

STATE OF MAINE
SPECIAL EDUCATION DUE PROCESS HEARING

October 22, 2015

15.068H— Parents v. SAD #45

REPRESENTING THE FAMILY: Stacey Neumann, Esq., Kaitlyn Wright, Esq.

REPRESENTING THE DISTRICT: Eric Herlan, Esq.

HEARING OFFICER: Shari Broder, Esq.

This hearing was held and this decision issued pursuant to Title 20-A, MRSA §7202 et. seq., and 20 U.S.C. §1415 et. seq., and accompanying regulations. The hearing took place on September 14, 15, 16, and 17, 2015 in Caribou and Presque Isle, Maine. Those present for the entire proceeding were the Mother, Father, Attorney Neumann, Attorney Wright, Roland Caron, Director of Special Education, Attorney Herlan, and the undersigned hearing officer. Testifying at the hearing were:

The Mother	
The Father	
Tanya Tilley	Section 28 Worker at Northern Lighthouse
Elyssa Deschaine	Section 28 Supervisor at Northern Lighthouse
Jade Tilley	Dayhabilitation Worker at Northern Lighthouse
Angela Russo, LCPC	Therapist, BCBA at Northern Lighthouse
Paula Perkins	Director, Opportunity Training Center (OTC)
Michelle Blackstone	Special Education Teacher, OTC
Student's great uncle	
Joseph Rowe	Case Manager, Northern Lighthouse
Christopher McCoy	Friend of the Parents
Joy Charette	Activities of Daily Living Coordinator, OTC
Roland Caron	Director of Special Education
Michelle Eastman	Special Education Teacher, Washburn Elementary School
Jessica Haley, LCSW	Day Treatment Director, SAD #45
Mary Ann Tardiff	Speech Pathologist, SAD #45
Christine McPherson	School Nurse, SAD #45
Deborah Whittier	Resource Room Teacher, Washburn xx School

All testimony was taken under oath.

I. PROCEDURAL BACKGROUND:

On June 17, 2015, the Parents filed this hearing request on behalf of their daughter (“Student”). On September 1, 2015, the hearing officer held a prehearing conference at the offices of Drummond Woodsum in Portland, Maine. Participating in the conference in person were: Stacey Neumann, Esq., counsel to the Parents; Eric Herlan, Esq., counsel to the SAD #45 (“District”); and Shari Broder, Esq., Hearing Officer. Participating by telephone were: Roland Caron and Megan Stanley, Special Education Directors; Elizabeth Ervin, Superintendent of Schools, and the Parents. Documents and witness lists were exchanged in a timely manner. The Parents submitted over 1500 pages of exhibits (herein referenced as P-#), and the District submitted approximately over 1700 pages of exhibits (herein referenced as S-#). The Parents submitted a videotape on September 11, 2015, filmed on September 8, 2015, to which the District objected. Because this evidence was not offered in accordance with the five-day rule, it was excluded from the hearing.

As noted above, the hearing took place over the course of four days. Both parties requested to keep the hearing record open until October 7, 2015 to allow the parties to prepare and submit posthearing memoranda. The District submitted a 39-page memorandum and the Parents submitted a 52-page final argument. The record closed upon receipt of these documents on October 7, 2015. The parties further agreed that the hearing officer’s decision would be due on October 22, 2015.

II. ISSUES: Evidence will be taken on the following issues:

1. Was the Student’s Individual Educational Program (IEP) and placement for the 2013-14 school year (xx grade) reasonably calculated to provide her with a free, appropriate public education (FAPE) in the least restrictive environment?

2. Was the Student's IEP and placement for the 2014-15 school year (xx grade) reasonably calculated to provide her with a free, appropriate public education in the least restrictive environment?
3. Is the District's 2015-16 IEP and placement for the Student reasonably calculated to provide her with a free, appropriate public education in the least restrictive environment?
4. If the hearing officer concludes that the District violated state or federal special education law, what remedies are appropriate? This includes the issue of whether the Parents are entitled to reimbursement of the costs associated with the unilateral placement at the Opportunity Training Center (OTC), and whether that placement was "proper" under state and federal special education law.

The District noted that the Hearing Request Form did not specifically speak to the xx grade year, and therefore that year was not properly before the hearing officer. That year is within the statute of limitations, and the Parents could request leave to amend their hearing request to include it. Rather than unnecessarily delay the hearing, the hearing officer ruled that she would hear this issue, as the witnesses and documents introduced at the hearing would be the same either way.

These issues are addressed below.

III FINDINGS OF FACT

1. The Student is xx years old (DOB: xx/xx/xxxx), and lives with her mother ("Mother"), father ("Father") and xx-year-old sister in Washburn, Maine. She is eligible for special education and related services under the category of Intellectual Disability. Washburn is within the District.
2. When the Student was almost xx years old, she had a medical consultation and psychological evaluation done by Mary Ellen Gellerstedt, M.D., and Jonathan Heeren, Ph.D. [S-1-6] At the time, her Full Scale IQ was 69, and she was diagnosed with mild mental retardation. [S-5] The evaluation also reported the Student's history of scoliosis, Arnold-Chiari-I malformation,

a history of seizures and early developmental delays. [S-2] The Student has significant global developmental delays and functions at a level well below that of other children of her age.

3. The Student had regular psychological evaluations every two years. In July of 2010, when she was xx years old, her Wechsler Intelligence Scale For Children test (WISC-IV) generated a Full Scale IQ of 48, which was considered in the moderate range of mental retardation. [S-18] She was also diagnosed with Adjustment Disorder with Mixed Disturbance of Emotional and Conduct. The Student showed a poor tolerance for frustration, and was engaging in minor self-injurious behaviors during those times, as well as aggression towards her younger sister. [S-19]
4. The town of Washburn has two schools, an elementary school with students from Pre-kindergarten through XX grade, Washburn Elementary School, and grades 9-12 are at Washburn xx School. The Student has spent most of her educational career in the elementary school. Washburn has an in-house developmental therapy day treatment program run by Jessica Haley, a licensed social worker. The Student received most of her instruction through that program, although she had some instruction in the resource room. She received related services of occupational therapy (OT), physical therapy (PT), and speech therapy, and had lunch and recess in the mainstream. In the day treatment program, the Student had an individual treatment plan, which was reviewed every 90 days, as well as annually. [Testimony of J. Haley] All of the educational technicians (ed techs) in the day treatment program have behavioral health professional (BHP) certification. The ed techs working with the Student were certified as educational technician III.
5. The Student has Arnold Chiari Malformation (Chiari), a brain condition that can result in a host of conditions, including impaired coordination, uneven gait and balance problems. She

also has seizure and anxiety disorders. Consequently, she had an Individualized Health Plan at school to address her needs resulting from these conditions. [S-21, 153-155, 273-276]

6. At the IEP team meeting where the team was drafting the Student's xx grade IEP, the Parents expressed their concern that the Student needed to learn more daily living skills. [P-3] They felt that she was very behind in these skills. [Testimony of Mother] The Student had a lengthy, detailed IEP for xx grade that contained annual goals in the following areas: speech, OT, PT, behavior, and instructional goals on reading, math, history, and science. [P-5-30] Because many people had difficulty understanding the Student when she spoke, she had an annual goal to "speak intelligibly expressing her wants and needs effectively with proper sentence structure with 80% or greater accuracy during conversational speech. [P-7] The Student's behavioral goals had no short-term objectives or specific measurements.¹ On the Vineland Adaptive Behavior Scales, Second Edition (Vineland II) administered on August 30, 2012, the Student consistently scored "low" on the adaptive level in all areas except fine motor skills, on which she scored moderately low. [P-39] The Vineland-II measures the personal and social skills of children in the areas of communication, daily living skills, socialization and motor skills.
7. To prepare for the Student's xx grade year, the IEP team met on May 7, 2013. The Father stated that he wanted the Student to attend OTC in Presque Isle for xx grade. Paula Perkins and Steve Richards from OTC attended this meeting. [Testimony of J. Haley] Special education director Roland Caron explained that this was not the "least restrictive environment," and he recommended that the Student remain in the District, as her needs were

¹ The Student's three behavioral goals were to "independently complete all daily living skill activities throughout her day," "increase task completion and increase attention to task," and "increase ability to manage frustrations and increase verbalizations." [P-27-30]

being met there. [S-98] There was discussion about whether the Student should be in the day treatment program all day, as opposed to continuing to receive math and English language arts (ELA) in the resource room, which was the current placement. The Parents were concerned that math was too difficult for the Student. Additionally, the Student had very few money skills and no laundry skills. The Parents again expressed their concerns that the Student was far behind in functional life skills. [Testimony of Mother] Ultimately, the parties agreed to continue the current placement at Washburn Elementary. The written notice said, “Due to [the Student’s] academic and functional performance and ability the Team agreed to continue her current placement as she is making progress.” [S-98] The team recommended the following services:

Speech therapy	5 times weekly for 50 minutes per session
OT	2 times weekly for 30 minutes per session
PT	1 time weekly for 45 minutes
Day treatment	135 minutes daily life skills curriculum, science and social studies
Resource room	90 minutes daily for ELA and math
Nursing services	School-wide health and safety plan

[S-97]

