

Complaint Investigation Report
Parent and Parent v. School Union # 122
May 31, 2006

Complaint # 06.016C

Complaint Investigator: Sheila Mayberry
Date of Appointment: February 21, 2006

I. Identifying Information

Complainant: Parent and Parent

Respondent: John Hedman
Superintendent
843 Woodland Center Road
Woodland, Maine 04736

Special Education Director: Paul Swanson

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

On February 16, 2006, the Maine Department of Education received this complaint. The complaint investigator was appointed on February 21, 2006. On or about March 15, 2006, the complaint investigator received 620 pages of documents from the Respondent and 65 pages from the parents. Interviews were conducted with the following people: Dr. Manisha Punwani, treating psychiatrist; Danielle Perry, social worker; Mary Mowatt, special education consultant; Rhoda Ouellette, educational technician; Libby Cohen, assistive technology specialist; Rick Mills, assistive technology consultant; John Hedman, Superintendent; Rick Umphrey, Special Education Director, Caribou School Department (CSD); Denise Bosse, Special Education Coordinator; Chris Hamilton, Caribou High School nurse; Ken Atcheson, Social Studies teacher; Barbara Souther, English teacher; Paula Gorence, educational technician; Martin Gallant, guidance counselor; Pat Sterris, educational technician; Kim Stokdijk, Spanish teacher; Peter Scovill, Physical Science teacher; Ken Kinney, Child Protective Services; Student's father; Student's mother. The complaint investigator determined that a complaint investigation meeting was not necessary.

III. Preliminary Statement

The Student is xx years old and attends the xx grade at Caribou High School (CHS) in Caribou, Maine, tuitioned from School Union # 122 ("District"). He receives special education services under the exceptionality of Multiple Disabilities. The District and the Caribou School Department (CSD) agreed that the CSD would implement the Student's IEP under the direction of Rick Umphrey, CSD's Special Education Director. Under this arrangement, the District has

maintained its legal responsibility for the Student' program. This complaint was filed by the student's parents, alleging that the District violated the Maine Special Education Regulations ("MSER") in a number of ways, including failing to implement his Individualized Education Program ("IEP").

Because of extraordinary circumstances resulting in the availability of only one complaint investigator, and the relatively high number of persons to be interviewed, an extension of the sixty-day time limit was necessary.

IV. Allegations

1. Failure to implement the Student's IEP with respect to assistive technology. MSER § 10.5;
2. Failure to implement the Student's IEP with respect to the provision of an appropriate environment for testing purposes. MSER § 10.5;
3. Failure to provide modifications during test taking. MSER § 10.5;
4. Failure to provide a written plan for scheduling make-up home work assignments and makeup tests;
5. Failure to track progress during tutoring sessions while the Student was hospitalized and after Christmas vacation;
6. Failure to terminate the use of negative consequences;
7. Failure to allow the Student to contact his parents during escalation of emotional trauma;
8. Failure to provide a schedule of the Student's assignments;
9. Failure to provide a written review of the Student's progress;
10. Failure to include parents in the development of goals and objectives in the May and June 2005 PET meetings. MSER § 8.6;
11. Failure to provide a qualified point person or qualified educational technician at the beginning of the school year;
12. Failure to provide an outside consultant to help with implementing the IEP;
13. Failure to have an alternate educational technician;
14. Failure to adjust failing test and assignment grades by not allowing the Student to retake tests or assignments to meet 80% goal of IEP. MSER § 10.1;
15. Failure to complete monitoring forms accurately;
16. Failure to plan for compensatory education due to failing several classes;

17. Failure to provide a free appropriate public education (FAPE) by not providing the Student to access to Internet services on the Student's laptop computer. MSER §1.3;

Ancillary Issue: Failure to convene a PET meeting to review the implementation of the Student's IEP. MSER § 8.3(E)(2).

V. Summary of Findings

1. The Student is xx years old and lives in Woodland, Maine with his parents and four younger siblings. The family moved to Woodland, Maine in 1997. The Student was home-schooled from xx through xx grades.
2. The Student was evaluated in xx grade after his parents became concerned about his apparent delays in reading. He was diagnosed with a reading and writing processing disability.
3. The Student entered xx grade in December 2002 at the Woodland Consolidated School in Woodland, Maine. He received special education services for language arts. Although no IEP for middle school was provided to the complaint investigator, references to special education were made in an evaluation performed by assistive technology specialist Libby Cohen. She noted that he had received special education services for spelling, English, study hall, computer class, and for the development of organizational skills. He also received some modifications in mainstream classes, including a behavior plan to address work completion and following directions.
4. In an interview with the complaint investigator, Dr. Manisha Punwani, the Student's treating psychiatrist, reported that the Student had been diagnosed with bipolar mood disorder in 2002 by Dr. McMullen. He was admitted to the Northern Maine Medical Crisis Center twice during 2002. She stated that Dr. McMullen's report indicated that the mood disorder was affecting his memory and attention which, in turn, affected his reading and learning.
5. In 2005, a psycho-educational evaluation was performed by Mary C. Mowatt, Special Education Consultant. In a review of prior testing, she noted that the Student's scores on the Wechsler Intelligence Scale for Children – Third Edition (WISC –III) in 2004 showed strengths in written math and math reasoning for basic math facts. His Full Scale I.Q. was recorded at 93. Weaknesses were found in word reading, written expression, spelling, and remembering what was just read for reading comprehension and understanding.¹ His 2005

¹ (2004 WISC –III Test scores):

	Achieved Grade Score	Achieved Standard Score
Word reading :	5.6	82
Math reasoning:	8.6	102
Spelling:	5.6	82
Reading comprehension:	6.5	89
Numerical Operations:	10.9	115
Listening Comprehension:	7.4	94
Written Expression:	7.8	98

Wechsler Individual Achievement Test – 2 (WIAT -2) scores indicated that there were continued weaknesses in these areas. Ms. Mowatt recommended that the Student have a weekly syllabus, small increments of information at a time, extended timelines, guided studies, academic assistance, and a homework assignment book for short- and long-term memory.

6. Sometime in February 2005, the Student was admitted to the Northern Maine Medical Center’s crisis clinic. In an interview with the complaint investigator, Dr. Manisha Punwani reported that during that time, the Student had difficulty controlling his anger. This resulted in extreme outbursts at school and at home with his parents. He was seen by Dr. Blanchard from February 2005 until August 2005. She noted that he had been diagnosed with bipolar mood disorder in 2002 by Dr. McMullan. He was prescribed with Abilify. Dr. Punwani started seeing the Student regularly in August 2005. She stated that, at that point in time, the Student had stopped taking his medication. She reported that he has few friends and low self-esteem.
7. In March 2005, while the Student was in xx grade, he was evaluated to determine whether he could benefit from assistive technology. The evaluation was performed by Libby Cohen, Ed.D., from ALLTech, an organization affiliated with The Spurwink Institute. She noted in her report that the Student received special education services in English and spelling. She noted that a phonics approach was used to teach spelling, although the Student did not retain new spelling words from week to week and did not use them in other applications. She also reported that his strengths included mathematical computation and reasoning, reading comprehension, and communication skills. Academic challenges included attention and memory, decoding words, spelling and written expression, organization, and a lack of interest in reading. His extra curricular activities included martial arts, basketball, tennis, and soccer.
8. Dr. Cohen recommended that the Student be provided with three computer software programs at school. She first recommended the use of Kurzweil 3000, a text-to-speech software program that provides an array of literacy tools to assist students with reading, communicating, studying, and test taking. Features include:
 - Text reader: reads digital text in a variety of voices and at various speeds;
 - Web site reader: reads Web sites;
 - Electronic speech-enabled dictionary: gives auditory definition to support understanding and word use;
 - Text highlighting: allows students or teachers to highlight important information within scanned text;
 - Voice notes: allows students and teachers to leave voice notes within textual material.
9. In addition, Dr. Cohen recommended Dragon Naturally Speaking, a software program that converts speech to text and allows dictation, manipulation and formatting text. Additionally, Dr. Cohen recommended the use of Lexia software, a computer software program focused on reading skills. For all three programs, training the Student and staff was necessary. For the use of Kurzweil, it was necessary that all text be in digital form or scanned first before it could be integrated with the software.

