work was begun on the issue of reading fluency. Limited progress was made in taking advantage of opportunities for extra instruction or test preparation. Limited progress was made on the self-advocacy goals and no work had begun on developing the Student's ability to tell teachers about her learning disabilities or ask for accommodations.
31. The PET met on January 12, 2006. It became apparent at that meeting that the Student was falling behind in completing assignments and not attending classes. The PET summary indicated that the Student's progress had been limited, due in large part to a considerable number of absences. Paul Brogan, the Student's history teacher, reported that the Student had attended 11 out of 40 classes. Debra Marcoux, the Student's special education teacher, reported that the Student had missed 26 hours of the 52 hours scheduled for direct instruction.
32. The Student's first semester grades for the 2005-2006 school year were as follows:

American Literature:	83 (C)
CP American History:	77 (C)
Algebra II, Level 3:	73 (D)
Health:	90 (B)
Human Anatomy:	85 (B)
Chemistry:	82 (C)

33. In an interview with the complaint investigator the Student's mother discussed her disappointment with how the District has handled her daughter's special education needs. She spoke about years of frustration with the District and how her daughter has fallen behind her peers, even though she is a bright, intelligent young lady. She stated that upon entering high school, her daughter's IEP was never properly implemented. She stated that, even though the IEP had been amended and was now appropriately worded, implementation of it had been very poor. Specifically, she reported that she was never notified that the Student's direct reading instruction had been discontinued in the fall of 2004 until March 2005. No PET was convened to make that change, and she would have been opposed to it. She stated that a technology consultation was never done and that social work services were not made available as agreed upon at the June 2, 2005 PET. She stated that the Student's need to have one-on-one direct reading

instruction was self-evident given all of the testing and evaluations that had been performed throughout the years. She reported that a transition plan was not included into the Student's IEP until the one dated March 15, 2005. She also stated that, even though the Student had access to special services in the resource room, the classroom itself, located in the high school basement, next to the noisy "shop" class, with fluctuating high temperature, was no place to conduct special education. She had no faith that the District would change this location any time before her daughter graduates. With respect to the availability of assistive technology, she stated that the District put up barriers to use it. For instance, the Kurzweil adapted computers were only located in the basement resource room. Books on tape needed teacher permission to be taken out of school, and no laptop had been made available.

34. The Student's mother also stated that she saw her daughter losing interest because it had been so difficult for her to access the special services defined in her IEP. She had not been consistently attending class. She lacked the self advocacy skills she needed to communicate her difficulties to teachers. She stated that the Student, who had turned xx years old, began denying to herself that she had a learning disability. She believed that her daughter had been disengaging from her educational program because of the environment, the barriers to accessing the services, and the history of faulty implementation of the Wilson reading program. She stated that in order for her daughter to be able to catch up to where she should be, she needed one on one direct instruction in the Wilson program on a daily basis, in an environment free from distractions.
35. In a joint interview with the complaint investigator, Special Education Director, Judith True, and Assistant Special Education Director, Cathleen Cox, both stated that the Student had refused to use the technology available to her. There was no record that she had ever asked for a laptop. They indicated that the PET could consider this if a request were made. With respect to other accommodations, they stated that the Student was allowed to request that tests be taken orally. They also stated that the Kurzweil adapted computers were available in the learning lab near the library, as well as in the resource room. They stated that the Student was allowed to use a tape recorder at any time. However, they acknowledged that there was a policy for getting prior teacher permission to check out books on tape. They also acknowledged that the resource room was not quite suitable for providing special education services. They indicated that the building was old and had its drawbacks. However, they stated that they are in the process of finding new space for the program.
36. Director True and Ms. Cox also stated that the Student's attendance record made it very difficult to provide her with services. They referenced the Student's attendance record, especially with regard to the periods when she was scheduled to use the resource room. Attendance records indicated that the Student missed 33 resource support sessions during the year. These included excused and

unexcused absences, as well as those days in which the Student came in late or left the room for various reasons and did not return as planned.