8. The Student receives “dayhabilitation” services through Northern Lighthouse, a non-profit mental health agency. Her treatment plan through Northern Lighthouse included objectives such as learning developmentally appropriate community skills, completing activities of daily living (ADL), learning safety awareness, social and behavioral skills. [P-82-87, P-88-93] This plan was reviewed every six months. Tanya Tilley, the Student’s Section 28 worker, worked directly with the Student for 20 hours a week, Monday through Friday after school, from September 2013 until July of 2015. [P-527-1313] Initially, the Student was shy with Ms. Tilley, but overcame this, and developed a very close relationship with Ms. Tilley. On a few occasions, the Student told Ms. Tilley she did not want to go to school because she was

afraid. She told Ms. Tilley that a boy in her class, henceforth Student A, was aggressive, although the Student considered Student A to be a friend. [Testimony of T. Tilley] Ms. Eastman, the Student's resource room teacher in xx grade, did not observe the Student as being fearful of any of her classmates. [Testimony of M. Eastman] Student A visited the Student at her home once, and on another occasion they played basketball together, but the Student still told her Mother about how some of Student A's behaviors made her uncomfortable. [Testimony of Mother] During xx grade, Ms. Tilley spoke with some of the staff who worked with the Student about whether the Student had any issues, or whether her work was done. These were verbal reports generally, and Ms. Tilley was normally told that the Student had a good day, and that there were no issues. [Testimony of T. Tilley] On some of those days, the Student would report to Ms. Tilley that she had a "meltdown." Ms. Tilley witnessed the Student having "meltdowns" at home on a weekly basis, which involved the Student engaging in behaviors such as screaming, running, punching walls, pulling hair and biting herself. [Testimony of T. Tilley] If there were problems, Ms. Tilley was supposed to write an incident report, but did not recall doing so with the Student. Ms. Tilley observed that the Student was mostly a happy child, but that she was rather anxious, worried a lot, and had struggles with her sister at home. Ms. Tilley worked with the Student on doing chores such as making the bed, cleaning off the computer desk, selecting clothes for the following day, bringing laundry downstairs and taking out the trash. [Testimony of T. Tilley]

9. The Student's xx grade IEP at Washburn Elementary contained annual goals for speech, OT, PT, and three instructional goals each for math and ELA, with objectives. [S-110-134] The Student's speech goal was the same as in xx grade: that she "will speak intelligibly expressing her wants and needs effectively with proper sentence structure with 80% or

greater accuracy during conversational speech.” [P-7, S-105] Although the Student did not meet any of her short-term objectives, she partially met some of them. Most of her xx grade speech objectives were new. [S-105-109] The Student’s speech therapist, Mary Ann Tardif, explained that although the Student received more services from her than any other student with whom she worked, 50 minutes daily, the Student’s progress was small. [Testimony of M. Tardif] Ms. Tardiff worked with the Student on intelligibility, expressive language and phonemic awareness. The Student would sometimes make a lot of progress, then regress, which was her pattern. Because retention was a problem, the Student received a high level of speech services. [Testimony of M. Tardiff] Ms. Tardiff thought the Student’s weakness was comprehension. In the speech therapy setting, the Student’s articulation was her strength, although outside of that setting, some people had difficulty understanding the Student. Ms. Tardiff felt that she had a good rapport with the Student. [Testimony of M. Tardiff]

10. The Student had the same OT goal in both xx and xx grades as well, to “increase her visual motor and fine motor skills by 6 months to 1 year to increase her functional academic skills.” [P-11, S-110] Of her three short-term OT objectives, two were repeated from xx grade. She partially met one of these objectives and regressed in one area. [S-111, P-12] Likewise, her PT goal was the same both years with some repeated objectives. The Student also had the same behavioral goal for xx, xx and xx grade that she “will increase ability to manage frustrations and increase verbalizations.” [P-32, S132, 198]

11. In addition to being the Student’s xx grade special education teacher in the resource room, Ms. Eastman was the Student’s xx grade teacher in both the resource and day treatment programs. She recently received her Masters degree in special education, and had experience as a special education teacher and Section 28 worker. Ms. Eastman explained that the Student

had to work hard to make small gains, and needed a lot of repetition. [Testimony of M. Eastman, A. Dow] The Student had difficulty with more abstract concepts. Ms. Eastman taught the Student math and ELA in the morning. The Student worked on some of her eight instructional goals with Ms. Eastman in the morning and some while in the day treatment program in the afternoon. [Testimony of J. Haley, M. Eastman] In the Resource Room, the service delivery was more academic, and the Student was taught along side classmates, all of whom were verbal and had various learning disabilities and other health impairments. [Testimony of M. Eastman] Ms. Eastman's classroom had anywhere between seven to ten students during the day, and she was assisted by two ed techs. Ms. Eastman did not observe the Student engage in any problem behaviors during xx grade while the Student was in the resource room.² [Testimony of M. Eastman] In the day treatment program, the Student received instruction by a certified teacher and two ed tech IIIs. There were two other students in this program for most of the year, both of whom had communication difficulties. The Student spent a fair amount of her time receiving speech, OT and PT, but also developmental therapy and community health and safety, plus hands-on activities like sorting silverware, washing tables and sweeping floors. [Testimony of J. Haley] Although the Student was doing a small amount of work on functional life skills, her only IEP goal in this area was community safety. [S-128] She did not begin working on this goal until the last quarter of the school year, and the narrative in her graded IEP said that she "is currently working on identifying parts of the body. She completed a chapter on safety, this was a struggle to her. Stranger danger was an area of weakness for her." [S-128] Ms. Haley observed that the Student was excited to learn and engage in whatever academic or skill building activity was

² Ms. Eastman only spent part of the day with the Student during xx grade. [Testimony of M. Eastman]

presented to her. The Student required a fair amount of repetition to learn a skill sufficiently well that she did not require as much prompting to complete an activity. [Testimony of J. Haley, A. Dow] The Student also had two behavioral goals: “to increase her ability to manage frustrations and increase verbalizations,” and “to increase task completion and increase attention to task.” [S-132-135] Neither the behavioral goals nor the functional life skills goal had specific short-term objectives. [S-128-129, 132-134] There was no statement regarding the method of measurement for the behavioral goals. During her school day, the Student had lunch and recess with the mainstream population, and normally ate lunch with her day treatment classmates. [Testimony of T. Tilley, J. Haley]

- 12.** The Student experienced anxiety and worried about a number of things outside of her control, including whether the family had enough money, whether the car would make it to the gas station, small changes in the Student’s schedule, and her younger sister. [Testimony of J. Haley, Mother] She was diagnosed with Unspecified Anxiety Disorder. [S-316] Her anxiety and worrying would cause “meltdowns” at home. [Testimony of Mother] In xx grade, Ms. Eastman observed that the Student had good days and bad days. When she had more difficult days, she would cry, and had a bracelet and necklace to chew to prevent her from self-harming behaviors such as biting herself. Sometimes, the Student would hold her head, and when Ms. Eastman would ask what was the matter, the Student would respond with “I don’t get it” or similar statements of frustration. [Testimony of M. Eastman] The Student had an array of coping skills for addressing her anxiety like blowing bubbles, taking deep breaths and counting. She typically de-escalated quickly. Her “meltdowns” typically lasted about 10 minutes or less. [Testimony of M. Eastman, S-314] Over time, the Student

continued to gain coping skills, and the coping interventions consistently worked to get the Student settled and back on track. [Testimony of J. Haley, A. Dow]

- 13.** In February of 2014, the Student's Northern Lighthouse treatment plan noted that she was making moderate progress on her goals there, including with money skills, but that she still needed prompting and direction. Her objectives and goals were increased periodically to help meet her changing needs. [P-88]
- 14.** Ms. Eastman thought the Student was doing well emotionally during xx grade, and did not have problems with her sister at school because they did not have the same lunch period. [Testimony of M. Eastman, S-166] In the evenings, the Student would process her day in the bathtub, sometimes staying there for one or two hours talking to herself. [Testimony of Mother] Towards the end of xx grade, the Student began seeing a therapist, Angela Russo, on a weekly basis. The Mother brought the Student for therapy because she was aggressive and frustrated, and was continuing to hurt herself. The Student had hit, kicked and bitten the Mother as well. [Testimony of A. Russo] The Student's younger sister was also significant source of stress for the Student. Ms. Russo worked with the Student on coping skills.
- 15.** Towards the end of xx grade, on May 5, 2014, the IEP team met to discuss the Student's placement for xx grade. [S-165] In reviewing the xx grade IEP, the Student's progress was mixed. There were some areas in which the Student did not meet her goals at all. The Student did not meet her PT goals in either xx or xx grade. [Testimony of Mother, S-113, P-13] In xx grade, she partially met two of her six short-term objectives, but did not meet the other four. [S-114-115] The Student had OT objectives for visual motor and fine motor skills, and partially met one of these, but did not meet the other two. [S-110-111] In Speech, out of her ten objectives, she met two of them, did not meet two of them, and partially met the other six.

[S-106-109] The Student was more successful with her math goals, having met three and partially meeting one other. The Parents were worried that the Student was continuing to fall behind in the area of daily independent living skills. She was unable to complete skills such as dressing, washing and brushing her hair, doing laundry or cooking. [Testimony of parent]

- 16.** The Student's xx grade IEP described her present levels of academic and functional performance as follows:

[The Student] is currently performing at a xx grade math level. She requires many manipulatives which include counters, hundreds charts, clock, and other hands on materials to help her understand. [The Student] is capable of reading at a xx grade level. When reading she does not read fluently nor does she comprehend or remember facts from the story . . . [The Student] struggles with peer relations, self-advocacy, and daily living skills. [The Student] can easily become overwhelmed and struggles to regulate her emotions. When working with peers she often focuses on the needs or habits of others rather than herself. Through the a [sic] Life skills curriculum [the Student] works on improving her ability to care for herself and her daily needs independently. [S-175]

- 17.** The main change made to the Student's programming for xx grade was the frequency of speech services, which was reduced from 50 minutes daily to 30 minutes daily. [S-165] Ms. Tardif did not observe any significant change following the reduction of services, and in light of the Student's small progress in speech, thought her time would be better spent working on life skills. [Testimony of M. Tardiff] The Written Notice said that the Student did not have lunch or recess with her sister that year, which was a positive thing. [S-166] The Parents expressed their concern with the amount of nonacademic work the Student was bringing home, and wanted to be sure her school day was focused on math, ELA and life skills. In the area of life skills, the Student had the same behavioral goal as in xx and xx grades of independently completing all daily living skill activities throughout the day, although the XX grade goal added "with 90% accuracy." [S-197] There were no specific skills listed and it was unclear how the Student's progress toward this goal would be measured. The Student's

