

**Complaint Investigation Report**  
**Parent v. Lisbon**

March 29, 2017

Complaint #17.048C  
Complaint Investigator: Jonathan Braff, Esq.

**I. Identifying Information**

Complainant: Parent  
Address  
Address

Respondent: Rick Green, Superintendent  
19 Gartley St.  
Lisbon, ME 04250

Special Services Director: John Merrifield

Student: Student  
DOB: xx/xx/xx

**II. Summary of Complaint Investigation Activities**

The Department of Education received this complaint on February 8, 2017. The Complaint Investigator was appointed on February 10, 2017 and issued a draft allegations report on February 14, 2017, amended on February 15, 2017. The Complaint Investigator conducted a complaint investigation meeting on March 2, 2017, resulting in a stipulation. On February 8, 2017, the Complaint Investigator received 567 pages of documents from the Complainant, plus an additional 148 pages of documents on March 9, 2017, and received a 15-page memorandum and 246 pages of documents from Lisbon School Department (the “District”) on March 9, 2017. Interviews were conducted with the following: Robert Kahler, principal for the District; John Merrifield, special services director for the District; Lisa Brown, special education teacher for the District; Barbara Morris, special education teacher for the District; Debora Furrow, regular education teacher for the District; Jamie Martin, regular education teacher for the District; Randy Ridley, regular education teacher for the District; Jonathan Pollack, regular education teacher for the District; Jean Dolan, guidance counselor for the District; Roxanne Blethen, educational technician for the District; Terry Roy, educational technician for the District; Amy St. Pierre, literacy specialist for the District; and [REDACTED] the Student’s mother (the “Parent”).

**III. Preliminary Statement**

The Student is [REDACTED] years old and is currently receiving special education under the eligibility criterion Multiple Disabilities (Autism and Specific Learning Disability). This complaint was filed by the Parent, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

**IV. Allegations**

1. Failure to provide special education, related services and supplementary aids and services sufficient to enable the Student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d);
2. Failure to provide supplementary aids and services in the nature of full-time one-on-one support to enable the Student to be educated with non-disabled children in violation of MUSER §IX.3.A(1)(d);
3. Failure to develop a behavior plan for the Student, using positive behavioral interventions and supports and other strategies, to address the child's behavior issues from February 2015 until February 2016, in violation of MUSER §IX.3.C(2)(a);
4. Failure to fully and adequately implement the Student's IEP with respect to the Student's 2016 ESY program in violation of MUSER §IX.3.B(3);
5. Failure to amend information contained in Written Notices, alleged to be inaccurate or misleading, at the request of the Student's parent within a reasonable right to a hearing, in violation of MUSER §XIV.8;
6. Failure to provide periodic reports of the progress the Student made towards his annual goals during the last quarter of the 2014-15 school year in violation of MUSER §IX.3.A (1)(c).

**V. Stipulations**

1. The District did not develop a behavior plan for the Student prior to February 2016.

**VI. Summary of Findings**

1. The Student lives in [REDACTED] with his siblings and the Parent, and has been attending [REDACTED] grade at [REDACTED] School (the "School"). He began receiving early intervention services in preschool.
2. The Student's began attending the School in January 2015, while in [REDACTED] grade, after starting his [REDACTED] grade year in Westminister Massachusetts. Prior to that, the Student attended school in Brunswick Maine ([REDACTED] grade), Woolwich Maine (repeating [REDACTED] grade), and Old Orchard Beach Maine ([REDACTED] and [REDACTED] grade).

3. The IEP developed by the Massachusetts school district on October 29, 2014 stated that the Student's "continued difficulties in the area of Speech and Language impact his learning in all areas of the curriculum." Current performance levels indicated that the Student was fairly close to grade level in math, and slightly below grade expectations (elsewhere described as "within [REDACTED] grade level") in reading, stating that reading is an activity for which the Student "will exhibit increased task avoidance and escape behaviors." Services identified in the IEP included two hours per day of academic and behavioral support by a special education teacher or ed tech for ELA, writing and math in the regular education setting, 30 minutes four days per week of small group reading instruction in the special education setting, 60 minutes per week of speech/language services, and 30 minutes per week of OT services. The IEP further indicated that the Student was being supported in his classroom by a program which provided inclusion support available across the school day to the Student. Accommodations identified in the IEP included token economy programming and behavioral guidelines.

4. Upon the Student's arrival to the School, informal reading assessments were conducted which indicated that the Student was reading at a late [REDACTED] grade level. Teacher reports indicated that the Student had been able to participate successfully in his class's math unit.

5. The Student's IEP Team met on February 12, 2015 to conduct the transfer IEP Team meeting, and developed an IEP containing the following services: 30 minutes five times per week of specially designed instruction in reading in the special education setting; 60 minutes per week of speech/language services; 30 minutes per week of OT services; and two hours per day in-class adult support in the regular education classroom. Among the supplementary aids and services were various instructional strategies, both general and specific to math and writing, and, "Behaviors: positive/consistent reinforcement and defined limits/expectations."

6. During the February 12<sup>th</sup> IEP Team meeting, the Parent questioned the provision of two hours of adult support to the Student in the regular education setting, stating that the Student had been receiving support across the school day in his school in Massachusetts. As the exact nature of the Student's program in Massachusetts was unclear, the District requested and initially received the Parent's consent to communicate with the school in Massachusetts. The Parent withdrew that consent on March 23, 2015.

7. The Parent obtained a literacy evaluation of the Student from Lori Coffin, M.S., CCC-SLP, M.S. Ed on March 21, 2015. Ms. Coffin conducted a record review, student, teacher and parent interview and student observation, and administered the following assessments: TORC-4, TWS-4, CTOPP, GORT-5 and WRMT-R. During her observation, the Student "appeared attentive, respectful, enthusiastic and engaged," although Ms. Coffin stated that the teacher reported that the Student often had difficulties in the classroom. Ms. Coffin summarized the results of her evaluation by stating that the Student demonstrated significant weaknesses in basic reading skills including decoding, encoding and phonological awareness, scoring approximately 2.5 years below grade level in basic reading skills (WRMT) and reading fluency (GORT-5), and exhibiting significantly below average phonological awareness skills (CTOPP). Ms. Coffin recommended a more intensive and individualized reading program than what the Student was then receiving. Ms. Coffin also recommended that the Student have access to a social worker or "prominent adult" at all times while at the

School, and that any such personnel be “in line” with the Student’s private weekly care at the Center for Autism and Developmental Delay (CADD). Ms. Coffin further recommended a comprehensive behavior plan and “access to a behavioral professional to address behavioral difficulties both in the classroom as well as at home.”