37. Ms. True and Ms. Cox acknowledged that the PET agreement to provide social work services had not occurred and that it was an oversight in implementing the IEP. They also acknowledged that a technology consultation had not been timely performed but that one had been done in February 2006, once it came to their attention that it had not been performed.
38. In an interview with the complaint investigator, Carol Marcoux, Coordinator for Instruction Support, reported that her experience with the Student had been only based upon the 2005-2006 school year. Her sense of the Student was that she appeared invested in her relationship with friends, and did not want to stand out. She appeared to have systemically made herself unavailable to take advantage of opportunities available to her. She was often tardy and would leave the resource room for an errand or other teacher help, but not return. She was absent on numerous occasions. Ms. Marcoux believed that the Student's behavior was that of a typical teenager.
39. In an interview with the complaint investigator, the District's licensed psychologist, Sharon Bouchard, M.S., stated that she met with the Student in the fall of 2005 at the mother's request. She with the Student and discussed her strengths and weaknesses, and strategies for advocating her needs to her teachers. She stated that it appeared that the Student did not want to willingly accept the educational programming for her and was not convinced that she needed it any longer. Ms. Bouchard stated that the Student did not want to work any harder than she already was, and that she was very passive about her own learning. She believed that the Student did not have the desire to work on her needs during the school day and that this was why she had not been participating this year. Ms. Bouchard commented that the Student felt that she could get by in her content classes with her reading level at this point. Ms. Bouchard opined that she was uncertain how the District could address the Student's lack of participation at this point, noting that disciplinary measures would most likely not work. She believed that the Student may be more interested in one on one reading instruction if it took place outside of the school day.
40. Ms. Bouchard also stated that because the Student was reading at a xx or xx grade level, or at the equivalent of a xx year old, she believed that the Student would always have difficulties with reading fluency and accuracy. She believed that the Student could do fine in college with accommodations and a good work ethic.
41. Ms. Bouchard also reported that at the September 2005 PET meeting, the PET discussed increased support. However, the mother felt that it was important that the Student engage in something that she would do well at. It was decided that the Student should take the quilting class which would interfere with a schedule that could have included increased direct reading instruction. Since then, it had

- become apparent that the Student had keen visual and spatial abilities and performed well in this class.
42. In an interview with the complaint investigator, Debra Marcoux, the Student's Special Education teacher, stated that, although the Student was a wonderful person, she had missed many days of direct instruction in the resource room during the 2005-2006 school year. During unexcused absences, she often saw the Student in the hallway with her friends. She stated that this had happened frequently during the school year. She noted that the Student had received detention for skipping class. She also stated that the Student was worried about her grades more than developing her reading and writing skills and would frequently ask to go and get help for another class. She saw this as typical teenage behavior.
 43. Ms. Marcoux also stated that in November 2005, a reading assessment she administered to the Student indicated that the Student was having trouble with two and three syllable words. She was working with the Student to address underlying problems before moving ahead. Ms. Marcoux stated that she also had two to three other students in her class. She worked with the students individually and as a group. The Student was scheduled for 230 minutes bi-weekly in 85 minute blocks every other day. Ms. Marcoux described the resource room as not being too distracting and that windows could be opened if it was too hot.
 44. In an interview with the complaint investigator, Jessica Kulis, the District's Speech and Language clinician, stated that she consulted with the Student's Special Education teacher, Debra Marcoux, one hour a month on the Student's self advocacy skills. She reported that the Student was not unique in that she did not want to stand out among her peers. Ms. Kulis stated that she had never met with the Student herself. It was her understanding that she provided consultation to the teacher and not to the Student directly.
 45. The complaint investigator made a site visit to South Portland High School (SPHS) on April 12, 2006, to inspect the location of the resource room where students with disabilities attend direct instruction. The classroom was located on the bottom floor of the school. The room is accessed off a corridor that houses the custodian break room, the custodian's office and supply areas. It is the only classroom off of this corridor. The classroom sits between the garage/docking bays for delivery trucks and the "shop" classroom on the other side. Saws and other machinery could clearly be heard in the resource room. The outside wall of the room had windows across the entire wall. The room was spacious and had three desks for the three special education teachers. At the time of the visit, only one student was in the room. There were three computers in the room. One of them was used for the Kurzweil software reading program. The complaint investigator was told by Debra Marcoux, who was in the room at the time, that the Kurzweil reading software program had not been installed in another computer until that week, on or about April 10th, 2005, in the learning lab located in the

school library. Up until that time, the program had only been available in the resource room.

46. The complaint investigator toured other parts of the school. It was determined that a classroom for photography and foreign language, taught by the same teacher, was located in another section of the lower level. It was accessed by a different stairwell. It was located across the hall from professional offices for the guidance counselor and social worker. It also shared a wall with the “shop” classroom. Although machinery could be heard in the classroom, the teacher reported that during her foreign language class, no machinery was running.

VI. Conclusions

Allegation #1: Failure to provide a FAPE with respect to implementing an appropriate literacy program. MSER § 1.3. **VIOLATION**

Maine Special Education regulations, § 1.3 entitles each student with a disability an equal opportunity to receive a free appropriate public education (FAPE) that emphasizes special education and supportive services designed to meet his or her unique needs.