10. In preparation for the student's entry to high school, the PET met in May and June 2005. It was agreed that the District would provide the Kurzweil and Dragon Naturally Speaking assistive technology software. The parents agreed to buy a laptop for the Student in order for him to bring it back and forth from school. An IEP was developed that included these services. The draft IEP was not provided to the complaint investigator. The Student's mother reported she was told that no goals or objectives would be included in the IEP due to the new IDEA 2004, which did not require them.
11. Upon review of the draft IEP, the parents discovered that goals and objectives that had not been discussed were nevertheless included in the plan. The "criteria for mastery" was set at 70%. The parents were told that it was based upon the Maine Learning Results criteria. The parents protested that these goals had not been discussed or agreed upon by the PET. The District agreed to change the criteria to 80%.
12. In July 2005, the Student and his parents were trained by an ALLTech trainer, Rick Mills. Mr. Mills was scheduled to train the staff at CHS in September, after school started.
13. The Student's IEP indicated he was to receive direct instruction three hours per week in a special education setting, describing it as practical study hall. In addition, special services included case management for 75 minutes per week, scanning services 10 hours per week and organizational skills support 75 minutes per week. The narrative attached to the IEP indicated specific concerns. It stated:

“(The Student) is an incoming xx from Union #122. He has had numerous evaluations in regards to his disability. The most recent evaluation was one done by ALLTech in conjunction with using assisted technology in the classroom. The evaluation was done on 3/31/05. A copy of that report and plan are attached to this IEP. (The Student) also has organizational and behavioral concerns in regards to his school performance. A behavior plan is also attached to this IEP. (The Student's) parents are very concerned about his school success, and are very involved in making that success happen. (The Student) has strength in math. He was on the Aroostook Math League Team for Woodland School during the 2004-2005 school year. (The Student's) weaknesses in the areas of written language and spelling will negatively impact his performance on the general grade xx curriculum. His deficits in organizational skills will negatively impact his performance in all xx grade curriculum areas. In order to be successful he will need modifications in all subject areas. (The Student) can spell long vowel patterns, but was weak in inflected endings and suffixes. He can write stories with an identifiable beginning, middle and end. (The Student) can write simple paragraphs. (The Student) has difficulty completing his homework accurately and in a timely manner on a consistent basis. Mary Mowatt, an outside examiner, tested (the Student) in the fall of 2005. The WIAT was used to test in the areas of reading and writing only. His current reading score

according to that testing was at the xx grade level. His writing grade level score was a xx grade level.”

14. The IEP specifically noted that the Student would be using the Kurzweil reader and Dragon Naturally Speaking software. Also, special education staff would encourage and remind the Student to use the technology during class time. All content courses were to be taught in mainstream classrooms. In order for material to get transferred from the school’s computer to the Student’s laptop, a storage device, called a USB (Universal Serial Bus) flash drive, would be used to transfer information between the computers.
15. The IEP also included a Behavior Plan to address goals to increase his self-esteem and for him to become as independent as possible. Consequences for noncompliance were for him to have an opportunity to confer with teachers and guidance counselors as needed to establish resolution to behavioral problems; allow the Student to contact his family if resolution could not be accomplished with counselors to attempt to resolve the conflict; and if the problem was not resolved in the above manner, face the consequences that normally apply to his peer group, including receiving a failing grade or loss of privileges at school.
16. The IEP included several modifications to allow the use of assistive technology, and modified assignments (e.g., shortened assignments, deadline extensions), preferential seating, verbal directions, organizational aids (e.g., assignment book, study sheets), and provision of assignments and worksheets and other materials scanned for Kurzweil use with two weeks notice. It included numerous accommodations for test-taking, including timing, setting accommodations, presentation format and response accommodations. Accommodations included extended testing time, minimal distractions, the option to have the test read orally, and technology-based responses.
17. The 2005-2006 school year began on August 15, 2005. Both the parents and the District agreed that the assistive technology was not properly set up at CHS on the first day of school. No computer had been dedicated to the use of the Kurzweil or Dragon programs. No staff had been trained to operate the systems. No texts or other materials had been scanned for use on the Kurzweil software. No special education staff had been assigned to work with the Student. The District does not deny the extent of the problems that this caused. The Student immediately fell behind in all of his studies. All parties were extremely frustrated during this initial period.
18. Near the end of August, the CSD hired and assigned Rhoda Ouellette to serve as the special education technician assigned directly to the Student. ALLTech was scheduled to train Ms. Ouellette and other staff members during Harvest Break, which was scheduled from September 19 through October 7, 2005. No school was scheduled during this period of time. However, the CSD changed the training date to September 8, 2005. Ten staff people were trained to use the Kurzweil and Dragon software. Ms. Ouellette began scanning material three weeks after the start of school.
19. Throughout the year, the CSD provided a daily recording routine for teachers to follow with respect to the Student’s progress. Daily “monitoring” sheets were filled out by all of the Student’s teachers, including Ms. Ouellette and other educational technicians who worked with the Student. A set of monitoring sheets was sent home to the parents every Friday.

They would often pick them up themselves at the end of the week. The sheets would also include handwritten notes from the teachers about certain areas of concern or praise. The sheets recorded, on a scale of 1 to 5², specific behavior categories, including whether he exhibited the following behaviors:

- Off task;
- Tired/lethargic;
- Overactive/silliness/impulsive/restless;
- Completes school work;
- Has materials ready for class with a reminder;
- Demonstrates active listening behaviors;
- Interacts appropriately with staff (follows directions and meets general expectations);
- Utilizes technology

20. In addition to the daily monitoring reports, the Student was provided with assignment books for each teacher to record assignments, projects, and upcoming tests. The Student was scheduled to bring in the assignment books each morning for review by Ms. Ouellette. She would plan out the Student's review time with him and help him organize his material. She would scan material into the Kurzweil program for his use at home. She stated in her log entries how important it was for her to review the Student's assignments with him in the morning so he could be on the right track for the day and the week.
21. By the third week of school, the Student had fallen behind on his assignments due to the District's failure in implementing the assistive technology program. As a result, a tutor was assigned to him. After Harvest Break, only one homework assignment was outstanding.
22. In or about late October 2005, after the Student returned from Harvest Break, Ms. Ouellette reported that the Student did not want to use the laptop in class because he did not want other students to see him using it. She reported that he was willing to use it during tests and at home, but was adamant that he not use it in the mainstream classrooms. Ms. Ouellette stated that this became an apparent stress point for the Student when his father became insistent that he use it in the classroom.
23. On October 24, 2005, the Student was admitted to the child psychiatric unit at Northern Maine Medical Center. Dr. Manisha Punwani diagnosed him with "Bipolar Affective II, mixed type with features of depression and hypomania, without psychosis." Psychosocial stressors included, "poor performance in school, noncompliance of IEP at school; relationship problems at home with parents and siblings; and noncompliance with medications." He was prescribed lithium citrate. Dr. Punwani stated to the complaint investigator that the Student had become explosive at home. He was aggressive and angry, and started throwing objects. He had stopped taking his Abilify. Dr. Punwani told the complaint investigator that there was significant stress on the Student caused by issues surrounding the District and the parents. The Student was released from the hospital on November 1, 2005.

² Scores legend indicated that: 1=no problem; 2=slight problem; 3=occasional problem; 4=frequent problem; 5=major problem.