8. At the Parent’s request, the Student’s IEP Team met on March 30, 2015 to review Ms. Coffin’s evaluation report. District personnel reflected that certain of the assessments used by Ms. Coffin were not the most recent versions of those assessments.<sup>1</sup> The Student’s teacher, Ms. Grenier, reported that, since January, the Student had advanced in reading from Level I to Level L, equivalent to late-█ grade reading level. The District staff offered to increase the Student’s specially designed reading instruction from 30 minutes per day to 60 minutes per day, but the Parent rejected this proposal. The Parent’s concerns were that the Student would be pulled out of the regular education classroom to do a non-preferred activity, and this could influence the Student’s behaviors, and that increasing the amount of reading instruction would be of questionable benefit if the method of instruction did not address the Student’s particular reading needs. There was discussion about developing a behavior plan for the Student, and it was decided that this would be discussed at the next meeting. The District asked the Parent for consent to communicate with CADD about the work they were doing with the Student; the Parent did not sign the consent form, but took it with her.

9. Another IEP Team meeting was held on May 14, 2015. At the meeting, the Team reviewed the speech/language pragmatics evaluation of Susan Smith, which showed that the Student had pragmatic language skills that were mildly to moderately impaired. As a result, the Team determined to provide to the Student an additional 30 minutes of speech/language services that would take place in the regular education setting with the focus on pragmatics. The Parent declined to participate in the pragmatics evaluation, and requested a copy of the test protocols, which the District said were copyright protected and could not be shared. The Team also agreed to have a functional behavior Assessment (FBA) conducted by a mutually agreed upon, duly qualified BCBA, and to increase the Student’s specially designed reading instruction to 60 minutes per day, starting at the beginning of the Student’s █ grade year.

10. During the May 14<sup>th</sup> meeting, the Student’s █ grade teacher, Ms. Grenier, reported that the Student had increased from a Fountas & Pinnell level L in March to level M. Two classroom observations were reported at the meeting. One was part of the speech/language evaluation. Ms. Smith observed the Student in the regular education classroom during a math activity. The Student engaged in the activity, stayed in his seat and followed directions. His interactions with other students were appropriate. School psychologist Allen Northup observed the Student in the regular education classroom and in the computer lab. The Student needed verbal coaching from his ed tech in order to enter the regular education classroom. The Student sat on a yoga ball, which Mr. Northup felt could be overstimulating for him.

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<sup>1</sup> The Department notes that Ms. Coffin does not hold any credential that would qualify her to administer this literacy evaluation. School districts must be vigilant when considering evaluations obtained by parents to note the qualifications of the evaluator, with any deficiencies in regards to qualifications factored into the district’s consideration of the evaluation.

During the lesson, the Student required support to help find items in the book. At one point he slumped down on his ball and under the table. At times the Student was distractible. In the computer lab, the Student was focused and quiet. He chatted with and requested help from a peer. He was described as highly oppositional, but could be redirected when he didn't want to do something.

11. The Parent, during the May 15<sup>th</sup> meeting, reported that the Student told her that he hated school, and didn't want to go. Ms. Grenier reported that the Student was displaying positive interactions and behavior in the classroom, was happier to work with the ed tech, and had made more friends. He was playing ball at recess with his peers. The Parent shared her perception that the Student behaviors were getting worse at school, and that he wanders the hallways and leaves the classroom and does whatever he wants. Ms. Brown and Ms. Grenier stated that the Student does not storm out of the classroom, but has gone into the hallway to take a break. Ms. Brown reported that the Student had only gone to the special education classroom to take a break once since the March IEP Team meeting. Despite the District's urging that the Student needed to be in an ESY program for the summer to maintain his skills, the Parent declined to have the Student attend an ESY program because she wasn't going to make the Student go to school in the summertime when he didn't want to.

12. Although there were reports from the Student's teachers and providers at the May 14<sup>th</sup> meeting as to the Student's performance in their classes or sessions, they did not report specifically on the Student's progress towards his IEP goals.

13. On May 26, 2015, Ms. Wilmot sent to the Parent a list of three BCBA's who could do the FBA of the Student and a consent form so that the Parent could select one of them. The Parent did not respond to this email.

14. The Student's IEP Team met on October 22, 2015 to conduct the annual review. Ms. Morris reported that the Student had regressed in his reading skills over the summer, having gone from a reading level L (mid- to late-█ grade) to a reading level H (mid- to late-█ grade). The Team determined to continue the Student's 60 minutes per day specially designed reading instruction. The Team reviewed the Student's behavior data, which reflected that the Student was receiving mostly "good" or "okay" ratings during most periods of each day. The Team determined that the Student would receive three hours of adult support during math, morning, recess/lunch, ELA and science/social studies. The Team discussed the Student's upcoming triennial evaluations, and the Parent consented to have the FBA conducted by Gretchen Jefferson, Ph.D. in addition to various other evaluations. The Parent again sought adult support for the Student throughout the day, and expressed her belief that the Student's behaviors were more significant than the way they were being reported.

15. The Student's IEP dated October 29, 2015 provided the following services: specially designed instruction for 1 hour five times per week; OT consult 30 minutes per month; and speech/language services 30 minutes three times per week, plus 30 minutes consult per month. Supplementary aids and services included: reading text to student or lower readability text; math word problems read to student; use of graphic organizers and word banks for written assignments; multi-sensory approach to reading instruction; positive/consistent

reinforcement for behaviors with defined limits and expectations; and adult support for three hours daily.

16. On January 4, 2016, the Student's IEP Team met to consider the results of the Student's triennial evaluation. Summer Paradis reviewed the results of the Student's psychological evaluation completed in December 2015. On the WISC-V, the Student scored a full scale IQ of 76, verbal comprehension 62, visual spatial 100, fluid reasoning 74, working memory 67, and processing speed 103. On the Comprehensive Test of Phonological Processing 2, the Student's score was significantly below average for phonological processing. The Gilliam Autism Rating Scale was completed by Ms. Morris, with results that fell in the "possibly autistic" range; the responses of the Parent "tripped the Validity Index that identified her responses were overly negative response pattern." Ms. Morris's responses suggested that the Student's behaviors were "outside the typically expected limits in many areas," including "hyperactivity and aggression in the 'clinically significant range' and conduct problems (rule breaking) which fell within the 'at risk' range." The Student's WIAT III scores for academic achievement fell in the below average range. The classroom observation showed on- and off-task behaviors, as did the observation part of the speech/language evaluation, where the Student required "significant amounts of teacher redirection and support to complete tasks." The latter evaluation demonstrated that the Student had receptive and expressive language in the moderately low range, with all language skills on the CELF-5 falling in the severe range, although the scores were reported as questionable due to the Student's response style of saying "I don't know." The Student's pragmatic profile was significantly below average as well.