According to *Board of Education of the Henrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176 (1982), if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the procedural checklist are satisfied, the child is receiving a “free appropriate public education” as defined by the Act. As quoted in *Lt. T.B. and E.B. ex rel. N.B. v. Warwick Sch. Committee*, 104 LRP 12129 (1st Cir. 2004), this does not obligate a school system to provide the student with the best possible education, but the student must be able to make reasonable educational progress. If the District’s program is designed to address the Student’s unique educational needs, is reasonably calculated to provide her some education benefit, and comports with her IEP, then the District has offered a FAPE, even if the student’s parents preferred another program and even if the alternative program would result in greater educational benefit. *Rowley*, 458 U.S. at 207-208. The District is also required to offer the Student a program which educates her in the least restrictive environment, with removal from the regular education environment occurring only when the nature or severity of the disabilities is such that education in regular classes and services cannot be achieved satisfactorily. 20 U.S.C. §1412(a)(5)(A); Me Reg. 11.1.

The issue in this case is whether the District provided a FAPE to the Student in its implementation of the literacy program specified in her IEP. The mother alleges that the Student’s progress has declined since she entered SPHS due to the failure on the part of the District to implement the IEP.

It is apparent from SPHS staff and those administering assessments that they believe the Student to be a bright, intelligent, socially engaged and physically active young woman. She is artistically talented and has been motivated to do well. It is equally

clear to the staff that the Student has struggled in high school to keep up with the demands of her academic classes and that this is due not only to her learning disabilities, but also to her social activities. She has felt the pressure of increased academic challenges and the pleasure of being creative, as shown in her quilting class.

The Student's current IEP includes numerous services and access to various forms of assistance to aid in developing her reading and writing skills. Her IEP calls for 680 minutes bi-weekly of direct instruction, including 530 minutes of academic support and 120 minutes of direct reading instruction. Various accommodations for assignments and tests are in place. She is allowed to retake tests on which she received a "D" grade or below. Assistive technology tools have also been included. These include the use of the Kurzweil computer software that allows a student to read text along with a read aloud computer program. Progress on IEP goals and objectives has been varied, but positive overall. She consistently receives "Bs" and "Cs" and a "D" on occasion. Extended year services were added to the IEP for the 2005 summer months to provide direct reading instruction. Also, a transition plan was drafted that included activities to prepare for job placement and other life skill activities. The District also acknowledged that the Student was passive and needed self-advocacy skills. Therefore, in January 2006, the PET built into the IEP a 30 minute consultation with a speech and language therapist to help the Student work on her self-advocacy skills.

The Student's absenteeism has been significant during the 2005-2006 school year. She missed or partially missed at least 36 scheduled resource room sessions. She has been seen talking to friends in the hallway during times when she should have been getting direct instruction. Up until March 2006, it was reported by her mother and the District's psychologist, Sharon Bouchard, that the Student believed she no longer had a learning disability. Ms. Bouchard reported that the Student did not want to take the time to attend direct reading instruction because she believed she could get by on her current skill level.

It is clear that the Student's IEP is designed to address her unique educational needs, and is reasonably calculated to provide her some educational benefit. However, the District's efforts to provide these services have not been consistent. 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). Furthermore, school departments must ensure that all services set forth in the IEP are provided consistent with the student's needs as identified in the IEP. *Maine School Administrative District # 61*, 41 IDELR 28 (2004). In this case, the Student's IEP was not implemented in its entirety during the 2004-2005 school year. The direct reading instruction, 120 minutes bi-weekly, stopped being provided on or about October 1, 2004 through March 15, 2005. The Student's Special Education Teacher, Mr. Schoonover, unilaterally stopped the direct instruction upon the request of the Student. Although there is some evidence that he conferred with the parent on this issue, no PET was ever held to officially amend the IEP to discontinue the services. The failure to provide these services deprived the Student of a FAPE.

Also, the District failed to include the agreed upon social work services in the IEP. IDEA 2004, Title 20 § 1414(d)(4)(ii) requires, among other things, that school districts ensure that PETs revise IEPs as appropriate to address the changing needs of the student. MSER § 8.11 states that if a PET cannot reach consensus on an issue, the school district must provide the parents with prior written notice of the school's proposals or refusals or both, with respect to the student's educational program. During the investigation, the District acknowledged that it had not provided the social work services agreed upon by the PET, but that it was an oversight. Given that this service was needed at a critical time in the Student's academic life when she was disengaging from her program, it was imperative that she be provided with the service at that time.

Finally, the District has acknowledged its failure to perform a technology assessment that the PET agreed to in the June 2, 2005 meeting. Upon realizing this, one was performed in February 2006. Many of the supports recommended in the assessment have already been provided to the Student.