XX grade IEP also had an instructional goal to “demonstrate a basic working knowledge of independent living skills in self-care, preparing, planning and serving food with 80% accuracy over multiple attempts” and a goal to understand health promotion and disease prevention concepts and “demonstrate an understanding of key health concepts: human growth and development, food groups, nutrition, reading labels, thoughts, feelings and actions.” [S-187-188] There were no short-term objectives for either of these goals. The Student’s IEP also had an instructional goal in history, primarily Maine history, that was very similar to her xx grade history goal. [S-126, 189] Her IEP contained three complex science goals about understanding the “universal nature of matter, energy, force and motion” and how these relationships are exhibited on Earth and in the solar system, and an understanding that “cells are the basic unit of life, that all life as we know it have [sic] evolved through genetic transfew [sic] and natural selection to create a great diversity or [sic] organisms, and that these organisms create interdependent webs through which matter and energy flow.” [S-190-195] Lastly, she had a goal about demonstrating a working knowledge of maps and symbols, and community signs/symbols with 80% accuracy. [S-196]

- 18.** At the IEP team meeting, the Parents expressed his concern about the reduction in speech services, as they felt the Student needed to receive as much speech as possible. They agreed to try the reduction in service for six months. [S-166] The team was planning to reconvene in late fall to conduct the Student’s triennial evaluation, and review the Student’s progress in speech to determine whether she experienced any regression at that time. [S-166]
- 19.** Another change for XX grade was that the Student received instruction for both the resource and day treatment components of her program in the same classroom at different times of the day, and Ms. Eastman oversaw the instruction in both settings. The Student continued

working with ed tech Bob Bartlett and began working with Angela Dow, a behavioral health professional and ed tech III. [Testimony of J. Haley] The students in the room changed throughout the day, depending on whether it was the day treatment or resource portion of the day. [Testimony of M. Eastman, J. Haley] The Student’s IEP provided her with two periods of resource setting instruction in math and ELA, and three hours per day of day treatment programming. [S-201-202] She also received PT and OT, each twice a week for 30 minutes per session, and daily social skills instruction in a group of three to five students for 15-20 minutes in the middle of the day. [Testimony of J. Haley, M. Eastman]

20. The District used certain assessments to track the Student’s progress. The Maine Department of Education required the District to administer the Personalized Alternate Assessment Portfolio (PAAP), a test used to assess a small number of students whose cognitive impairments prevented them from taking the usual state assessment. [Testimony of J. Haley, M. Eastman]. The Student’s PAAP scores were as follows:

	Reading	Math	Writing
2013-- xx grade	35 (P)	54 (PP)	no report
2014-- xx grade	50 (P)	75 (P)	27 (P)

The District also used Star Reading and Math to show growth. Ms. Eastman saw minimal improvement in spelling, phonetics and math. She had to use a lot of repetition with the Student and it took a long time for her to learn. Ms. Eastman thought this was consistent with the Student’s learning profile. [Testimony of M. Eastman] On the STAR 360 school-wide assessment tool, used to assess the Student every other month on math and reading, the Student’s scores, based upon grade levels, were as follows:

<u>XX grade</u>	<u>Reading</u>	<u>Math</u>
Nov 14	1.4	2.1

Jan 15	2.1	2.0
March 15	1.7	3.4

Ms. Eastman explained that the erratic scores could be due to having a bad day one day, and that the Student would not progress 1 ½ grades in two months, as it appeared from the math scores. [Testimony of M. Eastman]

21. The Student sometimes had problems with transportation to school. When she rode the bus, the driver occasionally put the bus in motion before the Student had an opportunity to take a seat. Due to the Student’s Chiari, this made it very difficult for her to balance, and caused her to have anxiety about riding the bus. [Testimony of parent]. Throughout the years, the District worked to find bus drivers who worked well with the Student and her needs. [Testimony of J. Haley] Nonetheless, the Student continued to have problems with riding on the school bus. The Parents raised this issue at the September and December 2014 IEP team meetings. [S-214, 337] The written notice from the latter said, “it is imperative that she be sitting before the bus takes off. Parents indicated this has not been happening when substitutes are driving the bus.” [S-337] The District ultimately changed the Student’s bus and resolved this problem. [Testimony of J. Haley]

22. The Student also had a health and safety plan. [S-136, 153, 273, 353, 461] Whenever a student has medical issues, the parent and student come to school, discuss the issues with the school nurse, and the nurse drafts an Individualized Health Plan. [Testimony of C. McPherson] Christine McPherson has been the school nurse for both Washburn schools for 17 years. Her office is in the elementary school, although it is a very short two-minute walk to the xx school. The Student’s health plan for xx grade contained three issues: (1) high risk for injury related to loss of balance from Arnold Chiari; (2) high risk of injury due to uncontrolled movement of seizure activity; and (3) Anxiety that is the result of

embarrassment from either of the other two conditions. [S-153-154] There were specific instructions for how to deal with each potential problem. At the beginning of XX grade, the Student's health plan was similar to her xx grade plan, and was signed by the Parents on October 6, 2014. [S-273-275]

23. On September 10, 2014, at the end of the school day, the school bus the Student rode broke down outside the school building, and the students had to exit the bus and go to the gym. An ed tech observed the Student crying in the bleachers. [S-210] She tried to calm down the Student, and someone called Ms. Eastman to the gym to help. Ms. Eastman arrived, asked the student why she was upset, and held her hand. She asked the Student whether she was going to be able to ride the bus home, and the Student responded, "yes." [Testimony of M. Eastman] Ms. Eastman calmed her down, and walked her out to the bus, the Student boarded it and went home. Ms. Eastman did not observe anything that would cause her to be concerned about the Student's health, as she was behaving no differently than when she was upset on other days. [Testimony of M. Eastman]

24. Following this incident with the bus, the Parents requested an IEP team meeting, which was held on September 15, 2014 IEP. The team discussed improving communication between the Parents and the school. [S-214, Testimony of R. Caron] They agreed that the Student would be provided with a daily schedule, and the Parents would receive the Student's weekly schedule for their review. [S-213] Mrs. Dow would correspond with the Parents at least weekly, and daily as needed. They also agreed that the Student's bus driver would be made aware of the student's need for stair assistance and will wait for assistance if no one is at the school to assist the Student when the bus arrives. The team also discussed including more life skills in the Student's schedule, including cooking. They agreed to convene again on October

6 to discuss the Student's schedule. [S-214] At this meeting, it was reported that the Student had only had one OT session since the start of the school year in August, although her IEP called for this therapy twice weekly for 30 minutes. [P-406]

- 25.** When the IEP team followed up on October 6, 2014, they agreed that there was no room in the Student's schedule for meal preparation. Her day was focused on academics and therapies. The team also noted that the Student was scheduled for an evaluation on November 6 and 7, and that they would wait until after the results were available before making changes in the Student's program. [S-229-230]
- 26.** Following a referral from Northern Lighthouse, Dorothy Strom, Ph.D., and others at Eastern Maine Medical Center (EMMC) conducted an evaluation of the Student in November of 2014. [S-313-318] Dr. Strom's evaluation, which the IEP team received in January 2015, discussed various aspects of the Student's development. Dr. Strom noted that the Student had been enjoying a long period of seizure-free activity over the last several years, but in September 2014, she had "several localized seizures and a grand mal." [S-313] An EEG and MRI followed, which did not show significant changes, so the Student was not on seizure medication at the time of the November evaluation. Dr. Strom also noted that the Student's problems with emotional meltdowns and aggressive behaviors toward herself and others had improved over time. [S-313] The Student had been involved in a social group at school, but her participation was discontinued after seizures occurred. [S-314] Dr. Strom reported that the Student's general cognitive ability, with a Full Scale IQ of 58, was in the mild to moderately impaired range. [S-315] As compared with previous testing in 2008, the Student's overall level of function appeared quite stable, and she made some gains. [S-316] Her reading score was in the upper xx grade level, between the .3 and first percentiles. Her

math composite score was also in the first percentile, and was in the xx grade level.

Comprehension of instruction was in the 9th percentile. [S-315] Ms. Eastman completed the Teacher Report Form, where she rated the Student's academic scales as being far below grade level. Based upon the Mother's completion of the Child Behavior Checklist and Ms. Eastman's report, the Student was rated as having clinically significant or borderline elevations in attention deficit hyperactivity problems, anxiety, and somatic problem scales. [S-315-216]

Dr. Strom made a number of recommendations. Academically, she believed the Student would benefit from "a very individualized program which would include a combination of further work in functional academics and also very strong experiential program including life skills and prevocational goals." [S-317] Dr. Strom also recommended a gradual focus on decreasing individual pullout time from the classroom for OT and PT, but increasing functional activities throughout the day. She also recommended participation in a social skills group. [S-317]

27. On the morning of December 2, 2014, around 7:45 a.m., students were in the lobby waiting for their teacher. Ms. McPherson overheard loud voices and crying. Through her window, she could see the back of the Student's head, and Mr. Bartlett was standing in front of her. Ms. McPherson exited her office to see what was happening. The Student was sitting on a bench, upset and verbalizing loudly to Mr. Bartlett. Ms. McPherson asked Mr. Bartlett if he needed assistance, to which he replied that Ms. Dow was on her way. [Testimony of C. McPherson] She asked Mr. Bartlett if she should call the family, and he said yes, so Ms. McPherson called the Parents. She then returned to the area where the Student was and reported this to Mr. Bartlett. The Student was calming down, and Ms. McPherson observed

no indication of injury, so she returned to her office to observe from there. The Mother arrived very quickly with comfort aids, and Ms. Dow came to the scene, too. [Testimony of C. McPherson]

- 28.** On December 17, 2014, the Mother came to school to discuss a complete seizure history for the Student. This resulted in revising the Student's Individualized Health Plan on January 5, 2015 to include the Student's seizure history and information about her seizures, as well as a protocol for whom to call in the school building, should the Student have a seizure. [S-353-356] Ms. McPherson sent the revised draft to the Parents on January 13, 2015. [S-361] Although the Parents did not ask any questions about the revised plan, they did not sign it and return it to the school until April 1, 2015. [S-464] The Parents did, however, file a complaint with the Maine Board of Nursing against Ms. McPherson because they believed she did not handle the situation on December 2 appropriately. [P-504, testimony of Mother] The Board of Nursing ultimately determined that Ms. McPherson did not violate any laws regulating the practice of nursing, and dismissed the complaint. [S-548]
- 29.** Jonas Rowe was the Student's case manager at Northern Lighthouse. One of his goals was to have the Student placed at OTC, which was also what the Family asked him to do. The team at Northern Lighthouse felt the Student needed a new educational placement because she was not making adequate progress on her goals. [Testimony of A. Russo] Mr. Rowe then asked Ms. Russo to write a letter for the upcoming IEP team meeting recommending that the Student be placed at OTC. [Testimony of A. Russo, P-447] After writing the letter, the Parents contacted Mr. Rowe and asked "about getting a new letter stating if [Ms. Russo] supported OTC or not." [P-448] Ms. Russo agreed to write a new letter with more detail a few days later, but did not change the original date of January 12, 2015. [Testimony of A.