17. The IEP Team also reviewed the results of the FBA conducted by Dr. Jefferson on December 28, 2015. Dr. Jefferson conducted interviews with the Student's teachers, who reported that teaching the Student was a "constant negotiation," with initial verbal refusal the typical response to a task. Staff reported that the Student was assigned approximately 50% of the work assigned to other students and he completed that work, sometimes doing more than expected. Dr. Jefferson also reported being told that "refusal occurs every day across the day and has occurred since the end of September 2015." Staff reported that, in order to avoid classroom disruptions in the regular education setting they typically relented to the Student, describing the Student's behavior as "very manageable across settings if the Student is allowed to self-direct his activities but very disruptive in the mainstream and mildly disruptive in the resource room when pushed to follow the teacher's plan." Dr. Jefferson concluded that escape from academic demands is the primary function of most of the Student's target behaviors, most likely motivated by the true or perceived difficulty of the task, with the Student being more productive in small group or 1:1 settings outside the regular education classroom. Dr. Jefferson recommended use of two levels of visual schedule for the Student, social skills training with structured practice opportunities with peers, teaching the Student to self-monitor and self-reinforce desired behaviors, instruction in use of visual organizers, and a positive reinforcement system with more specifically defined target behaviors and leveled reinforcers based on the Student's preferences.

18. Based upon review of the various evaluations, the IEP Team determined that the Student continued to qualify as a student with a disability, changing the category of disability to

Multiple Disabilities (Autism and Specific Learning Disability). The Team determined to increase the Student's specially designed instruction in reading and writing to 90 minutes per day, and to add specially designed instruction in math for 60 minutes per day and in keyboarding for 15 minutes per day. An IEP goal focused on social thinking skills was also to be added to the Student's IEP, to encourage generalization of the social skills the Student was developing in his speech/language sessions. The Team also determined to continue the discussion at a further IEP Team meeting.

19. A further IEP Team meeting was held on January 11, 2016. The Team determined to increase the amount of specially designed instruction in math to 75 minutes per day, with the addition of several math goals. The Team also determined to obtain behavior consultation with an outside provider for four hours per month to support the Student's new behavior plan, and to add several new behavior goals to the IEP. The amount of adult support provided to the Student in the regular education setting was reduced to 2 hours 15 minutes daily, including specials, morning routine, recess/lunch and end of the day.

20. On June 2, 2016, the Student's IEP Team met to discuss, among a few other things, the Student's ESY program. At that time, the Student was working at reading level O. The District initially proposed two hour sessions four days per week for five weeks, focusing on reading, writing and math. The Parent asserted that that was insufficient because the Student hadn't attained the level of reading proficiency that he should have, and because the Student also needed to be working on social skills. The District then proposed increasing the ESY services to four hours per day, four days a week for five weeks, with the emphasis being placed on reading instruction, but also including math, keyboarding, writing and social skills. Ms. Morris explained that there are not typically opportunities in the ESY program for group activities. Dr. Jefferson expressed concern that four hours was a lot of time to expect the Student to be doing intensive academic work. Michael Opuda, present at the meeting as an advocate for the District and to facilitate the meeting, suggested the following: "What if we were to offer up to four hours a day, but we also set that kind of contingency where, when we finish this work, then you can do work the rest of the time in the garden if you want to, or we can just call it good." Dr. Jefferson supported this idea.

21. The Written Notice for the June 2<sup>nd</sup> meeting stated, as proposed actions in Section 1: "3. To increase [the Student]'s ESY services from 20 two hour sessions to 20 four hour sessions; 4. To include special education transportation to and from ESY Services...." In Section 3, the Written Notice stated that "as a motivator, the Team agreed that once he has completed all of his assignments, he can earn a reward and then go home early."

22. As the ESY program got under way, it became apparent that transportation was only available to take the Student home on the hour, so if the Student completed his work for the day at 11:15, he would have to wait until 12:00 to go home on the bus. The Parent found this unacceptable, and she began picking the Student up herself once she received a phone call that the Student had completed his work. The Parent was reimbursed for her mileage. The ESY program did not contain any explicit social skills training for the Student, and the Student had very limited opportunities to interact with his peers during the program.

23. The Student's IEP Team met again on October 19, 2016. The Student was reported to be reading at level O, the same as his level had been at the end of [REDACTED] grade. The Team determined to continue the Student's reading instruction at 90 minutes per day. With respect to math, the Team determined that the Student would receive specialized instruction for 75 minutes per day four days a week, with the fifth day math instruction in the regular education classroom with adult support. The Team also determined to add 20 minutes daily of pre-teach/reteach in the special education setting, 60 minutes per month consultation with a BCBA, and monthly staffing meetings with the Parent.

24. During an interview conducted by the Complaint Investigator with Lisa Brown, Ms. Brown stated the following: She is a special education teacher and case manager at the School. She was the Student's teacher and case manager from January 2015 through May 2015 when the Student was in [REDACTED] grade, and is again the Student's case manager and teacher this year. During the Student's [REDACTED] grade year, overall everything was fine. The School staff was pleasantly surprised by the Student's behavior in contrast to what the Parent had presented. The Student was receiving minimal services, being pulled out for a short time for reading instruction. The District essentially replicated the services that appeared on his previous IEP from Massachusetts, but the Parent was adamant that the Student should be receiving more. They used a "smiley face" charting system (the Student received either a smiley face, neutral face or frowning face) for the Student's behavior at intervals, but there were no big issues with the Student's behavior.

Because the Parent insisted that the Student received services not identified on the Massachusetts IEP, the District reached out to that school district to try to learn more about the Student's experience there. Before they received any meaningful information, however, the Parent revoked her consent for that communication. The Parent waived with respect to the Student's services – sometimes she wanted more targeted literacy instruction, and other times she wanted the Student to maximize his time in the regular education setting. The District offered to increase the Student's specialized reading instruction, and the Parent rejected it; the District offered to provide ESY services in 2015 and the Parent rejected it.

The Student made gains in reading during his [REDACTED] grade year. That year, the Student used the LLI program for reading. When he started at the School, he tested at a level I (mid-[REDACTED] grade). By the end of March, he was at level L (late [REDACTED] grade), so he made more than one year's progress in three months. In mid-May, the Student was at level M (late [REDACTED] early [REDACTED] grade). The Student was never one who read for meaning, however – he just decoded to get to the end of the text without thinking about what he was reading. When the Student returned to School after the summer, having not received any ESY services, he had regressed to a level H (mid-[REDACTED] grade).