24. After his release, the Student did not return immediately to school. Superintendent Hedman contacted the Student's father, who indicated that he was concerned that perhaps the high school was not a safe place for the Student. Superintendent Hedman indicated that he needed more information about this in order to take action and asked for and received permission to discuss the matter with Dr. Punwani. In a telephone conversation with Superintendent Hedman, Dr. Punwani stated that there was no issue regarding safety for the Student at the high school.
25. Superintendent Hedman contacted Dr. Punwani again when the Student failed to return five days after being released from the hospital. She stated to Mr. Hedman that she did not know why he had not returned.
26. The Student returned to school on November 9, 2005. The Student was behind in his assignments by about one week. In a letter to the parents, dated November 9, 2005, Rick Umphrey offered to provide one-on-one tutoring after school three days a week. Some teachers were willing to stay after school to help the Student. The first marking quarter had passed and the Student had two incompletes. When the work for the incompletes was submitted, he received a failing grade of 60 in Global Studies.³
27. Rhoda Ouellette, the Student's educational technician, kept daily log entries on the Student's progress during the 2005-2006 school year. She routinely met with the Student every morning for a check-in. This was designed to make sure the Student had his homework assignments done and to discuss any quizzes or tests that needed to be taken during the day, and what notes or other modification would be needed.
28. In an entry dated November 15, 2005, Rhoda Ouellette reported that the Student announced to her that he was no longer bringing his laptop to school. In the weeks that followed, her log entries noted that the Student refused to bring and/or use the laptop in school. This made it impossible for her to transfer scanned material that the Student needed to study for his classes. She felt that the Student was getting further behind. She explained that the material could be downloaded onto a USB flash drive for the Student to take home, but the Student had not brought one to school.
29. In November, 2005, the Student's parents filed a request for a due process hearing regarding the implementation of the Student's IEP. On November 22, 2005, the parties met in a Resolution Session in an attempt to resolve the issues raised in the due process hearing request. An agreement was reached on several items. In return, the Student's parents withdrew the hearing request. A signed document purporting to be an agreement to resolve the issues raised in the November 2005 due process proceeding indicated that a "fully developed IEP" was "completed." In addition, the document included the following items:

³ First quarter grades were as follows: Spanish: 86; Physical Science: 70; Chorus: 90; English 9: 88; Global Studies: 60; Algebra 1: 85

- “Mr. Umphrey will follow up on a makeup plan which will not penalize (the Student’s) athletic participation;”
- “Explore over Christmas vacation;”
- “Will explore use of Dr. Putnam and Steve Ulman for 3rd party consultation if needed;”
- “Suggest less obvious ways to remind (the Student) to use technology.”

30. The Student’s father explained to the complaint investigator that the phrase “Explore over Christmas vacation” was a reference to the District’s agreement that tutoring would be considered over Christmas vacation. The District agreed to it, but had not decided who would be the tutor. He also stated that the agreement for the District to use less obvious ways to remind the Student to use the Kurzweil technology referred to the Student’s ongoing unwillingness to use the laptop in the classroom.
31. Superintendent Hedman reported to the complaint investigator that the parents and staff agreed that the District would provide help to the Student to catch up on his assignments. They agreed that the Student would be overwhelmed with work if he had to complete all missing assignments. They agreed to focus on regular daily assignments and get caught up by the end of Christmas break. The District would provide tutoring during the week of Christmas break.
32. During the week of November 28, 2005, Ms. Ouellette’s log entries indicated that parents and the District discussed ways in which to have the Student willingly use the laptop at school. She reported that the parents met with Mr. Martin Gallant, the guidance counselor. It was agreed at that meeting that the parents would let the Student decide on whether to use the laptop in the classroom, but that he should use it during study hall and for tests. In addition, all teachers were notified that the Student had until December 22, 2005 to complete all first quarter work.
33. Log entries from Ms. Ouellette indicated that tests taken by the Student were taken in the resource room. For a Physical Science test, he used hard copies of a computer-based slideshow presentation and other materials.
34. During a morning check-in on December 6, 2005, the Student’s mother accompanied him. After he left for classes, she reported to Ms. Ouellette that the Student had refused to take his medication since being released from the hospital but that they could not force him to take it given his age.
35. Ms. Ouellette’s log entries from December 12, 2005 indicated that the Student appeared to be highly agitated and defiant. She noted that, at one point during the week, he told her he did not have to do any work and that he did not need to study for a test in Physical Science. She noted that this was a class in which he had failed three consecutive tests. He also refused to take a test.
36. Ms. Ouellette noted that on December 14, 2005, in a conversation between herself and the Student’s mother, the mother confided how difficult it had been working with the Student while he was refusing to take his medication. She told Ms. Ouellette that the Student’s psychiatrist was considering whether to place him in the Kid’s Peace residential program.

37. On Friday, December 16, 2005, the Student insisted on going to his locker to get materials during study hall, which school policy did not allow. He was given permission to call home, but was refused by the office secretary. He was told that he had to wait until noon. The Student became very angry and stated that he would call his lawyer. He refused to take a Physical Science test. She also noted that his USB flash drive was not brought in three days out of five during that week, and that it was the mother, not the Student, who brought it in.
38. During the week of December 19, 2005, Ms. Ouellette noted in her log that the Student had received a score of 100 on his Spanish quiz. However, she noted that his grade of 68 in reading was due to his failure to use the Kurzweil program. She also noted that he had failed for a third time to meet with his Spanish teacher for an after school appointment.
39. By December 22, 2005, the Student still had outstanding assignments. Superintendent Hedman reported that tutoring for the Student had been arranged for the period during the Christmas break. However, the Student had only attended two of the five tutoring sessions. On one occasion, he refused to enter the office after his father had driven him to the school. On two other occasions, bad weather deterred the family from getting the Student to the school, although tutors had arrived at the school, as well as Superintendent Hedman. By the end of Christmas break, the Student still had outstanding modified assignments. Even though teachers continued to make themselves available after school for the Student, the Student rarely took advantage of the opportunities.
40. In preparation for midterms, the CSD provided study sheets of important concepts for the Student to study. In an e-mail to staff, dated January 10, 2006, from Denise Bosse, CSD's Special Education Coordinator, stated, "We want to afford [the Student] every opportunity to be prepared." The District also prepared a schedule for midterm examinations; the schedule indicated whether the exams were considered Level II and where they were to be taken.
41. In a second e-mail dated January 10, 2006, in response to the parents' concern that the Student was not being allowed to use the telephone when he felt he needed to contact his parents in a crisis, Denise Bosse informed the District staff that if he requested to use the telephone during a conflict, he was allowed to go to the guidance office and use it. Although no telephone usage was in the Student's IEP, Ms. Bosse also reminded the staff to strictly follow the Student's IEP.
42. In a memorandum prepared for the District in response to the complaint investigation, District Guidance Counselors, Mark Gallant and Mark Pinette, stated that the Student was given permission immediately on two occasions from January through February 2006 to use the telephone.
43. On or about January 11, 2006, Denise Bosse met with the parents. They told her that they understood the IEP language to allow the Student to retake tests and assignments until he received 80% marks. In an emailed response, Rick Umphrey, Director of Special Services for the Caribou School Department, explained to the parents that the 80% figure in the Student's Behavior Plan referred to the goals that the PET determined were reasonable for the Student to achieve. They were not a mandate or a guarantee of what he would be getting for grades.

44. In Ms. Ouellette's log entry dated January 11, 2006, she noted that the Student refused to take a Physical Science test and instead agreed to work on his journal for English class. His mother agreed that she would work on it with him that night and turn it in the next day. However, when the mother physically brought in the journal the next day, all that was printed in it was, "blah, blah, blah," for three pages. Ms. Ouellette reported the mother was upset by seeing this herself and indicated that the Student would not be allowed to attend a chess match that night unless he fixed the journal. However, Ms. Ouellette reported that no disciplinary action was taken by the family and the Student attended the match.

45. In a January 11, 2006 letter to the District, the parents requested the following:

- a testing schedule for midterms, along with a list of testing locations
- that test modifications be given to test monitors
- that the Student should be provided with study review sheets from his teachers
- a two week advance schedule of all school work from teachers
- a "medical waiver for all classes from first and second semester which are below 80% as a grade"
- that Rhoda Ouellette be replaced
- that a consultant be hired as discussed in the November 2005 resolution session
- a discussion on how they could access the Student's assignments and grades, negative consequences, phone calls, and "briefing staff."