Russo] The letter stated that the Student could benefit in many ways from attending OTC. [P-231] Ms. Russo thought OTC was the best placement for the Student. [Testimony of A. Russo] In addition to being able to have OT, speech and PT at OTC, services which the Student was already receiving at Washburn Elementary, Ms. Russo felt it would be a positive growth opportunity for the Student to learn life skills such as cooking, cleaning up after herself and working together on projects. [P-231] Rebeca Ayala, M.D., the Student's pediatrician, also wrote a letter at the Parents' request stating that she thought the Student would benefit a great deal from attending OTC. [P-232]

30. The IEP team met on January 20, 2015 to discuss the Student's evaluation. [S-367] Based upon the report, the team agreed to focus more on functional life skills, as well as math and ELA. Science and social studies were removed from the Student's IEP "because guidance has been given from Maine DOE that these goals do not belong on the IEP" and because the IEP team determined that the Student would be focusing on functional life skills in these areas rather than Maine Learning Results. [S-368] Meal preparation was substituted for science and community living for social studies. [Testimony of J. Haley, M. Eastman] The Student's IEP was amended to integrate meal preparation objectives into the Student's OT goals.

31. The Student continued to experience anxiety and frustration during XX grade. Sometimes, this was caused by difficulty with her schoolwork, and other times due to schedule changes, bus changes, and other things outside of her control. [Testimony of A. Dow] The Student continued to develop her communication skills and was learning how to work as a team with her classmates. This was often a small group of five students, only one of whom had verbal difficulties. The Student enjoyed interacting with her classmates. [Testimony of A. Dow]

- 32.** Ms. Dow, the ed tech with whom the Student worked most, continued to communicate with the Mother by email as much as possible, giving her brief updates about the Student's school experience and answering questions. [Testimony of A. Dow, e.g. S-395-408] On January 29, 2015, Ms. Dow emailed the Mother telling her the curriculum for life skills that quarter, which included maintaining personal needs, maintaining a household, and becoming independent. The following quarter, the goal was to focus on staying safe, being a responsible citizen, and traveling within the community. She also hoped to cover using money, including identifying and counting money. [S-400] The Mother wanted the District to make learning how to use money a higher priority, and preferred the daily living skills instruction to be active, not just on the worksheets the Student brought home. [Testimony of Mother, P1506-1508]
- 33.** Northern Lighthouse reviewed the Student's treatment plan in February 2015, and noted that she had made moderate progress on most of her goals, including being able to complete money concepts around 50% of the time, ADLs and appropriate social skills 25% of the time on her own. [P-293] She continued to struggle with being able to express her feelings and use coping skills independently. [P-297]
- 34.** Ms. Eastman used the Wilson Reading program with the Student in XX grade. The Student started the year with Book 1 of this program, progressed through the six steps of that level, and was beginning Book 2 at the time she left Washburn in April 2015. Although the Wilson program expects that learning disabled students will progress through Book 3 in one year, this program is recommended for use with students with an IQ of 90. When Ms. Eastman saw that something was not working with the Student's instruction, she made changes.
[Testimony of M. Eastman]

- 35.** Ms. Eastman noticed a change in the Student when she returned from February vacation. The Student had a lot of concerns, she expressed that her work was too hard, and started talking about going to OTC. Ms. Eastman observed the Student being preoccupied with the idea of going to another school and leaving Washburn. [Testimony of M. Eastman]
- 36.** On March 20, 2015, the Mother visited Washburn Elementary to observe the Student in the school setting. In the classroom, the Mother observed the Student working on a worksheet containing a variety of life skills topics, such as how to take care of leftovers, how to dust, and how to behave in the cafeteria. The Student worked with ed tech IIIs Bob Bartlett and Angela Dow. The room was very quiet. Then the Student worked on math worksheets involving coins. The students used plastic coins, and the pictures on the worksheet did not differentiate between the different coin sizes. The Student became frustrated. The Mother also observed the Student working with her speech therapist on putting sentences together in the correct order. [Testimony of Mother] The Mother observed the Student at lunch sitting with an ed tech and the other two children in her day treatment program. Although there were typically developing students in the lunchroom, the Student did not interact with them. The Mother also observed the Student at recess on the swings with her classmates. [Testimony of Mother] After recess, the Student prepared macaroni and cheese from a box. She was very excited to be cooking. She measured ingredients and put them in the preparation.
- 37.** Angela Russo also observed the Student once in the spring of XX grade at Washburn Elementary. Ms. Russo spent three hours there. On that day, there were four children in the classroom with two teachers, and there was a lot going on, including noisy child's play. [Testimony of A. Russo] Ms. Russo observed that the Student was not as outgoing and talkative in school as she was during their sessions, and that she did not engage unless

prompted. With some prompting, the Student was able to complete most of her work.

[Testimony of A. Russo] Ms. Eastman observed Ms. Russo using her phone during the entire observation, but was not sure whether she was using it to take notes or to conduct other business. [Testimony of M. Eastman]

38. That spring, Ms. Blackstone, a special education teacher at OTC who taught xx school aged students, observed the Student in Washburn Elementary for about an hour, along with an ed tech from OTC. Ms. Blackstone has a Masters degree in special education with a concentration in Autism and behaviors. Ms. Eastman was expecting these guests and set up chairs in the back of the classroom so the two could quietly observe. Ms. Blackstone and her colleague entered the classroom, and began greeting the children. There were four students in the Washburn classroom. It was very quiet that day, and the Student was in a cardboard cubicle facing out the window. Ms. Blackstone observed that the Student had an amicable relationship with the ed tech with whom she was working. Ms. Blackstone thought the Student had a quiet, flat affect. [Testimony of M. Blackstone] During the visit, Ms. Blackstone moved to sit with the Student and began talking with her about OTC. Because Ms. Blackstone was distracting the Student and the other children in the room, Ms. Eastman showed her the chairs she had placed at the back of the room, but Ms. Blackstone did not want to sit there. [Testimony of M. Eastman, A. Dow]

39. At the April 1, 2015 IEP team meeting, the Parents notified the District that they would be placing the Student at OTC in Presque Isle. [S-466, 468] OTC is a private school serving students in grades K-12 who have moderate to severe disabilities. [Testimony of P. Perkins] The Parents were concerned that the Student was not meeting the goals in her IEP, and that her skill levels were not where they were supposed to be because the Student was not making

much progress. [Testimony of Mother, S-465] The Parents did not feel that the bus safety issue was resolved and did not think that communication with the Washburn school was good. They were concerned that the Student would not reach her potential by graduation. Their written list of concerns also included: medical safety concerns, the fact that the Student's speech goals had remained the same for five years, the Student's grades had fallen for three years, two medical professionals recommended OTC, the Student's frustration at home, sensory integration tools were not being utilized, and she was not receiving adequate daily living skills. [S-465] For these reasons, they had decided to place the Student at OTC unilaterally and see whether she would progress at a better rate there. [Testimony of Mother] The IEP team then proposed amending the Student's IEP to reduce OT services to consult twice per quarter for 30 minutes, based upon Dr. Strom's recommendation of a gradual focus on decreasing individual pullout time from the classroom for OT and PT in favor of increasing functional activities throughout the day. The consultation time would focus on learning daily living skills such as folding laundry, cooking, cleaning, and other household tasks. [S-468]

40. The Student began attending OTC on April 15, 2015. OTC employs three teachers, one ADL coordinator, Joy Charette, who is an ed tech I, and nine other ed techs. There is one ed tech III, one ed tech II, and seven ed tech Is. [P-486] Most of the staff has been there for at least six years. Ed techs attend the same in-service days as teachers, and they have six such days each year. [Testimony of P. Perkins] The Student's classroom had an ed tech with four years of experience, another who had been there for 21 years, a contracted ed tech, and the teacher, Ms. Blackstone. There were up to 12 students in the class throughout the year. All of the

students had significant disabilities. [Testimony of J. Charette] Although homeroom was divided by age, instruction was done by cognitive ability.

- 41.** The Student was placed in the xx school classroom because she arrived so late in the year, and fit well there. Her teachers thought there were a lot of wide gaps in her academic level, and that she was behind on her functional living skills. [Testimony of P. Perkins, M. Blackstone] The staff set priorities around what the Student needed to learn to be more independent, focusing on functional skills. [Testimony of P. Perkins] She did very well on her ADLs, which consisted of laundry, meal planning, cooking, making grocery lists, public grocery shopping, using money, personal hygiene, cleaning up, and similar skills that a child needs to learn to be independent in the outside world. [Testimony of J. Charette, Mother] Once a week, the Student traveled with her class to the SAD #1 farm, where she learned about soil preparation, hydroponics, working in an orchard, and harvesting fruit. The Student loved this. [Testimony of M. Blackstone] The OTC staff expected to see problem behaviors based upon reports from the Parents about the Student “falling apart” when she got home from Washburn Elementary, but she never had any behavior issues at OTC. [Testimony of P. Perkins] OTC also contracted with Aroostook Regional Transportation to bring the Student to school. The Student’s program involved functional skills, such as using real money, and reading involved learning to read the newspaper, reading instructions, and the like. OTC had speech, OT and PT services as well. OTC contracts with SAD #1 for nursing services and with Dr. Ayala, the Student’s physician, but there is no medical staff on the premises. [Testimony of P. Perkins] The cost of this program is \$179 per day. The Parents paid \$7187.50 for the Student to attend OTC at the end of XX grade, which was broken down into

\$187.50 for transportation, \$300 for speech therapy, and \$6700 for tuition. [P-1589-91, testimony of Father]