The Student worked on reading with an ed tech in a small group. After the IEP Team meeting with Ms. Coffin, she spoke to Ms. Wilmot, who was then the special education director for the District, about using the Wilson reading program during the Student's reading instruction. She is using Wilson with the Student currently. This year, the Student is more willing to try things, and is less governed by fear of making a mistake. He participates more in class, and puts himself out there a little more. At the start of the year, the Student was independent at level N and instructional at level O. He tested at level N at the end of [REDACTED] grade, so with his



receiving ESY services he was able to maintain his reading level through the summer. The Student is currently working at level P (late █ grade). The Student works well with Ms. Blethen on reading. He is now reading chapter books, which wasn't doing at all in █ grade. The Student used to only engage when a book was on a topic of particular interest; now there is a much more widespread willingness to engage. In addition to continuing with the LLI series, the Student continues to use Wilson to build word attack skills, and he has improved his decoding ability. He also reads short paragraphs followed by comprehension questions. Right now, comprehension is his biggest challenge, whereas previously there needed to be more focus on his word attack skills. The Student has been making academic gains across the board.

With respect to behavior, when the Student was in █ grade he wasn't displaying behaviors that the education team felt warranted a formalized behavior plan; they wouldn't have even used the "smiley face" chart if the Parent hadn't requested it. The Student was not happy when he had to do writing, but he wasn't presenting with behaviors that were outside the norm of his peers. This year, there have been no issues with the Student's behavior. The IEP Team agreed in October that the Student no longer needed to carry his behavior chart with him through the day; the staff is still using it to collect data, but the Student isn't aware of it. During the first trimester, the Student was respectful 98% of the time, safe 100% of the time and his social skills (offering a kind response to peers) were at 100%. The second trimester numbers were 98%, 100% and 99%.

She doesn't believe that the formal behavior plan developed with Dr. Jefferson was necessary; the Student's behaviors were never at the level that the District would normally seek consultation with a BCBA. The District agreed to it because the Parent was so insistent and the District was trying to work with her. When the Student came to the District, he had been in numerous school districts previously, and hadn't been living with his parents in the months before he arrived. That would be very stressful for any child. The Student has now been in the District longer than any other school district, and has been living in the same home; there is more stability in his life. She thinks this is the biggest contributing factor to the improvements in the Student's behavior. He's just a happier child. He has friends at school, a crew of children that spend time together. He's never by himself at recess; he loves to run around, play tag, football and basketball.

In her opinion, the Student doesn't need 1:1 adult support and didn't need it in █ grade. This year, Ms. Blethen goes with him to each of his special classes. In science and social studies, Ms. Blethen is there to support the Student as well as some other students. Ms. Blethen is also there as an additional support during recess, initially for the Student specifically. Ms. Blethen also has lunch duty. The Student doesn't need the support in specials classes, and he's gotten better at recess – he doesn't seek her out for support, lines up when he's supposed to, and doesn't need to be spoken to about his behavior.

The Team all agreed that the Student should receive support during regular education academic times. She believes that the Student needs support during science and social studies because there is so much emphasis on reading and language. The Student is receiving specialized instruction in math four days a week in the regular education setting. The fifth day the Student is in the regular education setting for math with support; the class mostly does

math games and doesn't do word problems. The two hours of adult support the Student received in [REDACTED] grade during academic time in the regular education classroom was appropriate.

With respect to the Student's progress reports at the end of [REDACTED] grade, she went out on medical leave in mid-May 2015, and she doesn't know what arrangements were made to record those reports.

25. During an interview conducted by the Complaint Investigator with Barbara Morris, Ms. Morris stated the following: She is a special education teacher for the District, and last year (for [REDACTED] grade) was the Student's teacher and case manager. At the start of the year, the Student was in her class one hour per day for reading. When the IEP Team reviewed the Student's triennial evaluations in January 2016, they decided to increase the Student's ELA services to 90 minutes for reading and writing, and to provide 75 minutes daily for math instruction. The Student was also receiving two hours per day of adult support during academic times in the regular education classroom and during unstructured time. That also got increased during the year.

In her classroom, the Student typically got along better with the adults than with his peers, but he had classmates who were his friends. Some days there were work refusals, but overall the Student's behavior was very appropriate and typical for his peer group. At the beginning of the year, staff was using the "smiley face" chart, but that got changed after the completion of the FBA to a system where the Student earned points. At the end of math, the Student would count up his points and get a reward if he earned enough points; the rewards were levelled – different rewards for different amounts of points. At the end of the day, there would be another counting up and opportunity for rewards. The staff was constantly tweaking the system with Dr. Jefferson as the year went on. The behavior plan was helpful in that it generated data so the IEP Team could talk more knowledgeably about the Student's behavior, but she doesn't think it generally drove the Student's behavior; typically, the Student's behavior was not outside the norm. There was one incident where the Student threatened another student and was suspended, and then there was a second suspension due to a bomb threat. The latter was an in-school suspension; staff suspected that the Student did it to see if he could get out of having to go to school.

With respect to the Student's math program, she wrote the goals and she collected data which showed that the Student made progress towards the goals. He met a goal involving subtraction with borrowing fairly quickly, and he started learning his multiplication facts.

With respect to ELA, for reading, she was using LLI texts and building phonemic awareness using the Wilson program. At the end of the year, the Student had reached a level O in reading. With writing, the goal was to include an introduction, three supporting details and a conclusion. They used graphic organizers and discussion to help the Student frame his writing. When the Student was interested in the topic, he was able to write a good, solid piece of one to two paragraphs. Other topics required more pre-writing and assistance, but the Student had the basic format down.

She never received notice from the Parent of a request to change a Written Notice, nor had a conversation or email with the Parent about such a request. After the October 2015 meeting,

the Parent informed her that an accommodation had been inadvertently left out of the IEP, and it was later amended to include it.

26. During an interview conducted by the Complaint Investigator with Debora Furrow, Ms. Furrow stated the following: She is a regular education teacher at the School. Last year, she was the Student's [REDACTED] grade teacher. He was in her class for most of the day. The Student was somewhat cautious expressing and sharing his thoughts; he didn't want to ever be wrong. He was basically fine, however, and did what was asked of him. He had a preferred seating arrangement because he liked to sit on a yoga ball, and his ed tech came in to support him during math. The ed tech would help by restating what she had said, and help the Student get his work done, redirecting the Student when necessary. The Student gave up too easily ("It's too hard. I can't do it."), and needed encouragement. There were no problem behaviors that stood out. If the Student hadn't had the ed tech support, she would have provided it to him. That would have been difficult during academics, however, because the Student struggled.

The Student made progress during the year. He did a lot of his work in the special education classroom, but would show it to her so she could see what he was doing. There were improvements in writing and spelling, and he was working on keyboarding. His reading improved, moving up several levels over the year. The Student participated in social studies activities, though his fear of being wrong got in the way of full participation. She had a good relationship with the Student; they could talk together and share stories. The Student would tell her about things he liked to do outside of school. She thinks he enjoyed coming to school.