46. Ms. Ouellette reported that during January and February 2006 the Student continually forgot to bring assignments and assignment books to school from home. This seemed to happen more often on Mondays. In addition, he would lose points in class when he failed to bring in his notebooks. He would often not have a USB flash drive or his mother would have to bring one in for assignments to be downloaded onto it. It was Ms. Ouellette's impression that he needed to become more organized at home before going to school. During the week of February 13, 2006, she and the Student emptied his locker and organized any school work that was in it.

47. In mid-January 2006, Denise Bosse drafted a summary of concerns that had been raised by the parents. These concerns included:

- Midterm preparation;
- Grade weight system;
- Advance notice of tests and projects;
- Advance notice of which tests were Level II tests;
- Expectations of tutoring over Christmas break;
- Expectation of Behavior Plan goals of 80%;
- When monitoring sheets can be discussed;
- Concern about assignment book check-ins in the morning

48. In her summary, Ms. Bosse indicated that several of the items had been resolved. With respect to midterm test preparations, the Student would be provided study guides prior to testing. Notice would be given if a test was considered a Level II test. Also, Level II tests already indicated on monitoring sheets would be highlighted to aid in advance notification.

Information on how grades were weighted was sent to the parents on January 13, 2006. Advance notice of tests and projects, which had been referenced in assignment books, would also be placed on the Student's USB flash drive as further reminders.

49. Meetings with the District staff and parents were held on January 17 and 19, 2006. In an interview with the complaint investigator, Rick Umphrey, the Special Education Director for the CSD, stated that this was not a PET meeting and no minutes were taken. According to Superintendent Hedman, this was a PET meeting. However, no PET minutes were submitted to the complaint investigator and no changes were made to the IEP.
50. A reference to the meeting on January 19, 2006 was made in Ms. Ouellette's daily log. She indicated that the parents discussed their request for one or two week class schedules in order to have advance notice of tests and projects. She also indicated that there had been a verbal agreement on who would be the monitor. The monitors included herself in the resource room, and Tom Beckman in the "In House" room or mainstream study hall or in the resource room.
51. The Student's father concurred that the agreements that were reached at the January 17th and 19th meetings included two-week schedules for assignments, and schedules for test taking, including what modifications and accommodations would be used. He stated that nothing was put into writing.
52. During the week of January 23, 2006, midterms took place at the high school and regular classes were not held. The Student's schedule for midterms included information regarding who would be monitoring him, the type of test it was, and the location of the test.
53. Ms. Ouellette's log entries for February 2006 indicated that the Student had been forgetting to bring in his assignment book, had not completed assignments, and had missing assignments. Ms. Ouellette noted in her February 16, 2006 log that the Student had five outstanding assignments. She prepared a list for the Student so he could finish them by the end of the week-long February break.
54. On February 16, 2006, the parents filed the request for a complaint investigation with the Maine Department of Education.
55. Between February 27 and March 3, 2006, Ms. Ouellette's log entries indicated that the Student slowly finished his late assignments, but that he only erratically brought his assignment book to school.
56. Monitoring reports and detailed daily log entries were submitted by the Student's English teacher, Barbara Souther. Ms. Souther reported that starting in November 2005, the Student has not use the Kurzweil program during class time. She indicated in numerous notations that the Student refused to use it and that his failure to do so was not helping him access the material the class was using. She also mentioned many times on the monitoring sheets and in her daily log entries that he would argue with her about whether he had homework to do, was unprepared many times, and would often forget to bring his assignment book to school. He often chose not to retake tests when given the opportunity.

57. Monitoring reports and daily written comments by the Student's Global Studies teacher, Ken Atcheson, were submitted to the complaint investigator. He noted that on most days starting in November 2005, the Student did not bring his laptop with him to the classroom. Offers to use accommodations during testing (i.e., having the test read to him, using his laptop) were declined by the Student. In a notation made on the monitoring reports dated for the week of January 12, 2006, Mr. Atcheson noted, "What concerns me is that I am not seeing much effort on [the Student]'s part to complete the work assigned to him."
58. Monitoring reports from the Student's Algebra teacher, Sharon Ouellette, indicated that the Student improved his performance from November to January to the point where his grade for the second quarter was a "B-." Thereafter his performance slipped to a "D" at one point due to having had missing homework assignments and several poor test results. By the end of the third quarter, he had a grade of "C+."
59. Monitoring reports submitted by the Student's afternoon education technician, Pat Sterris, noted that on December 9, 2005, the Student, "was very defiant and refused to do makeup (Global Studies) which was given to me by Mrs. Ouellette." On January 6, 2006 she noted that the Student, "refused to work on quartile maps needed to finish his Level II Global Studies. Was rude and confrontational towards Mrs. Ouellette about getting 'special permission' to go to locker. He worked on Physical Science homework. Wanted to go use phone." Also on that day she noted, "(The Student) was sent from Mr. Atcheson's to finish Level II. Unfortunately, he spent the period banging and taping (sic) his pen. He was read the questions and basically refused to comply. The entire period was wasted." On several other tests that he took with Ms. Sterris in the resource room, she noted that he used notes and other materials.
60. Monitoring reports and written notes submitted by the Student's Spanish teacher, Kim Stokdijk, were extensive. She worked with the Student, the parents and the educational technicians throughout each quarter, making sure that the Student had an opportunity to make up work. Although many assignments were late, she sent home detailed schedules for them. She also worked with him after school. By the end of the third quarter he was receiving a "C" grade (83%).
61. In separate interviews with the Student's father and mother, both parents described the challenges that the Student has had since early childhood. Their early decision to home school the Student continued until the middle of xx grade. Due to the need for both parents to work, they placed the Student into the public school system. Within months it was determined that he needed to be evaluated for learning disabilities due to his inattention and mood swings.
62. The father also commented on the racial harassment the Student encountered at school. He stated that the mother is white and he is African American. He stated that due to this factor and the Student's mood swings, the Student was briefly hospitalized in 2002. He had become extremely angry at home and was throwing objects. He was a danger to himself and other family members.
63. The father related that by the time the Student was in xx grade, the District was meticulous with its implementation of the Student's IEP and that the Student had a good year. He stated

that the District made sure the Student was not overwhelmed with assignments. He stated that even though the Student read at a xx grade level, his teacher inspired him. The mother also noted that the Student took the Maine Educational Assessment test without aids and received very high scores.

64. The father described that the understanding he and the Student's mother had at the May 2005 PET meeting was that the District would assess the Student for the use of assistive technology. He stated that he agreed to buy a laptop to ease the financial burden of the District in providing the technology.
65. The parents explained that the first several weeks of the 2005-2006 school year were exasperating for the Student and the parents. The District had failed to have the technology up and running on the first day of school. The Student could not keep up with his high school assignments and fell behind from the beginning. From the father's perspective, the District had undermined the Student's ability to succeed in high school. It was not until several weeks into the school year that any staff person was hired and trained to use the program effectively. The parents claimed they were at the school every day making sure all the scanning of the material was done.
66. The parents also stated that even though the District educational technician, Rhoda Ouellette, was briefly trained on how to scan material and upload it to a computer, she had never been fully trained in how to use all the Kurzweil applications. She was only trained for one day by ALLTech, the consultant that provided the software.
67. The father stated to the complaint investigator that the laptop did not become a social issue until mid-September 2005. The Student started to rebel to the point of crying. He claimed he was uncomfortable using it in the classroom because none of the teachers were trained in how to use it. He said that the Student became apprehensive about using the Kurzweil program sometime in October 2005. He did not want to bring his laptop to school. It was on October 24, 2005 that the Student exploded in anger at home and became dangerous. The father stated that they took him to the crisis unit at Northern Maine Medical Center.
68. The Student's mother also reported that his relationship with his father grew very tense over Harvest Break. She said it was very antagonistic. She reported that the father was pressuring the Student to get his school work done. She further reported that, at one point, the Student tried to burn his hand and that the Student felt that no one was listening to him. She stated that the Student expressed that he did not want to use the Kurzweil and wanted to be like other kids.
69. The parents stated that after the Student was released from Northern Maine Medical Center, he received tutoring over the Christmas break to make up any work that had been missed during his absence. They missed two days due to snowstorms and one day due to the Student's refusal to enter the building when he arrived.
70. The father stated that he did not think that the teachers submitted notes and other material far enough in advance to input into the laptop so the Student could follow along in class. The father blamed the District for how far the Student had fallen behind in class. He also blamed

the Student himself for just not doing the work and losing assignments. He believed that a consistent routine had not been established.