42. Dr. Paul Johnson, a psychology professor at the University of Maine at Presque Isle, observed students in the classroom and helped the school set up behavior plans when needed. He set up the Student's data sheet and data tracking. [See P-1478] This sheet tracked the highest level of prompting the Student needed to complete 24 different tasks and her behavior doing these tasks. The prompting levels were: independent, verbal, gestural and physical. [P-1478-1500] The tasks included regular daily activities like eating lunch and breakfast, and cleaning up after meals, but also included functional math, laundry, social skills and other instructional areas. Throughout the Student's time at OTC, the amount of prompting she required varied considerably. On most days, she was able to complete her meals independently. Of the 23 school days on which this prompting sheet was tallied, the number of activities the Student was able to complete independently on any given day ranged from a low of three to a high of nine. There was no pattern or progression, however, as the Student was able to complete four tasks independently on the first day, and three on the last day these records were kept. [P-1478-1500]

43. Although the Parents expected there would be a transition for a couple of weeks, the transition to OTC was almost seamless, both from the perspective of OTC and the Parents. The Student learned her routine quickly. [Testimony of Mother, P. Perkins] The Mother, Tanya Tilley, and a friend of the Family observed that the Student spoke more clearly after she began attending OTC. [Testimony of Mother, T. Tilley, C. McCoy, P-502] The Student began attempting to do chores at home and dress herself. [Testimony of Mother, C. McCoy, T. Tilley] She started reading signs on the roads and on store walls, and voluntarily reported

what she did at school each day. She was also getting along better with her sister and her home life was happier. She made more friends, and was less withdrawn. [Testimony of Mother, P-502]

- 44.** The Northern Lighthouse staff who worked with the Student, Tanya Tilley, Elyssa Deschaine, and Jonas Rowe also noticed changes in the Student when she was attending OTC. She seemed happier, more energetic, couldn't wait to go to school, and talked more about what she did there. [Testimony of T. Tilley, E. Deschaine, J. Rowe P-484] Although the Student did not stop having "meltdowns," Ms. Tilley experienced fewer of them with the Student. Self-harming behaviors like hair pulling did not cease when the Student was at OTC, however. [Testimony of T. Tilley] Because the Student was learning to use money at OTC, Ms. Tilley could work on this with her during their outings. [Testimony of T. Tilley] At the request of the Parents, Section 28 supervisor Elyssa Deschaine wrote a letter dated May 20, 2015 regarding her observations about the Student since she began attending OTC. [P-483] Ms. Deschaine observed the Student in one of her groups where the Student worked on peer interaction and coping skills, and usually saw the Student weekly either in this group or in the community. [Testimony of E. Deschaine] Ms. Deschaine noticed a significant change in the Student's attitude for the better while the Student was attending OTC. The Student also spoke more clearly. [Testimony of E. Deschaine]
- 45.** Ms. Russo also noticed changes in the Student while she was attending OTC. On the Student's first day there, she was very excited, happy to be there and wanted to tell Ms. Russo stories about her day. At the Student's June 1, 2015 therapy session, she told Ms. Russo that she liked going to OTC because "somehow they know what I need." [P-1563,

Testimony of A. Russo] Ms. Russo felt that OTC was a better environment to teach the Student ADL skills, in addition to academic skills like reading, writing and math.

46. The Student's OTC report card contained grades for schoolwork and behavior. Her conduct was always satisfactory. The report card contained a detailed account of the work the Student was doing, such as in mathematics, "[The Student] is working on the four basic operations and real-life math including money, budgeting, etc." and for reading, "participated in a reading group that completed *Nim's Island* and a short story unit." [P-497] For social studies, the Student "is learning about the culture of Mexico, World and US historical people of significance and basic government functions. We recently visited the U.S. Border Patrol Station." [P-497]
47. On May 8, 2015, while the Student was attending OTC, the IEP team met to develop the Student's xx grade IEP. [S-529-547] This was the Student's annual review. The District presented its offer of programming for xx grade that included four and a half hours per school day of specially designed instruction. [S-520, 546] Approximately half of this time would be spent receiving services in the resource room where special educator Debra Whittier would supervise the Student's program. The other half of the day would be spent in the life skills classroom with teacher Michelle Desfosses. Angela Dow would be the Student's primary ed tech, as she was in XX grade. [Testimony of J. Haley, A. Dow] The Student would receive the following related services: speech therapy with Ms. Tardiff daily for 30 minutes, OT consultation twice quarterly for 30 minutes, and PT weekly for 30 minutes, with quarterly consultation for 30 minutes. [S-546] Her OT needs would be integrated with the life skills curriculum. This IEP was divided into the following sections: academic goals, of which there were four in math and three in ELA; functional goals, which

included two speech/language, one OT, one PT and two behavioral goals; and developmental, which consisted of the new Assessment of Functional Living Skills (AFLS) curriculum. [S-532-542] For the first time this school year, the District would use the AFLS curriculum. [Testimony of J. Haley] It involves assessing the Student and building the curriculum based on the assessment score. This program provides structure for students who will be in supported living and job environments. [Testimony of J. Haley] The IEP states that the Student would be given the AFLS curriculum and other interventions and supports, and that she “will develop independence with completing intermediate life skills with 80% accuracy as measured by data collection and observation.” [S-542] The Student would have lunch and open gym for about an hour each day with nondisabled peers. The team considered a placement at OTC but rejected it because the team determined that the Student’s needs could be met in the local public school setting. [S-520, testimony of M. Eastman] Roland Caron thought the Student was making progress, but falling a little short of where the District hoped she would be, but performing commensurate with her disability. [Testimony of R. Caron] The District has placed students at OTC previously, and Mr. Caron thought it was a great program for students who needed that level of programming, but did not think the Student fit that description. The Parents did not agree with this decision, and felt that the Student would benefit from the programming at OTC.

- 48.** While the Student was at OTC, Ms. Haley and Ms. Eastman visited to observe her for about an hour. They observed a very different atmosphere than at Washburn Elementary. The Student was in a much larger class with two or three staff and around 12 students. They were doing a science lesson on reduce/reuse/recycle. There was a lot of talking and movement, and people were entering and leaving the class. Ms. Haley and Ms. Eastman thought it was a very

distracting environment, and thought it would be difficult for the Student, who liked a quiet workspace. [Testimony of J. Haley, M. Eastman]

49. The Student's last day of school at OTC was June 5, 2015. She attended the summer program there from June 15 through August 8, but this was not an academic program. The focus was on socializing, getting out into the community and being active. [Testimony of P. Perkins]

50. The Parents filed this due process complaint contesting the IEP team's placement at Washburn High, but did not continue the Student's unilateral placement at OTC. She told Ms. Russo that she was looking forward to seeing her friends at Washburn when she returned there in the fall. Consequently, Ms. Russo expected the Student to transition nicely back to Washburn. When Ms. Russo saw the Student on August 31, shortly after school started, she learned that the Student's incidents of aggression had increased at home, and she came to her therapy session with a lot of worries about her family again. [Testimony of A. Russo] At school, however, the Student's ed tech, Ms. Dow, observed that the Student was doing well, and that she was not experiencing frustrations. With her ADLs, the Student was starting with small steps and moving onto bigger ones. The Student's schedule had her in the life skills program for first and second periods, where she worked on telling time, both digital and analog, laundry skills (sorting, washing, drying and folding) and calendar skills. [Testimony of J. Haley] She also had speech therapy during period 2. For third period, the Student was in the resource room with Ms. Whittier for ELA. She then had a 15-minute social period in the life skills room, followed by lunch and open gym for an hour. [Testimony of J. Haley] Following lunch, the Student had life skills, which included recipe planning, meal planning and preparation. On Thursdays, the Student walked with her class to the local grocery store, although the program also included occasional shopping trips to the supermarket in Presque

Isle. The Student is not working on money management at this time, but is learning how to compare products, sizes and prices. Money will be part of the curriculum later. For 7th period, the Student was in the resource room for math. [Testimony of J. Haley] The Student's classmates in her life skills classes are nonverbal, but use other methods to communicate. All are cognitively limited.

51. Ms. Whittier described the Student as being an eager student who is ready to work and works hard. Ms. Whittier gives her primarily xx and xx grade work, and the Student does pretty well on most of it, but some is a work in progress. [Testimony of D. Whittier] The Student sometimes needs redirection, but not a lot, and she has never gotten upset in Ms. Whittier's classroom. In Ms. Whittier's classes, the Student is with a varied population of seven or eight students, mostly with learning disabilities, but not cognitive impairments. [Testimony of D. Whittier] There is one ed tech, Brenda Devoe, in the classroom. Ms. Haley also observed the Student in xx school, and she appears to be engaging well. [Testimony of J. Haley] When the Student returned to the District, Ms. Tardiff noticed that the Student experienced no regression in articulation since she last saw her in April 2015, and that her focus was much better. [Testimony of M. Tardiff]

52. The Student currently is able to brush her own teeth, but the Mother still brushes and washes her hair. The Mother assists the Student with dressing fairly often. The Family and educators who work with the Student agree that she will ultimately likely be capable of independent living in a supportive living environment and of employment in a supported job. [Testimony of Mother, J. Haley, P. Perkins]

IV. DISCUSSION AND CONCLUSIONS

A. Brief summary of the position of the Parents:

SAD #45 failed to provide the Student with an appropriate education during her xx and XX grade years at Washburn Elementary. There was considerable evidence that the Student made virtually no progress academically or functionally during those years. There was no dispute that the Student has the potential to live independently with support and be employed, but her programming did virtually nothing to advance those goals.

The Student's IEPs were inadequate both in their design and implementation. The IEPs lacked programming that was reasonably calculated to provide her with meaningful benefit in key areas of her educational development, including daily living skills, social and communication skills, and academic development. The majority of the goals set forth in the Student's xx grade IEP were repeated verbatim in her xx and XX grade IEPs because she never attained them. Daily living skills, a critical area of need for which the Parents and Dr. Strom advocated, was absent from the Student's xx grade IEP. The daily living goal in the Student's^{xx} grade IEP was nebulous, and contained no specific objectives or tasks. Merely repeating goals when there are no real signs of progress demonstrates the lack of meaningful benefit in violation of the IDEA. Consequently, there was evidence that the Student was significantly below where she should have been based upon her ability to achieve in this area. The Student's behavioral goal, also repeated every year, contained no specificity of how she would achieve this goal, what tools or strategies would be used or how progress would be measured. The Student continually failed to meet her PT goal. Despite only meeting 2 of her 11 speech objectives, her services were reduced in May of 2014 because she was not regressing. This flies in the face of the IDEA mandate of "meaningful progress" as a benchmark of appropriateness of services.