27. During an interview conducted by the Complaint Investigator with Jamie Martin, Ms. Martin stated the following: She is a regular education teacher at the School, and is the Student's [REDACTED] grade teacher. The Student is in her classroom for homeroom, science and social studies. Initially, the Student had an ed tech with him during homeroom, but that changed so that the Student could help Ms. Brown in the cafeteria during breakfast. The ed tech was available to help the Student during homeroom, but the Student didn't need it; he never had behavior problems. During science and social studies, as the Student's reading level is lower than his classmates, he needs support to get through the text in those subjects. When she is using handouts, she writes them at a lower reading level for the Student and a few other students in the class. The Student is one of several students who receive support from Ms. Brown during those subjects. The Student has a fair ability to understand the concepts being taught. He needs repetition to learn, but so do most students. The Student doesn't participate a lot.

The Student had definitely made progress; he just recently received a 4 (exceeds the standard) on a geography unit. The Student has done well in science as well, and has been generally meeting or exceeding the standard on units in both subjects. The Student goes to RTI reading class, and was making great progress at the beginning of the year. At some point, the Student stopped working, the teacher changed her approach, and the Student started working again. Now the Student has again reached a point where he doesn't want to do the work. He is, however, reading with a younger student, and this involves comprehension of text, so is good work for the Student to be doing.

She is not using a behavior program with the Student, and there are absolutely no behavior problems.

28. During an interview conducted by the Complaint Investigator with Roxanne Blethen, Ms. Blethen stated the following: She is an ed tech II at the School, and has been working with the Student both last year and this. This year, she was asked to go to all special classes with the Student, and is with him all day for the most part. Last year, she was initially with the Student only for reading, and then was asked to go to art class with him, and then P.E. and music.

In reading, the Student started [REDACTED] grade at level H. She worked with the Student using the Wilson program, in which she has received training and which is her referred method. In addition, she continued to use the LLI system, and added some other books as well. She believes that the Student was able to make the gains he did because of his work with the Wilson program. In that system, he went from a level 1.2 or 1.3 to a level 5.1. The focus now is on his comprehension. The LLI program has a word attack skills component, but there are books that the students read and the emphasis is on the words found in those books. The Wilson system is more sequential and controlled.

With respect to behavior, the Student was initially reluctant to make a mistake, and wouldn't even try. That is no longer the case. The Student wants to do very well. There have been times when the Student said "I'm not reading this," but no more often than with the other students, and she has been able to redirect him. The Student has not been difficult to work with, and she can always redirect him. In the special classes, there were no significant problems, only occasional social problems with other students. She might have spoken with him about where he was choosing to sit (next to someone with whom he wasn't getting along, for example). Now, she mostly just sits there with not much to do. She might speak to the Student in P.E. about throwing the ball too hard, but one of the teachers could do that.

The biggest problems with the Student happen when he knows that the Parent is in conflict with the District. At those times, he might decide he's not going to read, or might be grumpy at lunch and call someone a name. He will acknowledge his behavior when she points it out to him, however.

With respect to the 2016 ESY program, the Student was supposed to have a four hour program, but it was agreed at a meeting that the Student could leave before four hours if he finished his work. The bus drivers only take children home on the hour, however, based on where they live. Before each day, she would write up a chart with the things they would be working on that day, including time for a break. The Student would often finish early and call the Parent, and then have to wait for about 30 minutes until the bus could take him home. The Parent ended up coming to pick him up instead. As she was working on advancing the Student's skills in reading, writing and math, not just maintaining where he was at the end of school, she could have continued to work with him until the bus was ready, but the Parent didn't want that.

Dr. Jefferson came during the summer and asked her about social pragmatics. She tried to have a social setting for the Student, but other students came for only a short time to maintain their skills. There were some opportunities for social engagement, but not on a regular basis.

29. During an interview conducted by the Complaint Investigator with Terry Roy, Ms. Roy stated the following: She is an ed tech II at the School, and taught the Student math from September 2016 to January 2017 when student groups were switched. When the Student was in [REDACTED] grade, she checked in with him during morning homeroom for the first month or so, until the Student decided he didn't want that support. The Student often said he didn't want help or wouldn't accept it; if the teacher came over to him he might respond better to her. In other respects, however, he was a typical [REDACTED] grader; he didn't look that different from everybody else. There was no non-compliant or rude behavior. He needed adult support if an activity involved reading, however. His math skills were also weaker than those of his peers.

This year, she has worked with the Student as part of a group of three students. She has been using a program called Number World, which the School's math specialist recommended, instead of Everyday Math which she used last year. Number World is more hands on with manipulatives, focusing more on number sense. They worked on multiplication and then started on division. The Student has learned his multiplication facts. His IEP goal involves multiplying two digit numbers by two digit numbers and he had started that worked when the groups switched. He was making progress, though he began by saying it was too hard. When he saw his peers doing the work, it made him more willing to work on it. The Student was also working on word problems, usually just one per day because this was hard work for him. They also had started a unit on perimeters.

The Student is a typical [REDACTED] grader; when he didn't want to work on something, he ultimately always came around and got it done. Sometimes he had to work during recess to finish the work, but this only happened three times or so.

30. During an interview conducted by the Complaint Investigator with Randy Ridley, Mr. Ridley stated the following: He is a P.E. teacher at the School, and the Student has been in his class each year since he started attending the School. In [REDACTED] grade, the Student looked like a typical [REDACTED] grade boy. He tested the boundaries, typically for a student starting in the middle of the year, but he came to understand the boundaries quickly and has been a very good student since then. He didn't think that the Student required adult support in his class. For one thing, it was a small class.

The class for [REDACTED] grade is combined with the [REDACTED] grade, and there are two teachers for the class. The Student has wanted to help him set up the class for the day's activity. This year, there has been a 1:1 support person with him, and that's beneficial because there are 40-50 students in the class. The Student a few times has gone over to sit with Ms. Blethen when he needed time to calm himself, and a few times the Student has come to him and said he needed to remove himself from the class activity and take a break. He doesn't know if the Student needs to have the adult support there or not.

31. During an interview conducted by the Complaint Investigator with Jonathan Pollock, Mr. Pollock stated the following: He is a music teacher at the School. The Student was in his class during [REDACTED] grade, and is in his class this year. In [REDACTED] grade, there were no major problems; the Student seemed normal for a [REDACTED] grader. There were a few times when he had to get the Student back on track, like with any student. The Student was able to sit in the front row and he chose to do so. The Student didn't ask questions, and if he saw that the Student was struggling, he would ask the Student what the problem was. He never thought that the Student needed something more in terms of behavior management.