71. In an interview with the complaint investigator, Superintendent John Hedman reported that the District had been working with the parents to implement the Student's IEP and his transition into high school since the May 2005 PET meeting. He stated that when the PET met, an agreement had been reached to provide the Student with assistive technology that the District had never used before. The PET agreed upon a training schedule and agreed to buy the technology from ALLTech, the company that also supported training on the software. Superintendent Hedman concedes that the District was not prepared to implement the software program on the first day of school. He stated that there were numerous problems in its implementation, including the lack of available time to train staff, the lack of appropriate computers, and the lack of understanding, in general, about how much time and effort it would take on the part of staff to have the technology fully implemented for the Student. He also conceded that the Student was not able to keep up with the new high school workload without the use of the technology. He stated that the fundamental problem was the District's inability to scan material into the computer to have it adapted for use with the Kurzweil software. He also reported that the PET had agreed that the Student should be in the mainstream classroom for all of his courses if he had the technology available. He stated that the Student was bright and motivated, but had not done well in xx grade. He stated that the Student had performed extremely well on the Maine Educational Assessment test without the use of any modification or accommodations, even though they were offered.
72. The Superintendent stated to the complaint investigator that, by the end of August 2005, the District had finally hired an educational technician specifically to work with the Student. She began to be trained on how the technology worked shortly thereafter. She began to scan two of the five textbooks that needed to be scanned for the Student, as well as his assignments and other materials. She and several other staff members were trained by ALLTech on September 8, three weeks after school started. Superintendent Hedman stated that he was in frequent contact with the parents during this period about whether the technology was being implemented properly. He stated that progress was slow in scanning material and that the mother helped the staff by scanning some materials herself.
73. Superintendent Hedman stated that in order to help the Student get back on track with school assignments, he was offered tutoring. The staff also worked with him to catch up. He stated that Ms. Ouellette had a daily check in with the Student to make sure he had his assignments and to help him organize his work and that there was continuous monitoring by the Student's teachers and support personnel. By the end of Harvest Break, the Student had just one outstanding assignment. When the Student returned from Harvest Break, he began refusing use of the Kurzweil software in the classroom. He refused to bring his laptop to school. After speaking to the Special Education Coordinator, Denise Bosse, it was clear to Mr. Hedman that the Student did not want to use the Kurzweil software in the classroom because he felt self-conscious. In addition, the family reported that there was tension at home over the use of the technology.
74. Superintendent Hedman reported that on or about October 24, 2005, the family notified the District that the Student had been admitted to the crisis clinic due to an emotional "meltdown," as the father described it to Mr. Hedman. The father told Mr. Hedman that the

cause of the incident was a disagreement over the use of the laptop at school. Mr. Hedman stated that the District provided the Student a tutor during the time the Student was in the hospital. However, by the time the Student returned to school on November 9, 2005, he was more than a week behind on his assignments. In order to help him catch up, the District provided a list of assignments and teachers, and other staff offered to stay after school.

75. Superintendent Hedman further explained that once it became apparent that there was too much work to make up, there was a verbal agreement with the parents to have the Student focus on regular daily assignments, and not require further make-up work. He stated that the District agreed to provide tutoring over the Christmas holiday for Spanish and math. Because he only attended two of the five tutoring sessions over the Christmas break, the Student was still behind in class. The staff was still willing to help him after school. He stated that although there were many issues that the parents wanted to discuss at the informal meeting in January, only a few issues were resolved, including changes to the Student's schedule. The District continued to try to help the Student complete his assignments, but on February 13, 2006, the parents filed the request for a complaint investigation.
76. In an interview with the complaint investigator, educational technician Rhoda Ouellette, reported that she was the educational technician to whom the Student reported each morning. She also was hired to be trained on the Kurzweil technology in order for her to be able to scan materials submitted by the Student's teachers. She would then have the material ready to be transferred from the District's computer to the Student's laptop using a USB flash drive. She stated that she was trained for three hours by ALLTech personnel.
77. Ms. Ouellette stated that the Student was her only pupil and that she worked with him every day. She noted that the Student had a difficult transition into high school. In addition, there were many textbooks she had to scan because they were not available in digital form. She said that after he had started using his laptop for a while, the Student began to feel uncomfortable bringing it to school. He told her that he did not want other kids to see him using it. She believed that because he was a xx, he was more sensitive to being stigmatized. He was willing to use it for test taking and at home. She noted that the Student's father would come in with the Student on many occasions and talk with her about the Student's programming. She stated that he was adamant that the Student use the computer in the classroom. She believed that the teachers had a good relationship with the Student and did not want the laptop issue to become counterproductive. She reported that she would often write notes home about how the day went and what assignments were not completed or missing. She said that there were times that she felt conflicted about this since the Student had reported to her that he would "get in trouble" when she sent notes home. At one point, she discussed the possibility that the notes be addressed to him and a copy sent to his parents. He replied that the parents did not need the notes. She stated that after that, due to the apparent confrontational relationship the Student had with his father, she customized the notes in a way that avoided having the Student feel threatened by them. She also reported that after mid-November, his schedule changed so he could have four study hall periods instead of two. However, this was not noted in his IEP or discussed in a PET meeting.
78. Ms. Ouellette reported that on or about October 25, 2005, the Student's father called her and reported that the Student had been admitted into the hospital. She then gathered assignments for him to take to the hospital. Once the Student returned, he received tutoring and made up

some work after school. Ms. Ouellette described the month of December 2005 as “being out of control.” The Student was seeing a psychiatrist. The mother told Ms. Ouellette that Dr. Punwani wanted him to start doing routine work outside the home because it was too detrimental to his relationship with this father. Thereafter, private case workers did work with the Student most days after school. However, the student started to have missing assignments, he failed to bring his assignment book to her in the mornings and a few days he did not go to see her for check-ins. She stated that not having his assignment book made her work “extremely difficult” because she could not help him organize his work. In addition, he was not using the Kurzweil software for English. His grade in English dropped from 88 to 68, and then to 66 for the quarter grade. Ms. Ouellette noted to the complaint investigator that she was going out on an extended leave of absence in March 2006 and that another educational technician was taking her place.

79. In an interview with the complaint investigator, Special Education Coordinator Denise Bosse reiterated how difficult it was to have the Student’s assistive technology up and running at the beginning of the 2005-2006 school year. She explained that one of the initial problems was the decision to put the Kurzweil software on her computer in her room. No one had consulted her about this until afterwards. The problem this caused was that the Student had access to confidential information on her computer. Once this became apparent, the District had to locate another computer. This took away the Student’s access to the Kurzweil software for a few days. She reported that at the beginning of the year, all teachers were informed that the Student had special needs and that he was going to be using the laptop in the classroom with headphones to avoid distraction for the other students. After a few weeks, teachers reported to her that the Student did not want to use the laptop in the classroom. They were told to encourage him to use it. After Harvest Break, a verbal agreement was made that allowed the Student to decide whether or not he wanted to use the laptop in the classroom.
80. Ms. Bosse also reported that sometime in December, she started attending all the daily and weekly briefings to the parents with Ms. Rhoda Ouellette. The parents would ask questions about how the day or week went and receive an update on any new information about the Student’s schedule or discuss any issue that may have come up. The parents would receive the daily monitoring reports and grade sheets collected by the teachers. In one of the meetings, the parents stated their belief that the Student should be getting 80% in every class. Ms. Bosse explained to the parents that although the Behavior Plan stated that the Student agreed to achieve 80% , this was a goal, not a guarantee. If the Student was receiving a 78% , he was still passing the class.
81. Ms. Bosse also explained that the concern with respect to the Student’s access to a telephone had been resolved. The staff was sent an e-mail on January 10, 2006, explaining that he was allowed to use the phone when he asked to without further explanation. They were told that he could go directly to the guidance office to use the phone.
82. In an interview with the complaint investigator, Paula Gorence, an educational technician, stated that she saw the Student in the afternoons briefly to check his assignment book. She gave him information and reminders if needed. She also described that when the Student took tests, he was provided a quiet room and an opportunity to use his notes and the Kurzweil software. She was the monitor for three of his midterms. All tests were scanned into

Kurzweil. For all three midterms, the Student used his notes but declined to use the Kurzweil software. She read all test questions to him. Ms. Gorence also noted that sometime in November or December, the Student told her that he did not like to feel that kids would laugh at him. She replaced Rhoda Ouellette in March 2006 when she went out on medical leave.