The EMMC evaluation team, which included Dr. Strom, recommended things that were not in the Student's program in the District, including a very strong experiential program

including life skills and prevocation goals, participation in a social skills group, and assistance with the transition to xx school. The actual daily living skills taught to the Student at Washburn were inadequate.

An IEP and placement that result in emotional harm to the Student are not appropriate under the IDEA. The Student's social, behavioral and emotional issues are part of her educational performance. Her inappropriate program at Washburn was the largest determinant of her negative behaviors. Despite the District's understated reports, the Student continued to engage in dangerous and troubling behaviors, which were indicative of her struggles through the school years. The District was also unable to maintain the Student's safety on the school bus, and the school nurse proved herself unable to handle a medical emergency properly.

The proper remedy for failure to provide the Student with FAPE during the period in question is reimbursement of the OTC spring 2015 costs and compensatory education in the form of a future placement at OTC. The Parents need not show that the placement at OTC is the only or least restrictive one, just that it is capable of conferring educational benefits to the Student. The evidence of the benefits the Student received when attending OTC is overwhelming. She had significantly fewer meltdowns, her demeanor became happier, and her speech became clearer. The Student is also entitled to an order placing her at OTC because the Student's xx grade IEP does not comply with the IDEA. It contains no post-secondary transition plan, and her program does not meaningfully address all areas of educational need to allow the Student to attain post-secondary employment and independent living.

Brief summary of the position of the District:

The Parents have the burden of proving that each of the IEPs they are challenging were not reasonably calculated to provide the Student with educational benefit.

The hearing officer must view the IEP as a unitary whole and in terms of what was reasonable when the document was promulgated, not in hindsight. The program must also be offered in the least restrictive environment. The First Circuit has ruled that it would likely violate the IDEA's mainstreaming requirement to place a child out of district if her needs can be met closer to home. The evidence shows that the Student's IEPs and placement met this standard.

With respect to the Student's xx grade year, there was no meaningful dispute, as neither parent offered any evidence against the programming for that year, nor did any of their witnesses. Contrary to the parent's testimony, the IEP contained a functional life skill goal for community safety, which was one of the Family's primary concerns. There were goals and objectives in all areas of need. This IEP was reasonably calculated to provide the Student with benefit, and in fact did benefit her. On the "reasonable calculation" question, there was no evidence that the level of services provided or area of services was inadequate. Given the seriousness of the Student's disabilities, she will not achieve commensurate with nondisabled peers, and her cognitive profile will prevent her from catching up with children who face lesser challenges. There was testimony that the Student's gains would be slow, and that she needs substantial repetition. There was also evidence from the PAAP that the Student made progress in reading, math and writing. She also improved behaviorally during xx grade. Overall, she did receive meaningful benefit from her xx grade program, and was provide with FAPE.

The Student's IEP and placement were also appropriate in XX grade. School officials understood the Parents to want the Student's teachers to focus more on academic skills than nonacademic ones that year. This led to less time for functional skills programming. After the Student's evaluation became available in January 2015, which strongly recommended a focus on life skills, the IEP team met and amended the Student's IEP to increase programming in that

area. The Student's program was reasonably calculated to provide her with educational benefits in the least restrictive setting, and did provide her with those benefits in a manner consistent with her learning profile. Testing done by both Dr. Strom and the District confirm these gains.

Although much of the dispute about the Student's xx grade IEP involves life skills programming, both Washburn High and OTC have similar programs. There was no evidence that OTC offers any programming or special methodologies that the District does not offer. What the District offers that OTC does not is instruction by Educational Technician IIIs, which is the level required by Maine law to teach students with disabilities. The Student also continues to have time during the school day with nondisabled peers, which would not be the case at OTC. Least restrictive environment (LRE) principles require the Student to attend Washburn High. Despite the Parents' assertion that the Student spent all of her time with her classmates while attending school in Washburn, a great value in attending the neighborhood public school is that the Student has the opportunity in the form of role modeling to see non-disabled children interact. She does not have these opportunities at OTC. When in the Resource Room, she has a chance to engage with students who are considerably less disabled than her peers at OTC.

The Family also raises issues about the lack of a transition plan, yet the IDEA only requires one to be in effect by the Student's xx birthday.

Although the District does not believe the Parents have proved their claims, if the Hearing Officer finds a violation, the remedy should not include placement at OTC. This would be particularly inappropriate as compensatory education if current programming at Washburn High is providing FAPE. If the current program has deficiencies, the Hearing Officer can order changes that will correct the problem.

Burden of Proof

As the U.S. Supreme Court has held, in an administrative hearing challenging an IEP, the burden of proof lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 41 (2005), *Regional School Unit No. 51 v. John Doe*, 60 IDELR 163 (D. ME. 2012); *DB ex rel Elizabeth v. Esposito*, 675 F. 3d 26, 35 (1st Cir. 2012). Therefore, as the Parents are challenging the IEP team's decisions, they must prove that the evidence supports their position on the issues before the hearing officer.

1. Was the Student's IEP and placement for the 2013-14 school year (xx grade) reasonably calculated to provide her with a free, appropriate public education in the least restrictive environment?

The Individuals with Disabilities Education Act (IDEA) provides that every student who is eligible for special education services is entitled under federal law (and Maine's corresponding law) to receive a "free and appropriate public education ... designed to meet their unique needs and prepare them for employment and independent living." 20 USC 1400(d)(1)(A). The hearing officer must examine whether the Student's educational program contained in her IEP was "reasonably calculated to enable the student to receive educational benefit." *Board of Educ. v. Rowley*, 458 U.S. 176, 207 (1982). In *Town of Burlington v. Department of Education*, the First Circuit explained that an appropriate education must be directed toward "the achievement of effective results – demonstrable improvement in the educational and personal skills identified as special needs – as a consequence of implementing the proposed IEP." 736 F.2d 773, 788 (1st Cir. 1984), *aff'd*, 471 U.S. 359 (1985). The educational benefit must be meaningful and real, not trivial or *de minimus* in nature. As the First Circuit stated in *Lenn v. Portland School Comm.*, the law sets a fairly modest goal of an appropriate, rather than an ideal, education. The benefit conferred does not need to reach the highest attainable level or the level needed to maximize the

child's potential. 998 F.2d 1083, 1086 (1st Cir. 1993). The *Lenn* court also stated that the IEP must be designed to target, "all of a child's special needs, whether they be academic, physical, emotional, or social." 998 F.2d 1083, 1096.

The Parents assert that for an IEP to be appropriate under the statute and case law, it must be reasonably calculated to address all of the Student's educational needs, which by definition includes both academic achievement and functional performance. They further state that the Student's xx grade IEP lacked programming "reasonably calculated" to provide her with meaningful benefit in key areas of her educational development, including her daily living skills, social skills, communication skills and academic development. As evidence, the Parents point to the fact that the Student's OT, PT and speech goals for xx, xx and XX grades were the same, and that her behavioral goals during those years were essentially the same all three years, yet the Student made minimal progress towards these goals. The District counters this argument by contending that the Student progressed in a way and at a rate consistent with her disability. Furthermore, the District argues that the LRE provision of the law requires placement in the school that the child would normally attend if not disabled, as long as that placement can provide appropriate programming. *See* 34 CFR §300.116(b)(3). In other words, an out of district placement would not be appropriate if the Student's needs can be met in her neighborhood school. *See Abrahamson v. Hershman*, 701 F. 2d 223, 227 (1st Cir. 1983).

Reviewing the Student's graded IEPs from xx and xx grades, the Parents accurately point out that the Student's annual goals for her therapies and behavior were essentially the same each year, if not identical, and that her short term objectives, when any were stated, were largely the same as well. The Parents calculated that from xx through XX grade, 60% of the Student's short-term objectives for speech remained the same, 67% for OT remained the same, and 50% of

her PT goals remained the same. As pointed out in the facts above, the Student met very few of her short-term objectives and partially met some of them.

The District, on the other hand, contends that the Student's program was well crafted and reasonably calculated to offer the Student FAPE, providing her with a high level of speech, OT and PT services, plus academic and behavioral goals delivered in the least restrictive environment. There was no dispute about the level of related services or the qualifications of the staff. Nonetheless, I agree with the Parents that despite receiving a high level of services, the Student made very little progress during xx grade in these areas.

The primary evidence of the Student's progress was found in the PAAP. On this alternative assessment, the Student scored in the proficient range in reading, math, and writing. [Fact #20] I conclude that the Student's progress in these areas, while slow, was meaningful and real.

The Parents' main concern, in addition to the Student's lack of progress, was that she needed more life skills programming. Despite the Parent's repeated requests, there was almost no life skills instruction during xx grade. The Student had one goal that was arguably in the life skills category: to learn about health, nutrition and safety. The Student's graded IEP showed that she did not start working on that goal until the fourth quarter, and that she only partially met it. It is unclear how she partially met this goal, as the narrative for 4/4/2014 said that she "is currently working on identifying parts of the body. She completed a chapter on safety, this was a struggle to her. Stranger danger was an area of weakness for her." [Fact #10]

While the IDEA no longer requires short-term objectives for certain goals, it does require IEPs to include a statement of *measurable* annual goals designed to meet the child's needs and a description of how the child's progress towards meeting these goals will be measured. 34 CFR

300.320, MUSER IX.3.A.(1)(c). The description should be sufficiently specific to allow the District to objectively measure the Student's progress. *Kuszewski v. Chippewa Valley Schs*, 34 IDELR 59 (ED Mich. 2001), *aff'd* 38 IDELR 63 (6th Cir. 2003), 71 Fed. Reg. 46,662 (2006).