This year, the Student has been amazing. He still chooses to sit in the first row. He now asks questions, and speaks with his neighbors when it is appropriate to do so. At the very beginning of the year, he would sometimes ask Ms. Blethen for help, but within the first few weeks, the Student came to understand that he could ask his teacher for help instead. He hasn't needed to speak to the Student about behavior at all this year, and Ms. Blethen doesn't support him in any way.

32. During an interview conducted by the Complaint Investigator with John Merrifield, Mr. Merrifield stated the following: He has been the special services director for the District since July 2015. With regard to the Student's progress reports at the end of his [REDACTED] grade year, he discovered in September or October 2015 that Ms. Brown had taken medical leave in May 2015, that other staff members had tried to use her paperwork to complete progress reports, but that the progress reports were never developed. All the Student's teachers presented progress reports at the May 15<sup>th</sup> IEP Team meeting, which the Parent attended, but they were never recorded on the Student's IEP goals.

With respect to the 2016 ESY program, at the IEP Team meeting when the Student's ESY program was developed, the Parent stated that the Student struggles with nothing to do, so she asked to be informed when the Student had finished his work for the day and she would come to get him. The District told her that there were certain times when the bus could take him home, but couldn't take him except at those particular times. There was no agreement with respect to social pragmatics during the ESY program. There was discussion that the Student could work on this while he was with other students on the bus, but it wasn't offered as a service. The District had tried really hard to get the Parent to agree to ESY services in 2015. The Parent said that the Student would be receiving some services at CADD during the summer, and wouldn't agree to have the Student attend ESY with the District. There was a marked degree of regression when the Student returned to school after that summer. This was in marked contrast with the past summer, when the Student showed no regression; the Student remained at the same reading level and just took off making continued progress.

With respect to the Student's behavior, the Parent had pushed for an FBA because she felt that behavior was an issue. The District didn't think so, but agree to do it to honor the Parent's concerns. When the Parent failed to respond to the request to choose one of three identified providers, he went ahead and contracted with Dr. Jefferson, with whom he had worked previously. The FBA revealed no huge red flags, but the District felt that it should follow up and implement a behavior plan. By the time of the meeting to discuss ESY, the Team was already discussing whether the behavior plan was really necessary. Out of an abundance of

caution, the Team decided to keep collecting the behavioral data, which continued to show that the Student demonstrates problem behaviors a little bit more than his typical peers, but not much more. This year, the behavior reports are awesome. The IEP Team met this year and the Parent agreed that the Student didn't need to use the behavior tracking sheets any more. He thinks that the behavior plan was helpful to the Student, but getting good academic instruction and positive adult interactions were also key to his behavior improving. There have not been a lot of office referrals for the Student due to behavior, or data that you would expect for a student who had behavior issues.

With respect to the increases in adult support being provided to the Student, this has been due in part to the Parent's demands; the District wanted to show the Parent that it was willing to work with her and meet her half way. School staff has worked really hard at building the relationship with the Parent, as well as with the Student.

He has never received an official request from the Parent to amend a Written Notice. There was an email where the Parent made some complaint about Written Notices, but no request to change some specific wording.

33. During an interview conducted by the Complaint Investigator with Robert Kahler, Mr. Kahler stated the following: He has been the Principal at the School during the three years that the Student has attended. The School's experience with the Student was never at the level they had anticipated based on his prior school records. The Student has been a pretty typical student; he has occasionally needed to speak with the Student, but nothing unusual. Football on the playground has turned to pushing on the playground and other similar, typical problems. He has never seen the Student escalated to the point that he wasn't in control of his behavior. There were times when the Student said he needed to call the Parent, but he was able to process with the Student and enable the Student to return to class. The Student is pretty responsive and usually does what he is supposed to do. There was a suspension about a bomb threat, but it was never repeated; there has been one such incident in each of his [REDACTED] years at the School. He wouldn't classify the Student as a discipline problem, or one of the "regulars" who get referred to his office. He hasn't seen the Student at all this year. He doesn't know whether the improvement in the Student's behavior is due to behavioral interventions or just the maturing process.

34. During an interview conducted by the Complaint Investigator with Jean Dolan, Ms. Dolan stated the following: She is the guidance counselor at the School. She has not had much involvement with the Student. He participates in a guidance class with her (1 hour per week this year and ½ hour per week last year), and comes to the class with an ed tech. When the class is working with written text, the ed tech helps make sure the Student understands the text. Otherwise, the Student hasn't needed any support. She hasn't seen much signs of behavior issues. A few weeks ago, another student told her that the Student had kicked a ball away. She spoke with the Student about it, and the Student apologized.

Last year she had [REDACTED] grade recess duty. The staff at recess always made sure one of them knew where the Student was. The Student played, ran, and interacted with other students. He

was always with friends, and behaved like a typical [REDACTED] grader. There has been no need to work with the Student individually to address any behavior issue.

35. During an interview conducted by the Complaint Investigator with Amy St. Pierre, Ms. St. Pierre stated the following: She is a literacy specialist at the School doing RTI for grades [REDACTED]. She has worked with the Student this year 1:1 for 30 minutes per day. They are working on comprehension, reading strategies, and solving words using word parts. They also work on self-monitoring and correcting for accuracy as the Student reads, and on being more phrase-fluent.

As the Student is reading, he's not always able to decode, so he loses comprehension. They work on using background knowledge and previewing text as strategies to increase comprehension; she tries to get the Student to slow down and take the time to do these things. They also look at character change over time.

When she started working with the Student, he was at level N/O (beginning of [REDACTED] grade); he started making great gains and he's now working at level P (end of [REDACTED] grade). At higher levels, the Student gets into greater text complexity and it will take longer to see those gains. His word attack skills keep getting in the way, but previewing text seems to help him. He has made progress on multi-syllabic words. A lot of the work is based on practice and repetition, and the Student is able to retain what he learns.

The Student will try to steer the conversation away from the reading if he can, but he's able to stay focused. She has no problems with the Student's behavior, and she enjoys working with him. He has written notes to her that he loves RTI and loves what they do together.

36. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: She had telephone conversations with Mr. Merrifield in which she told him that the Written Notices from Ms. Wilmot on which he was relying were inaccurate and that he should listen to the audio files to find out what had really been said. She also wrote to him in an email about the Written Notices being inaccurate. She doesn't think she ever pointed out specific language that was inaccurate or told him with what it should be replaced. It was the entire documents that were inaccurate, their nature and tone. Everything she said during the first few meetings was framed in the Written Notices with negativity towards her.