83. In an interview with the complaint investigator, Pat Sterris, an educational technician, stated that she had the Student in a study hall two or three times a week. She believed that the Student was “playing the system”. She reported that he was defiant when she asked him to do something and that he was disruptive to the other students and made it harder for others to work. She stated that he got work done only on occasion. She also noted that when there were tests, she would remind him that he could use the assistive technology and his notes. She stated that he took a significant number of retake examinations.
84. In an interview with the complaint investigator, Barbara Souther, the Student’s English teacher, reported that the Student was capable of doing the work assigned to him but that he often would not do it. She stated that he would not complete journal writing assignments, would not use his laptop to read novels in the classroom, and had chosen to retake tests twice. She stated that since his parents had insisted that he take tests outside of the classroom, he could not ask questions about them if he had any.
85. In an interview with the complaint investigator, Rick Umphrey, the Special Education Director of the CSD, stated that in response to the concerns raised by the parents in the complaint investigation about the Student’s lack of Internet access at school from his own laptop, the District agreed to format one of the school laptops with the appropriate technology for the Student. Mr. Umphrey also explained the difference between “Level II” tests and regular course tests. He stated that “Level II” tests were those given as part of the District’s local assessments required by the state’s Learning Results goals. On those tests, no one is allowed to use notes or other modifications, including those students receiving special education services. Therefore, there have been tests on which the Student was not allowed to use his notes or other materials. One test taken in Global Studies required the use of maps. The maps were made by the students themselves as part of the required course work. The Student had not completed three of the five maps. He had opportunities given to him to make up these missing assignments, but he chose not to do so. He was not allowed to use any other maps other than the ones he made.
86. Mr. Umphrey also responded to one of the concerns the parents had relating to when the Student could make up tests that fell below 80%. He stated that the Student’s Behavior Plan has as a goal, that the Student would achieve 80% in his courses. Mr. Umphrey stated that 80% was not a guarantee that the District made with the parents, that the District interpreted this language as a goal for which the Student should strive. He stated that the Plan did not allow the Student to retake tests until he reached 80% each time. However, he stated that the Student had the opportunity to retake any test.
87. Mr. Umphrey also responded to the parents’ concern that goals and objectives were incorrectly posted at 70% in the student’s IEP. He agreed that this had been a mistake and the IEP was changed to reflect 80%.

88. Mr. Umphrey explained the protocol established when a student is admitted to a psychiatric unit. He stated that the hospital calls the school to let personnel know that a student has been admitted. Arrangements are then made between the hospital and the school with respect to tutoring and assignments. The school is not allowed to contact the hospital due to confidentiality concerns. He stated that when the Student was admitted to the psychiatric unit at Northern Maine Medical Center, no one from the hospital ever contacted them during his stay. Only the family contacted the school and reported that he had been admitted. Assignments were given directly to the parents for the Student.
89. In an interview with the complaint investigator, the Student's Global Studies teacher, Ken Atcheson, responded to the parents' concern that the Student's midterm grade was too low because he did not have all the maps for the test that all the other students had. Mr. Atcheson stated that this was correct. The students used five maps they made in class. Those students who had not completed the maps were only allowed to use the maps that they had made. Since the test was also used as a Level II assessment test, the Student was not allowed to use any other materials.
90. In an interview with the complaint investigator, Peter Scovill, the Student's Physical Science teacher, reported that, although the class was difficult, the Student was engaged and asked questions. The course is "foundational" in that the concepts are taught in sequence and if a student misses the beginning, it is more difficult to catch on. He stated that although the Student stopped bringing his laptop to class, because the class was taught primarily with a Power Point (projector) presentation, the Student always had access to the printed version. In addition, notes taken by a strong student were given to the Student. Mr. Scovill stated that the Student didn't appear to be organized and did not review for tests and, that, although he had the option of retaking tests, he only took two or three. He believed that the Student wanted to be a "normal kid" and was therefore stubborn about doing what he needed to succeed in the class. For tests, the Student was allowed to use the printed Power Point notes, written notes, and formula cards. He would take tests with his educational technician, Rhoda Ouellette. He believed that the Student was just getting by and not taking full advantage of the course.
91. In an interview with the complaint investigator, Jill Griffith, the Student's mental health case manager from Wings, a social services agency in northern Maine, reported that she began seeing the Student in November 2005. She stated that there were many pressures on the Student coming from the District and his parents. She stated that the parents had high expectations for the student. She stated that the parents required that the Student achieve the 80% success rate mentioned in his IEP before he could participate in other activities. However, she stated that she did not think there were consequences placed on the Student for not completing his work. She stated that there was also an issue with how the parents discussed these issues with the Student. She noted that Dr. Punwani had suggested that the parents not have "adult" conversations in front of the Student. She stated that she had also reminded the parents of this when it arose in conversation when the Student was present.
92. In an interview with the complaint investigator, Danielle Perry, one of the Student's family support workers, stated that during the school year, the Student had "typical" teenage behaviors, including becoming defiant with respect to adult authority and not doing

homework. She stated that the Student expressed to her that he did not want to use his assistive technology because the kids made fun of him when he used it in class.

93. In an interview with the complaint investigator, Dr. Manisha Punwani, the Student's psychiatrist, stated that it had been very difficult to work with the parents' concerns for the Student. She stated that she had recommended to the parents in January 2006 that they place the Student in a residential facility for 45 days in order to have him evaluated. She recommended that this placement be at Kids Peace. She stated that the parents, especially the father, have resisted this recommendation. She stated that she understood that the Student had taken himself off his medication (Lithium). She was worried about him, especially due to a history of mental illness in the family.

94. The Student's third quarter grades were reported as follows:

- Spanish 1: C-
- Physical Science: D+
- Chorus: B
- English: C-
- Global Studies: B
- Algebra 1: C

VI. Conclusions

Allegation #1: Failure to implement the Student's IEP with respect to assistive technology.
MSER § 10.5. **NO VIOLATION**

MSER § 10.5 requires that each school district implement a student's IEP as soon as possible following the PET meeting. If a school district is unable to hire or contract with professional staff necessary to implement a student's IEP, the school district must convene a PET within 30 days after the start of the school year or the date of the PET's development of the IEP in order to identify alternative service options.

It is clear that the District did not have the assistive technology portion of the Student's IEP ready to use on the first day of school, August 15, 2005. The District conceded that it was not prepared in any respect. It did not have the appropriate hardware (i.e., the computer), the staff to run the hardware, nor the training to be able to teach the staff. In its defense, the District asserts that this was the first time it had ever implemented the Kurzweil or Dragon systems and did not realize the extent of the preparation work that needed to be done. However, it had been in communication with the technology consultant, ALLTech, during the summer and should have been aware of what was involved in readying it by the first day of school.

The District failed to convene the PET within 30 days of the first day of school to discuss how to handle the situation. However, the District quickly realized its mistake in waiting too long to get the assistive technology implemented. Within three weeks, it had hired educational technician Rhoda Ouellette and rescheduled training for September 8, 2005. In an effort to compensate for this mistake, the District worked with the parents and the Student to get the Student caught up on his assignments. They offered tutoring and after school help. By the end of Harvest Break, the Student was caught up on his work. He only had one outstanding assignment.