In *Independent Sch. Dist. No. 701 v. J.T.*, 45 IDELR 92 (D. Minn. 2006), the Federal District Court upheld an administrative law judge's (ALJ) conclusion that the IEP goals "were so vague and general as to fail to demonstrate that the IEP was reasonably calculated to result in educational benefit." The ALJ determined that the IEP must "contain academic goals and objectives that are specific and able to be measured." (*Id.*) In that case, as in the case before me, the goals at issue dealt with task completion and the ability to manage frustration. The goals were considerably more detailed than the Student's and contained short-term objectives, but the Court concluded that they were nonetheless vague and immeasurable.³

Here, the Student's behavior goals were vague, with no objective means for measurement. Furthermore, there were no specific services, skills being taught, or programming listed to show how the Student would achieve these goals. In other words, there was no way of determining whether she was making progress, other than subjective opinions. Throughout this hearing, there was testimony from the Parents and their witnesses about how the Student was not making progress, and from the District's witnesses that the Student was making progress. This illustrates why the IDEA requires objective measurements.

The District asserts that there was evidence of the Student's improvement behaviorally in

³ The two goals at issue in *Independent Sch. Dist. No. 701 v. J.T.* were: (1) "[the student] will increase the ability to express anger and frustration in socially acceptable ways from arguing, confronting, and refusing to work to calmly discussing solutions to problems with others" and (2) "[the student] will improve his functional academic skills from a level of not completing assignments independently to a level of being able to read, write and do basic math skills independently." The Court noted that wording of each goal and objective could define a broad range of conduct. Further, although the short-term objectives provide that the academic goal would be met according to certain percentages, the Court found that the objectives did not provide objective criteria against which achievement could be measured.

xx grade, citing the written notice from the end of the year which stated that the Student had fewer outbursts and came to school put together and ready to work, as well as Dr. Strom's statement in her evaluation that the Student's behavioral problems seem to be improving over time. I agree that the evidence supports this conclusion, although the Student's annual goals in this area lacked the measurability required by the IDEA.

For the most part, the Student's IEP provided a wide array of services and programming delivered by qualified professionals, but the Student only made meaningful progress in math, ELA, and her behaviors. She was making minimal progress in her therapies, yet there was no evidence that anything was done to adjust her goals or otherwise attempt to produce better results. Lastly, the nature of the Student's disability required that she learn functional life skills, and that this was an important part of her education. Despite the Parents' requests for more instruction in this area, the Student had only one goal in this subject and did not start working on it until late in the school year. Based upon the foregoing, I conclude that the xx grade IEP was not reasonably calculated to provide the Student with FAPE, and did not provide her with FAPE.

2. Was the Student's IEP and placement for the 2014-15 school year (XX grade) reasonably calculated to provide her with a free, appropriate public education in the least restrictive environment?

As discussed above, a large percentage of the Student's goals and objectives in all but ELA and math were the same in XX, XX and XX grades. Although she had caring teachers and therapists, her progress in most areas continued to be very slow. While the Student's cognitive profile was such that she would progress at a slower pace, there were areas in which the Student was making little or no progress. This was very frustrating for the Parents, who felt that the Student would benefit from more life skills instruction. They contend that merely repeating goals when there are no real signs of progress demonstrates the lack of meaningful benefit in violation

of the IDEA. I agree, and that seemed to be the case with respect to the Student's nonacademic goals at the start of her XX grade year. *E.g., CB ex rel BB and CB v. Special School Dist. No. 1*, 636 F.3d 981 (8th Cir. 2011).

A comparison of the Student's IEPs for XX and XX grades reveals that these goals and objectives were repeated and is evidence that the Student had not met them or had regressed from partially meeting to not meeting the objectives. Although she was making very little progress in her therapies, again there was no evidence that the District made an attempt to do anything differently at the time the IEP was drafted. Furthermore, despite the Parents' continuing advocacy for more daily living skills, lack of adequate life skills instruction remained a problem until Dr. Strom's report recommended "a very strong experiential program that included life skills and prevocational goals," and an "overall program of enhancing independent activity."

[Fact # 26]

Before Dr. Strom's report was available, the Student's XX grade IEP contained an instructional goal to "demonstrate a basic working knowledge of independent living skills in self-care, preparing, planning and serving food with 80% accuracy over multiple attempts" and a goal to understand things like "food groups, nutrition, reading labels, thoughts, feelings and actions." [S-187-188] She also had a behavioral goal to independently complete all daily living skill activities through her school day with 90% accuracy. [S-197] Again, there were no short-term objectives or list of specific skills she would acquire to demonstrate that she was meeting these goals. There were no other ways to tell whether she was making progress toward them. As set forth in Fact #17 above, the Student's IEP contained three science goals involving complex topics that appeared to the hearing officer to be very likely completely incomprehensible for someone with the Student's cognitive profile.

To the District's credit, in January of 2015, the IEP team met and revised the Student's IEP in response to Dr. Strom's recommendations, so that her school day would focus on math, ELA and functional life skills, removing the science and social studies goals⁴. [S-367-368] The team added meal preparation, incorporating this into the Student's OT short-term objectives. The lack of adequate instruction in that area until that point, however, led the Student to arrive at OTC in April of this year with daily living skills significantly below where they should have been based upon the Student's ability to achieve and her needs. [Fact #41]

The District argued that school officials understood the Family to want the Student's teachers to focus more on academic rather than nonacademic skills at the start of XX grade, as if the shortcomings in the IEP were somehow due to that alleged misunderstanding. It is hard to comprehend how school officials misinterpreted the Parents' repeated requests for more daily living skills in the Student's program as somehow meaning that this was not a priority for the Student.

The District also points out that the entries in the MaineCare daily progress notes show that the Student's behavior improved throughout the year. I found that perusing these notes was not very helpful, but there was other evidence showing that the Student was making progress throughout the year on her emotional regulation and coping skills. However, the Student also had 20 hours per week of support from Northern Lighthouse staff and weekly therapy from Angela Russo, making it hard to apportion how much of the Student's improvement in this area was due to her educational program at school or Northern Lighthouse services. I think it is fair to conclude that the Student was benefitting from both.

⁴ As noted in Fact #31, these goals removed because the Maine DOE informed the District that they did not belong in an IEP.

In conclusion, the Student started the 2014-2015 school year with inadequate life skills programming, but the IEP team made changes to the IEP to focus more on functional life skills as well as math and ELA. Although the Student was making minimal progress in her therapies, her OT objectives were revised partway through the school year, and she was making meaningful progress in math, ELA, emotional regulation and coping skills. I conclude that although the Student's IEP was not reasonably calculated to provide her with FAPE for the first half of the school year, the changes made at the January 20, 2015 IEP team meeting remedied that problem for the second half of XX grade.

3. Is the District's 2015-16 IEP and placement for the Student reasonably calculated to provide her with a free, appropriate public education in the least restrictive environment?

Before addressing the main issue, I will decide what the District refers to an ancillary issue: the lack of a post-secondary transition plan in the xx grade IEP. The Parents allege that the IEP is deficient because it lacks a post-secondary transition plan. The District is correct in its interpretation of the law in this area. Federal law requires that a transition plan be in effect by the time the child turns 16. 20 USC §1414(d)(1)(A)(i)(VII). The Maine Unified Special Education Regulations (MUSER) sets a higher standard, requiring that the IEP team "adopt a transition plan during the child's xx grade school year, to be updated annually thereafter . . ." MUSER §IX.3(A)(1)(h). The lack of a transition plan in this IEP is not a violation of the IDEA, and the District has until the end of this school year to develop one.

The central issue for the xx grade year is whether the actual educational program offers the Student FAPE. The current IEP offers the Student a comprehensive program of functional life skills. The skills the Student is learning are very similar to those on which she was working at OTC, with the exception of using actual money to complete purchases and weekly trips to the

SAD #1 farm. The Student will cover the former later in the school year. [Fact #50] Unlike the aspects of the xx and XX grade IEPs that I found lacking, the xx grade IEP contains specific objectives and measurements in all areas except for the behavioral goals. Those goals, too, are more specific and make reference to methods for measuring progress.

In Fact #47, I set forth the details of the Student's xx grade IEP, and I conclude that it is reasonably calculated to provide the Student with a program that addresses her areas of need. Furthermore, the District is able to provide these services to the Student in the least restrictive setting. Although, as the Parents point out, the Student does not interact much, if at all, with typically developing students at school, her resource room classes are with students who are considerably less disabled than the students who would be in her classes at OTC, and she has the opportunity to observe mainstream students during the school day. When the Student's needs can be met in her neighborhood school, the IDEA requires placement there, rather than at an out of district school. *Abrahamson v. Hershman, supra*.

Mr. Caron, in his testimony, made the following very wise observation: his staff testified that the Student was happy at Washburn High, and the OTC witnesses testified the Student was happy there, and somewhere in the middle lies the truth. He also observed that the Student was someone who liked to please people and suspected that she therefore told people what she thought they wanted to hear. [Testimony of R. Caron] I think Mr. Caron's observations are accurate. In any hearing, some witnesses support one party's position, and their testimony, while reflecting their honest beliefs, may seem overstated or inconsistent with contemporaneously maintained documentation. Because some of the testimony about the Student's behaviors was not consistent with other evidence in the record, I did not include that testimony in my findings of fact. I do conclude that there was evidence that the Student was doing well so far at Washburn

High. I cannot conclude from the evidence that it is more likely than not that attending Washburn schools caused most of the student's negative behaviors.

In finding that the xx grade IEP is reasonably calculated to provide the Student with FAPE, I do have some concern about the District's past inadequacies in the areas discussed above, and can understand the Parents' lack of confidence that the Student's needs will be met. This year, however, the Student is in a new school with a new program that is better tailored to her needs. As the District has a continuing obligation to offer FAPE to the Student, it is encouraging that the District is implementing this new program and seems to have cured the deficiencies in past IEPs.

There was also evidence that the Student was doing well during her short time at OTC. While there was a lot of anecdotal evidence about the Student being happier and speaking more clearly, there was no evidence actually relating this to any instruction or therapies that OTC was providing her. For example, there was no evidence that the Student was speaking more clearly due to her speech therapy at OTC or a specific methodology they were employing. In fact, there was very little evidence at all about the therapies the Student received there. I have no evidence on which to specifically link the Student's gains in articulation with her OTC programming.