With respect to the 2016 ESY program, the District initially offered two hours per day of services, and she said that was not intense enough and asked for an out-of-unit placement. Mr. Merrifield then offered four hours per day, but Dr. Jefferson said she was not sure the Student could make it through four hours on a summer day. Mr. Merrifield said they could arrange it so the Student could leave when he had completed his work if that took less than four hours, and she agreed to that. She assumed that the District would make the arrangements to transport him at that time. As it turned out, Mr. Merrifield told her that the bus could only transport the Student on the hour, no matter when he finished his work, so she had to provide the transportation.

There was also a discussion of social skills at that meeting. She said that work on social skills would be part of the out-of-unit program, and Mr. Merrifield said they could include that in



the Student's ESY program in the District. She wasn't told exactly what this would look like, but Mr. Merrifield said it would happen sometime during the day. It turned out that each student in the ESY program has his/her own schedule, so the Student never had an opportunity to be in a group with his peers. She received schedules showing the Student's summer agenda and they said nothing about working on social skills.

She disagrees that progress reports for the Student were presented at the May 2015 IEP Team meeting. Teachers may have reported on the Student's progress generally, but they didn't discuss progress on his IEP goals. Those progress reports are still not part of his IEP from that year.

Initially after the Student began attending at the School, the Student's behavior and need for behavioral support was her primary focus; his behavior was interfering with his learning. There was nobody on the staff who was there to help the Student with social issues. After the FBA was completed and it was agreed that the Student would get adult support, the support person also was providing academic support to the Student. The Massachusetts IEP stated that the Student needed 1:1 adult support for his behaviors, although it was worded strangely. In Massachusetts, the Student was in the regular education classroom all day except for some pull out reading instruction. The adult support was provided only to address behavior. The Student's school history showed that he needed behavioral support. In ██████ grade in Brunswick, the Student had behavioral support. In Massachusetts, the Student received support through the Wings program, and they reported that the Student had no behavior issues.

The information she initially received from the School showed that the Student was making many refusals and was walking out of class. They said that the Student was only doing 50% of the work that the other students were doing. The District wasn't giving the Student any behavioral supports at all, only a pull out reading program. The District eventually gave him the support he needed, but not as quickly as they should have. The Student was suspended twice, and was sent to the Principal's office several times. If the District really believed that the Student's behavior didn't rise to the level where he needed behavioral support, then she doesn't know why they eventually gave him that support. They could have supported the Student in other ways besides a 1:1. He doesn't have a 1:1 at home and she doesn't see those kinds of problems. At home, there is a standard of operations for the Student. She knows what the Student needs and his limits, when he's starting to become escalated and needs to take a break. The Massachusetts IEP talks about there being a "captain" for the Student each day, someone who was concerned about how the Student was doing across the day and holding the Student accountable. She suggested a similar arrangement to the District, but they insisted that the Student's behaviors didn't rise to that level. Now that they are giving him the support he needs, however, the Student isn't having any of the issues he was having before. He's not getting suspended and they have discontinued the behavior intervention plan.

She believes that Ms. Blethen needs to be with the Student in his non-academic periods. P.E., art and music are all non-preferred activities for the Student, and are areas where the Student finds other things to keep him amused and will get into trouble. He needs to have Ms. Blethen within earshot so she can recognize when he needs to take a break. In the past, teachers at the

District have sometimes not allowed him to take a break. The Student told her that his music teacher didn't let him take a break one day. The Student doesn't let that sort of thing go easily, and later that day he said something inappropriate to another student that resulted in his being suspended.

There were also things that the District didn't provide to the Student that he needed academically. In Brunswick, the Student was given a graphic organizer to help with writing, as well as instruction in keyboarding. These tools helped the Student stay in the regular education setting and keep up with his writing assignments. The Student gets these things now, but they were not provided when he started at the School. When he began there, he was on grade level in math; after he got to the School, he dropped a level in math. In Massachusetts, the Student had someone who would read word problems to him, or use a number line to help him with a problem. When she suggested that they implement those accommodations at the School, it was like they had never thought of these things.

In Brunswick, the Student had been receiving 60 minutes per day specialized reading instruction; the District was only providing 30 minutes, which wasn't enough. But they were also not providing appropriate instruction, and when she challenged the method they were using, they said that methodology was for them to decide. That was why she didn't initially agree to increase the reading instruction to 60 minutes, because it meant 30 more minutes of inappropriate instruction. The method they were using didn't address the Student's comprehension issues, and they're still not addressing those issues successfully.

She believes that the Student has not made academic progress during his time in the District. He came to the District working at [REDACTED] grade level in math, and at the end of [REDACTED] grade he was still at [REDACTED] grade level. The District changed the Student's math curriculum, and he is now back doing addition, subtraction, multiplication and division, the same things he was doing in [REDACTED] grade. At the beginning of [REDACTED] grade, the Student was at the same reading level as he had been when he transferred to the School. Just before he came to the School, he was tested at reading level L; when he was evaluated at the School, he was back four levels. The only reason they claim the Student made progress is because they say he regressed before he got there. She believes the District did not accurately assess his reading level. She believes that they have limited expectations of what the Student is capable of based on his percentiles on the psychological evaluation, but that is not an accurate representation of what his capabilities are. He has significant abilities to learn more complex things than, for example, multiplication facts.

37. During an interview conducted by the Complaint Investigator with Edward Talpy, Mr. Talpy stated the following: He is the father of the Parent's friend, and has been sort of a grandfather to the Student. Up until July 2016, he saw the Student several days a week. They worked together on projects, working outside on things and sports activities. He also tried to help the Student with learning activities, like reading and writing and computer skills. He does not have a background in education. The Student's biggest problem is with reading; he's very far behind. He has a 6 year-old grandson who reads almost as well as the Student. Reading for the Student is very broken and very difficult for him. He buys books for the Student that are mostly at [REDACTED] grade level. It is difficult to keep the Student focused during

reading, or during most things. The Student needs a lot of 1:1 attention to keep him focused. The Student is very good when working on machines, but reading and writing is difficult. It shocks him how far behind the Student is, and the things that the Student doesn't know. He thinks the Student has gotten better at reading, but not a great deal; progress has been very slow.

38. During an interview conducted by the Complaint Investigator with Kathy Talpy, Ms. Talpy stated the following: She is married to Edward Talpy, and also had a relationship with the Student. The Student needed a lot of help with spelling. She would make word lists to help him. She bought the Student some books, but he wasn't happy about reading. She tried to incorporate math into everyday tasks. The Student is better at math than at reading. The Student liked to write letters using her computer, but he struggled with spelling. His reading was about the same in spring 2016 as it had been in winter 2015. He's going to need a lot of guidance and assistance. She last saw the Student over Christmas 2016, and he appeared to be happier, interacting positively with family members.