Allegation #2: Failure to use the PET process before changing the Student's IEP. MSER § 8.3 VIOLATION FOUND

In addition to the District's unilateral termination of the Student's direct reading instruction during part of the 2004-2005 school year, the District also violated MSER § 8.3 by not convening a PET meeting in the Fall of 2004 to address its concerns that the Student was not attending her direct reading instruction sessions. Such decisions must be made within the joint decision making process of the PET. MSER § 8.11.

Allegation #3: Failure to provide an appropriate placement. MSER §§ 1.2, 11.2(D), 11.3 VIOLATION FOUND

MSER § 11.1 requires that, to the maximum extent possible, a student with disabilities shall be educated with students who are not disabled and that alternative placement shall occur only when the nature or severity of the disability of a student is such that education in regular classes cannot be achieved. Also, IEPs must be developed in accordance with the principle of the least restrictive educational alternative. One criterion that must be considered is whether the facilities and accommodations available at a proposed placement are comparable to those available at the school the student would typically attend. MSER §§ 11.2(D), 11.3 See also *Hendricks v. Gilhool*, 709 F. Supp 1364 (E.D. 1989) (Court found that classrooms were unequal to those furnished to non-disabled students in several areas including size, sanitation, ventilation, noise level, and furnishings.); and *Letter to Inos*, 43 IDELR 202 (2004) OSEP, in response to a request for funding of a school building renovation, where a separate building for special education classes was being proposed, questioned why a separate building was needed for special education services. OSEP noted that, in all cases, placement decisions must be individually determined on the basis of each child's disabilities and needs, and not solely on factors such as category of disability, severity of disability, configuration of service delivery system, *availability of space* or administrative convenience." (Emphasis added).

Both the District and the Student's mother agreed that the location of the resource room is less than desirable. It is located in the lower level of SPHS, an older part of the building in need of continuous repair. Although the mother stated that the room is in the basement of the school, it is actually located on the lower level, ground floor of the school. It is next to the "shop" class where loud, noisy saws and other machinery can be heard on the other side of the wall. The temperature fluctuates in the room, although the windows can be opened. In addition, it is the only classroom located in a corridor housing the custodial staff break room, the custodian's office and the school's supply and storage bays. Also, up until the filing of the complaint investigation request, the only computer adapted for use of the Kurzweil program was located in the lower level resource room. The noise level alone clearly made it difficult for the Student to use the resources available in that room. Direct reading instruction is clearly difficult in that environment.

Finally, the resource room is located in a part of the school that is unwelcoming and discouraging for students with disabilities. Its location and proximity to janitorial operations and storage bays, without other classrooms in the same corridor, sends a message to students with disabilities that they are the least important of the District's students. This classroom is not comparable to others provided for non-disabled students.

Ancillary Issue: Failure to provide a statement of transition services in the Student's IEP immediately after the Student turned 14 years of age. MSER § 10.2(I)

NO VIOLATION

MSER § 10.2(I) requires that upon a student turning xx years old, school districts must insert a statement into IEPs concerning transition services to prepare students for post high school activities. The Student turned xx years old on September 13, 2002. It was not until March 15, 2005 that the PET included a transition statement into the IEP. It was not until this complaint investigation request was submitted that the Student's mother raised this as an issue. A complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless compensatory services are sought. MSER § 13.5. Since this violation is well past the one year statute of limitations, no action can be taken.

VII. Corrective Action Plan

1. The District shall provide the Student with compensatory direct reading instruction for a total of 660 minutes.⁵
 - The District shall document compliance with this Corrective Action by sending a log of the provision of services, signed and dated by the reading instructor, to: 1) the Due Process Office; 2) the Complaint Investigator; and, 3) the Parent.
2. The District shall incorporate social work services into the Student's IEP and immediately begin providing those services.

The District shall document compliance with this Corrective Action by:

- sending a copy of the amended IEP that includes 30 minutes per week of social work services to: 1) the Due Process Office; 2) the Complaint Investigator; and, 3) the Parent.
 - submitting a log, signed and dated by the service provider, documenting the provision of social work services, to the above.
3. The District shall relocate the resource room from the lower level of the high school to a location within the school that is comparable to the location of classrooms that are used for non-disabled students. This relocation shall be completed by the beginning of the 2006-2007 school year.
 - The District shall document compliance with this Corrective Action by sending a report of completion, signed and dated by the superintendent of schools, to: 1) the Due Process Office; 2) the Complaint Investigator; and, 3) the Parent.

⁵ Calculation of compensatory service time: Date services stopped: October 1, 2004. Date services resumed: March 15, 2005. Number of weeks services not provided: 24 weeks – 3 weeks (vacation) = 21 weeks. Since the services were to be provided 120 minutes *biweekly* (60 minutes *weekly*), only 11 weeks will be counted. 11 weeks multiplied by 60 = 660 minutes (11 hours).