Therefore, although the District's failure to properly implement the assistive technology portion of the Student's IEP was a violation of MSER § 10.5, it was remedied within 30 days through the efforts of the District. Compensatory services were offered in a timely fashion that allowed the Student to resume his normal curriculum.

Allegation # 2: Failure to implement the Student's IEP with respect to the provision of an appropriate environment for testing purposes. MSER § 10.5. **NO VIOLATION**

The Student's IEP includes two types of accommodations: 1) Accommodations Options for Local Assessments; and 2) Caribou School Department Individual Education Plan Modification Checklist. When the midterm examination was a Level II (Local Assessment), the Local Assessment accommodations applied. In addition, all the Student's examinations included options for where the Student could take the examination, either in a resource room, practical study hall location or an empty classroom. Level II testing could be taken "in an environment with minimal distractions," in a small group or individually.

There is no evidence that the Student was not allowed to take tests in an environment other than what the accommodations provided. Many notations and monitoring reports from teachers and support staff indicated that the Student took tests in a resource room. In addition, agreements between the parents and the District reached at the January 2006 PET meeting included making sure a schedule of where the Student would be taking midterms was established. Prior to this, there were several occasions when teachers reported that the Student refused to leave a regular classroom to take a test when they reminded him that he could go to the resource room.

Allegation # 3: Failure to provide modifications during test taking. MSER § 10.5. **NO VIOLATION**

The testing modifications and accommodations in both the Local Assessment accommodation checklist and the Caribou Modification Checklist included many aids, such as an extension of test taking time, the use of assistive technology, and an option to have tests read aloud, as well as others. Regular tests allowed the use of notes, handouts, and worksheets.

There is no evidence that the Student was not allowed to use these modifications and accommodations during test-taking. Staff members monitoring his test taking would note in their monitoring sheets or logs whether the Student used his notes or handouts and whether he used the Kurzweil software. The only time he was not allowed to use written materials was when he had to take a Level II Local Assessment examination. This was predetermined by the checklist noted in the "Accommodations for Local Assessments."

In addition, the Student's parents and the District agreed in January 2006 that the District would communicate to the parents which tests were considered Level II tests. Prior to this agreement, there was no obligation on the part of the District to report when an upcoming test was a Level II examination.

Allegation # 4: Failure to provide a written plan for scheduling makeup home work assignments and makeup tests. **NO VIOLATION**

The Student's IEP does not require a written plan for scheduling makeup home work assignments or makeup tests. However, the District was diligent in communicating with the parents on how long the Student had to make up any homework. For example, they were informed that he had until December 22, 2005 to make up any assignments for the first quarter marking period. In addition, teachers scheduled after school appointments with the Student to go over missing material and provide help. He was reminded of these appointments by support staff. The Superintendent scheduled tutoring sessions over the Christmas break for the Student. In January 2006, the District agreed to have teachers submit two-week advance schedules of course work and projects. Makeup tests were offered and scheduled for the Student. Several times the Student declined the offer to retake tests. There is no violation of the requirement to provide a free appropriate public education (FAPE) to the Student in this regard.

Allegation # 5: Failure to track progress during tutoring sessions while the Student was hospitalized and after Christmas vacation. **NO VIOLATION**

There is no evidence that the District failed in its obligation to provide FAPE to the Student while he was hospitalized between October 24, 2005 and November 1, 2005. As soon as the District was notified by the parents that the Student was at Northern Maine Medical Center, they initiated procedures to provide a tutor for him. In addition, all teachers were notified to send assignments to Ms. Ouellette for her to give to the parents. The District never received any communication from the hospital. It is the policy of the District to not contact the hospital due to confidentiality concerns. All communication normally is through hospital staff to the District. Therefore, the District did not fail to provide FAPE while the Student was hospitalized.

After the Christmas break, tutoring was provided to the Student by the District staff. He continued to have one-on-one communication with support staff to review his assignment books, ensure that he had all materials scanned for use on the Kurzweil software and work with him on organizing his work. Daily monitoring sheets, daily log entries and weekly grading reports were continuously provided to the parents. They included notations in the logs of support staff with respect to updates on completed assignments and tests. Nothing in the Student's IEP called for tutoring after the Christmas vacation.

Allegation # 6: Failure to terminate the use of negative consequences. **NO VIOLATION.**

The parents and the District entered into an agreement at a Resolution Session on November 22, 2005 in order to settle the complaint the parents had filed. Part of the agreement was for the the District to not use negative consequences with respect to improper behavior or poor grades. The parents' allegation in this investigation is that the District violated this portion of the November 22, 2005 agreement by not allowing the Student to participate on the Chess team after his grades fell below acceptable levels. Both the parents and the District acknowledged during the investigation that there was an agreement reached on this issue. However, the Behavior Intervention Plan was not amended to reflect this agreement.

The Individuals with Disabilities Education Improvement Act 2004 (IDEA 2004) allows parties to attempt to resolve complaints to be heard before a hearing officer in a Resolution Session. 20 USCS § 1415(f)(1)(B)(i). If a written agreement is reached, it becomes enforceable through proceedings in a state or United States District court. 20 USCS § 1415(f)(1)(B)(iii)(II). Therefore, under this provision of the IDEA 2004, the Maine Department of Education does not have jurisdiction to determine whether this provision of the November 22, 2005 agreement should be enforced.

Allegation # 7: Failure to allow the Student to contact his parents during escalation of emotional trauma. **NO VIOLATION**

The Student's IEP does not include language that would allow him to use the telephone to contact his parents when he experiences the escalation of emotional trauma during school. However, the parents and the District agreed in January 2005 that teachers would grant the Student's request to call his parents when he needed to. The telephone in the guidance office was made available for him to use.

Allegation # 8: Failure to provide a schedule of the Student's assignments. **NO VIOLATION**

Before January 2005, the District had no obligation to provide a schedule of course assignments for the Student. There is no evidence that the District failed to provide a FAPE even if a schedule was not provided, since no other student received such a schedule. However, the District agreed to provide a two-week schedule of assignments to the parents at the informal meeting in January 2006. Thereafter, all teachers submitted a calendar of assignments and topics that covered two-week periods of time.

Allegation # 9: Failure to provide a written review of the Student's progress. **NO VIOLATION**

The extensive information that the District provided to the parents in the form of monitoring sheets and weekly grading reports was sufficient to provide continual updates on the Student's progress. These documents were either mailed or directly given to the parents every week. The weekly grading reports clearly indicated how the Student was performing on tests, what assignments had been completed and which assignments had not been turned in. They showed how many grade points the Student was missing for each assignment and what the Student's current grade for the course was. They parents received the most updated information available from the District.

Allegation # 10: Failure to include parents in the development of goals and objectives in the May and June 2005 PET meeting. MSER § 8.6. **NO VIOLATION**

The parents allege that the District refused to discuss any goals and objectives for the Student's IEP in the May and June 2005 PET meetings. In its draft IEP to the parents, goals and objectives were inserted. In every category, the "Criteria for Mastery" was 70%. Upon becoming aware of these goals, the parents protested that they had not been a part of determining the goals. After the parents discussed the matter with District staff, the IEP was changed to

reflect 80% for the criteria for mastery in all categories of his IEP, dated October 19, 2005. Therefore, it is apparent that the District's initial failure to include the parents in this decision was remedied by further discussion with them. Since a mutual agreement resulted, no violation will be found on this issue.

Allegation # 11: Failure to provide a qualified point person or qualified educational technician at the beginning of the school year. MSER § 10.5 **NO VIOLATION**

As stated above in Allegation # 1, the District conceded that it had failed to properly implement the Student's IEP at the beginning of the school year. This included its failure to assign any staff member the responsibility to ensure that the Student's IEP was being implemented. It was not until August 29, 2005 when Rhoda Ouellette was hired and assigned to work with the Student, that the District took responsibility for implementing the IEP. As stated above, the District's good faith efforts to compensate the Student during the fall to recover lost academic time, have remedied this failure.