By all appearances, the Student did well while attending OTC largely because she was happier there. One of the ironies of the LRE requirement is that it is common for children with disabilities to be happier when surrounded with other students who have similar challenges or are more disabled than they are. They feel like they fit in. Yet because the purpose of education is to prepare children for the world outside of school, a world in which they will likely be interacting with many nondisabled people, the IDEA's LRE requirement prepares them for that world. Furthermore, even if the Student may have been happier at OTC and could make more progress

if placed there, this does not compel the conclusion that her public school placement is inappropriate. *MSAD #51 v. Parents*, 07.053H (2007) (unpublished) *citing O'Toole v. Olathe Dist. Schs.*, 144 F.3d 692 (10th Cir. 1998). The IDEA does not guarantee the Student the best possible placement or a placement to maximize her potential. Rather, it gives her the right to an educational program reasonably calculated to provide her with meaningful educational progress. *Lenn v. Portland School Comm, supra*. I believe the Student's xx grade IEP offers her an opportunity to receive FAPE in what is a considerably less restrictive environment than she would have at OTC. The IDEA therefore dictates that this is the appropriate setting for the Student to receive FAPE.

There were several other issues both parties raised that are worth discussing. The Parents do not trust the District's school nurse and do not think she is competent. The Maine Board of Nursing determined that Ms. McPherson did not violate any standards of nursing practice, and this hearing is not an adjudication of her competency. Regarding bus safety, I am also convinced that the District has taken appropriate steps to assure that the Student will not be transported on a bus with a driver who does not give her time to sit down before setting the bus in motion.

The District correctly points out that the qualifications of the educational support staff at Washburn High are superior to those at OTC. Most of the OTC ed techs are authorized as ed tech Is, including Ms. Charette⁵, and this requires only a xx school diploma or GED. The higher ed tech classifications of II and III require a minimum of 60 credits of approved advanced study. All of the ed techs employed in the Student's program in Washburn are ed tech IIIs, which is the

⁵ The District questioned whether Ms. Charette was qualified to do her job under Maine law with only ed tech I certification. I do not know the extent of her job responsibilities, but under MUSER, as an ed tech I, she is not permitted to introduce new instruction to special education students without teacher supervision or perform other responsibilities reserved to individuals with ed tech II and III authorization.

only classification of ed tech permitted under Maine law to introduce new instruction to students without the direct supervision of a certified teacher or specialist. MUSER §X.2(A)(6)(2015). Ed tech Is may only review and reinforce learning previously introduced by the classroom teacher and they must provide that instruction while being directly supervised by a certified teacher or specialist. This is not the only difference between the ed tech classifications. *See* MUSER §X.2(A)(6)(2015).

4. If the hearing officer concludes that the District violated state or federal special education law, what remedies are appropriate? This includes the issue of whether the Parents are entitled to reimbursement of the costs associated with the unilateral placement at the Opportunity Training Center (OTC), and whether that placement was “proper” under state and federal special education law.

There was no dispute that the Parents properly gave notice to the District of their intent to place the Student unilaterally at OTC and seek reimbursement from the District for that placement. [Fact #39]

The Parents are seeking reimbursement of the Student’s tuition at OTC as compensatory education for the failure to provide the Student with FAPE in XX and XX grade, and an order for additional compensatory education in the form of a placement at OTC for this year. The First Circuit case of *Pihl v. Mass Dep’t of Education* is authority that, “a student who fails to receive appropriate services during any time in which he is entitled to them may be awarded compensation in the form of additional services at a later time.” *9 F3d 184*, 198 (1st Cir.1993).

As the Student’s educational program during xx and part of XX grade did not provide her with FAPE, the usual remedy under the IDEA for a student who has been denied appropriate services in the past is an award of compensatory educational services to place her in the same position she would have occupied had the District complied with the IDEA. *Reid ex rel. Reid v.*

District of Columbia, 401 F.3d 516, 24 (D.C. Cir. 2005). Although an IEP need only provide some benefit, “compensatory awards must do more – they must compensate.” *Id* at 525.

The Parents presented evidence that the Student’s lack of adequate life skills instruction caused her educational harm, as she was behind on her functional living skills. [Fact #41] Crafting an appropriate remedy in this case is very difficult for several reasons. First, although there was general testimony from staff at OTC and the Mother that the Student was behind in her functional life skills, there was little evidence regarding her specific areas of deficit. There was no testimony about what someone with the Student’s cognitive abilities should have learned by this point if she had been provided with an appropriate program. The Mother, who is not an expert in education, discussed areas of need such as personal care, laundry, food preparation and shopping. The Student received some instruction in these areas at OTC, and I believe the Parents are entitled, based upon the law cited below, to compensation for the cost of that instruction.

Although I also concluded that the Student did not make meaningful progress in some of her therapies during XX and XX grades, the only evidence presented of the Student’s specific educational losses resulting from this was that she only had one OT session during the first month of school in XX grade, rather than eight sessions. She was receiving a high level of related services at Washburn Elementary, and there was no evidence that she suffered specific educational harm or that therapies provided at OTC or elsewhere would have produced a different result.

Regarding the lack of life skills instruction, courts and hearing officers routinely award reimbursement for unilateral placements as compensatory education remedies in a variety of cases in Maine and elsewhere. *See, e.g., New Paltz Central Sch. Dist. V. St. Pierre*, 307 F. Supp.2d 394, 395-96 (N.D.N.Y. 2007); *Sanford Sch. Dep’t.*, 47 IDELR ¶ 176 (MSEA 2006);

School Admin. Dist. No. 22, 43 IDELR 268 (MSEA 2005). The IDEA provides parents of students with disabilities with a “self-help” remedy when the school district fails to offer them a free, appropriate public education in a timely manner. 34 C.F.R. § 300.148(c), *Burlington*, 471 U.S. 359 (1985), *Florence County School Dist. Four v. Carter*, 510 U.S. 7 (1993). The federal regulations state that if the parents of a child with a disability, who previously received special education through the public school, unilaterally enroll the child in a private school, a court or a hearing officer may require the school department to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school department had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. 34 C.F.R. §300.148 (c).

A parental placement may be found to be appropriate under the IDEA even if it does not meet the State standards that apply to education provided by public schools. Under the holding of *Florence County*, parents must demonstrate that the public school did not provide a free, appropriate public education, *and* that the private school placement is proper, which means, “education provided by the private school is ‘reasonably calculated to enable the child to receive educational benefits.’” *Florence County*, 510 U.S. at 11. It is not necessary that this unilateral placement be in the least restrictive setting. The Third Circuit Court of Appeals noted that imposition of the least restrictive environment requirement on such a placement “would vitiate the parental right of unilateral withdrawal,” and that “the test for the parents’ placement is that it is appropriate, and not that it is perfect.” *Warren G. v. Cumberland County Sch. Dist.*, 190 F. 3d 80, 84 (3d Cir. 1999).

The Student’s placement at OTC in April of 2015 satisfies the standards set forth by the courts. She was not receiving adequate life skills instruction in Washburn, so the Parents

unilaterally placed her at OTC, where she received those services. Therefore, the Parents are entitled to an award of \$7187.50 as reimbursement for the costs of sending the Student to OTC earlier this year.

This award, covering less than two months of instruction, is not adequate to compensate the Student for losses suffered as a result of 1½ school years without adequate life skills instruction. This raises the more complicated issue of what is an appropriate award, in light of my conclusion that the Student's current less restrictive placement at Washburn High is providing her with this instruction and offers her FAPE in the LRE. Additionally, placement at OTC for a full year in addition to the seven weeks discussed above would be an excessive remedy in this case.

An award of compensatory education need not be an hour-for-hour replacement for lost time or opportunity. *Parents of Student W. v. Puyallup Sch. Dist. #3*, 31 F.3d 1489, 1497 (9th Cir. 1994). The extent of a compensatory education award is dependent on the unique facts and circumstances of each case. *Millay ex. rel. Y.M. v. Surry Sch. Dept.*, 1:07-cv-00178-JAW (D. Me. Mar. 23, 2011), *aff'd sub nom. Millay ex. rel. Y.M. v. Surry Sch. Dept.* (D. Me. May 23, 2011).

In addition to the tuition reimbursement set forth above, to compensate the Student for the lack of adequate life skills instruction during XX and XX grades, the District shall provide the Student with compensatory services in any of the following areas: tutoring or other instruction in functional life skills, pre-vocational or vocational skills training, physical therapy or similar services to improve the Student's gross motor development or balance, occupational or speech therapy. The Parents shall select the services and providers, and may access services in one or more of the areas listed in this paragraph. The cost of these services shall not exceed

\$5000. These services shall be provided by individuals qualified (and licensed where applicable) to provide these services to a child with the Student's level of disability, and shall be provided by August 31, 2017 unless the parties agree otherwise. If the Parents elect to arrange these services on their own, they shall cooperate with the District about the District's preferred method for payment of these services.

The District is ordered to take remedial action set forth in section V below.

V. ORDER

1. The District violated state or federal special education laws by failing to provide the student with a free appropriate public education for the 2013-2014 school year.
2. The District violated state or federal special education laws by failing to provide the student with a free appropriate public education for the 2014-2015 school year.
3. The District's 2015-16 IEP and placement for the Student is reasonably calculated to provide her with a free, appropriate public education in the least restrictive environment.
4. The District is ordered to reimburse the Parents \$7187.50 for the cost of the Student's attendance at OTC as compensatory educational services for the failure to provide FAPE for the 2013-2014 and 2014-2015 school years. The District shall also compensate the Student by providing her with compensatory services in any of the following areas: tutoring or other instruction in functional life skills, pre-vocational or vocational skills training, or physical therapy or similar services to improve the Student's gross motor development or balance, occupational or speech therapy. The cost of these services shall not exceed \$5000. The services and providers shall be selected by the Parents, and shall be provided by individuals qualified (and licensed where applicable) to provide these services to a child with the Student's level of disability, and shall be provided by August 31, 2017 unless the parties agree otherwise.

SHARI B. BRODER. ESQ.
Hearing Officer