Allegation #12: Failure to provide an outside consultant to help with implementing the IEP. **NO VIOLATION**

There is no language in the Student's IEP indicating that the District would be hiring an outside consultant to help the District implement the IEP. The District hired ALLTech to train the staff and the Student on using the assistive technology, which was completed in September 2005.

The November 22, 2005 Resolution Agreement indicated that two consultants, Dr. Putnam and Steve Ulman, may be hired if needed. However, as stated above, the IDEA 2004 requires that Resolution Session agreements be enforced through state or federal court proceedings. The Student's IEP was not amended to reflect this agreement.

Allegation # 13: Failure to have an alternate educational technician. **NO VIOLATION**

There is no evidence that an educational technician was not assigned to the Student after September 29, 2005. Although Rhoda Ouellette, the Student's assigned educational technician, took a medical leave of absence in March 2006, another educational technician, Paula Gorence, was assigned to the Student.

Allegation # 14: Failure to adjust failing test and assignment grades by not allowing the Student to retake tests or assignments to meet the 80% goal of the Student's IEP. MSER § 10.1. **NO VIOLATION**

MSER § 10.1 states, "The IEP is the basis for educational programming and placement of the student with a disability and must be linked to the general education curriculum. *It is not a guarantee of a student's educational progress or a contractual arrangement* but does provide a statement of educational goals and objectives which all school personnel shall make good faith efforts to achieve." (Emphasis added)

A Behavior Plan included in the Student's IEP includes actions that the Student agrees to abide by in order to help him be successful in school. The agreement on his part includes language that he, "Earn grades of 80% or better on required assignments in his classes." In addition, the Student's IEP indicates that the Student should master 80% of his IEP goals and objectives. The parents assert that the District must allow the Student to achieve a grade of 80% in all classes by retaking tests and assignments until he has reached this grade. There is nothing in the Student's IEP that requires the District to allow the Student unlimited time to achieve these grades. His accommodations allow him to retake tests for failing grades if he chooses to do so. There were several notations from teachers indicating that he chose not to retake an exam.

The 80% figure in the goals sections of the Student's IEP is a goal the Student should work towards throughout the year. MSER § 8.3(F) requires that a PET periodically convene to consider how well the Student has progressed toward goals and what actions need to be taken to help a student continue to progress. Goals and objectives are just that. They cannot be guaranteed by the District.

Allegation # 15: Failure to complete monitoring forms accurately. **NO VIOLATION**

The use of daily monitoring forms are required reporting devices under the Student's IEP, as noted in the Behavior Plan. Monitoring sheets had been filled out daily by all teachers and support staff. Included in most sheets were written notations of the Student's weekly progress and certain concerns teachers had. There were few, if any, monitoring sheets that had not been filled out to indicate the daily progress of the Student with respect to his behavior, readiness, participation, and how well he used his assistive technology. There has been no violation of the Student's IEP on this issue.

Allegation #16: Failure to plan for compensatory education due to failing several classes.
MSER§ 1.1 **NO VIOLATION**

According to *Board of Education of the Hendrick 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 IDEA. 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 him some education benefit, and comports with his IEP, then the District has offered a FAPE. The IDEA 2004 and the MSER require compensatory education in the event a school district has failed to provide a FAPE. Merely failing a class does not automatically require a school district to provide compensatory education, if the District has been providing a FAPE.

In this regard, during the first semester, the Student's only failing grade was in Global Studies. Monitoring sheets, weekly grade reports and notations made by the teacher, Ken Atcheson, indicated that the Student was not putting in enough effort to achieve passing grades on assignments or tests. Mr. Atcheson made daily notations on the Student's progress. He noted

that in November 2005, the Student took a quiz without using the Kurzweil software and without asking for extra time. He gave the Student an incomplete for the semester and gave him two extra weeks to make up any unfinished work. The Student took another quiz on December 8, 2005 with modifications according to his IEP. By December 15, 2005, the Student's grade was 79 (C-). He missed a test review for a test he took on December 16, 2005 in the resource room, for which he received a failing score of 30. Mr. Atcheson noted that the Student needed to retake the exam. He also reported that the Student failed to finish assignments for a Level II test. He failed to finish the test and received a score of 0, which gave him an overall failing grade of 68 (F). On January 5, 2006, Mr. Atcheson noted how concerned he was that the Student did not seem to be putting much effort into the class. Missing assignments after Christmas vacation were not turned in and he failed to complete a Level II assessment over a Mapping Project. His semester grade receded to a 60 (F). On many, if not most days, the teacher reported that the Student did not bring his laptop to class and had missing assignments.

In Physical Science the Student received a "D+" for the third quarter. The Student's teacher, Peter Scovill, stated that the Student had all the tools he needed to succeed in the class but did not take advantage of them. He had all the notes, Power Point presentation copies, and other materials needed to study for tests. He chose to retake only two or three failed tests. He did not believe that the Student was motivated to do well in the class despite being capable of doing so.

It is clear that the Student was given every opportunity to make up missing or overdue assignments, retake examinations, and accept modifications for his tests. In this case, the District offered a FAPE.

Allegation #17: Failure to allow the Student to use Internet services with his assistive technology. MSER § 1.1. **NO VIOLATION**

During the complaint investigation, the parents reported that the Student was unable to access the Internet from his laptop at school due to the District's security concerns. Once the District became aware of this, it adapted one of the school's portable computers for use by the Student and the Kurzweil program. Based upon these efforts, no violation will be found.

Ancillary Issue: Failure to convene a PET meeting to review the implementation of the Student's IEP. MSER § 8.3(E)(2). **VIOLATION FOUND**

MSER § 8.3(E)(2) requires that a PET review a student's IEP to revise it as appropriate to address any lack of expected progress toward the annual goals and in the general curriculum, where appropriate.

The primary tool for implementing a FAPE under the IDEA 2004 is a student's IEP. 20 USCS §§ 1401(11); *Lenn v. Portland Sch. Comm.* 998 F.2d 1083, 1086 (1st Cir. 1993). The IEP is developed by the PET, which includes members who are most familiar with the student's needs including teachers and parents. *Lamoine Sch. Comm. v. Ms. Z*, 42 IDELR 172 (D. Me. 2005).⁴ The ultimate question is whether a proposed IEP is adequate and appropriate for a

⁴ In *Lamoine*, supra, the court found that a student's IEP was not adequate and appropriate once it was evident that the student's absenteeism continued to be a problem during the school year, despite efforts by the district to address

particular child at a given point in time. *Burlington v. Dep't of Educ.*, 739 F.2d 773, 778 (1st Cir. 1984) (*Burlington I*), aff'd. 471 U.S. 359 (1985) (*Burlington II*). The IEP needs to be reasonably calculated to enable the child to receive educational benefit. *Board of Educ. V. Rowley*, 458 U.S. 176, 206-07 (1982).

When it became apparent in November 2005 that the Student did not want to use his assistive technology in school, the District failed to formally convene the PET to discuss and decide upon appropriate action to take to help him use it. Although the District's special education staff believed it could not force the Student to use his laptop, the PET had a duty to discuss and amend the IEP to reflect any actions or changes to be made regarding the Student's use of the technology in school. It is apparent that a discussion and an agreement to eliminate the requirement that the Student bring his laptop into class occurred sometime in late November 2005. This discussion occurred between the guidance counselor and the parents. No changes to the Student's IEP were made. Even if this was the appropriate action to take, the decision making to alter the Student's programming was the responsibility of the PET.

VII. Corrective Action Plan

No later than June 30, 2006, the District shall convene a PET meeting and determine the best course of action to address the Student's reluctance to use his assistive technology. Any decision(s) will be reflected in the PET minutes and in an amended IEP. A copy of the PET minutes and a copy of an amended IEP shall be sent to the parents, the Due Process Office and the complaint investigator.

it. The court stated, "When a student is enrolled at school, a free appropriate education requires at a minimum that the student be present and on time. N.S. was not attending class and, when attending, he arrived late. This Court cannot conclude an IEP, which failed to address in some fashion N.S.'s persistent absence and tardiness, could be 'adequate and appropriate'." *Id.*, citing *Burlington I*, 736 F.2d at 788.