## **VII. Conclusions**

**Allegation #1:** Failure to provide special education, related services and supplementary aids and services sufficient to enable the Student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d)

### **NO VIOLATION FOUND**

The U.S. Supreme Court has very recently revisited the standard by which educational programs provided to children with disabilities, embodied in their IEPs, is to be judged. In *Endrew F. by Joseph F. v. Douglas County Sch. Dist. RE-1*, # 15-827, 580 U.S. \_\_\_\_\_ (2017), the Court held that, to meet its obligations under the IDEA, a school district must offer an IEP "reasonably calculated to enable a child to make progress in light of the child's circumstances." The Court notes that this is a fact-intensive analysis, geared to the particulars of a given child's abilities and disabilities. The Court underscores that this standard is couched in terms of what is reasonable, not what is ideal. The Court further notes that the standard is prospective in nature – whether it was reasonably likely, based on the information available to the school district at the time the IEP was developed, that the program would enable the child to make appropriate progress.

In this case, the Student's circumstances include the facts that he had been moved from school district to school district multiple times over the years before he came to the District. Most recently, the Student had been moved from the homes of his parents to live with a grandparent in Massachusetts and then, after a few months there, returned to Maine to live with the Parent and attend the School. The Student's circumstances further include the facts that the most recent evaluation of the Student's cognitive abilities produced scores as follows: full scale IQ 76, verbal comprehension 62, fluid reasoning 74, and working memory 67.

Upon the Student's first arriving at the School, the District implemented a program that closely replicated the program described in the IEP from Massachusetts, where it appeared that the Student was reasonably successful (although there was little in the way of records of academic progress). The Parent's advocate, at the first IEP Team meeting on February 6, 2015, expressed general satisfaction with the program developed that day. The Parent insisted that the Student's apparent success in Massachusetts was based in significant part on the availability to the Student of adult support throughout his day through a classroom-wide program which was not directly identified as a service or accommodation in the IEP. Before the District could communicate with the school in Massachusetts as to the nature of this program and the extent to which the Student relied on such support, however, the Parent revoked her consent to allow that communication to take place. Under the circumstances, it was reasonable for the District to expect that the IEP it developed would enable the Student to make appropriate progress.

As to the progress made by the Student on his IEP goals, the reports from the third quarter of the Student's [REDACTED] grade show satisfactory progress on many of his goals, with limited progress on others and some goals not yet started on. As noted below, reports of progress for the final quarter of [REDACTED] grade are unavailable. We do know, however, that in reading, a major area of academic weakness for him, the Student progressed from reading level I when he started at the School<sup>2</sup> to level M, growth of more than one year in five months' time. When the Parent obtained an evaluation from Ms. Coffin that identified phonological deficits as being key to the Student's struggles in reading, the District responded by increasing the amount of specially designed reading instruction the Student was given and by utilizing the Wilson reading program as part of the Student's reading instruction program.

During the Student's [REDACTED] grade year, the District completed the Student's triennial evaluation and made further adjustments to the Student's program, increasing the amount of specially designed instruction in reading, adding specially designed instruction in math and in keyboarding, and adding a social skills component to the Student's speech/language services. Progress reports indicate that the Student was making satisfactory progress on nearly all his IEP goals, and the Student, after returning from a summer with no ESY services (which the Parent rejected despite the urging of the District) and having regressed back to level H in reading, rebounded to level O by the year's end.

In the current year, the Student attended an ESY program, maintained his reading level, and has made further reading progress since then. The amount of specialized instruction in math

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<sup>2</sup> The Parent rejects this assessment of the Student's reading level by the District based upon language in the Massachusetts IEP that the Student was reading "slightly below grade level." Beyond the facts that the two schools used different reading systems to measure the Student's ability and that the Parent blocked any efforts by the District to obtain more information from the Massachusetts school, the Parent's rejection of the validity of the District's assessment speaks to the degree of suspicion and animosity that existed almost from the beginning on the part of the Parent towards the District. Although the Parent contributed much to the process of developing the Student's program that was valuable and which improved the program, this hostility was an obstacle to the work being done by the Student's team.

was increased, with one day a week spent in the regular education classroom doing math work not involving reading, and added to the IEP services were 20 minutes of pre-teach/reteach services as further academic support.

While the Parent feels that the Student's progress has not been sufficient, and that the District should have implemented some of the strategies sooner than was the case, the standard is not whether the Student made the maximum amount of progress possible or whether he received the ideal program, but rather whether the Student's program was reasonably calculated to enable the Student to make appropriate progress. At each step of the way, as the District acquired more information about the Student's needs and capabilities, the District responded by making meaningful modifications to the Student's program with the result that the Student continued to make progress over the course of the period in question.

**Allegation #2:** Failure to provide supplementary aids and services in the nature of full-time one-on-one support to enable the Student to be educated with non-disabled children in violation of MUSER §IX.3.A(1)(d)

**Allegation #3:** Failure to develop a behavior plan for the Student, using positive behavioral interventions and supports and other strategies, to address the child's behavior issues from February 2015 until February 2016, in violation of MUSER §IX.3.C(2)(a)

**NO VIOLATION FOUND**

As noted above, there was a discrepancy between what the Student's Massachusetts IEP provided in terms of adult support and what the Parent believed to have been actually available to the Student. The District replicated the Massachusetts IEP in terms of adult support in the regular education setting, and the Parent blocked the District from obtaining more information about the amount and nature of support the Student received outside his IEP. There has been little if any dispute with regard to the provision to the Student of adult support during academic activities in the regular education setting; the District has always acknowledged that the Student struggles with reading and therefore needs assistance in order to participate in activities where reading text is required. The point of contention has to do with the Student's behavior, both his ability to stay on task and do academic work, and his ability to navigate social situations with his peers.

From the District's perspective, the Student presented with relatively minor behavioral difficulties. The most frequent difficulty was initial refusal by the Student to do academic work. Staff members dealt with this by redirecting the Student, sometimes resulting in the Student doing some but not all of the work, sometimes resulting in the Student taking time out before returning to do the work. Staff estimated that the Student was completing approximately 50 % of the work assigned. This approach was successful in that the Student did not have meltdowns causing great disturbance to the Student and others, but the Parent was rightfully concerned with the amount of work being performed by the Student and what this would mean for his ability to keep pace with his grade level peers.

The District did, however, agree to the Parent's request to hire a BCBA to perform a FBA. Here again, the Parent hindered the effort by failing to respond to the District's request to

select one of three BCBA's. The District nevertheless proceeded to make its own selection of Dr. Jefferson and the FBA was completed. The report of Dr. Jefferson (who did not respond to a request to be interviewed for this investigation) presented the Student's task avoidance behavior as more pervasive and disruptive to the Student and others than what had been described by staff at IEP Team meetings. Dr. Jefferson recommended, among other things, use of a visual schedule, social skills training, and a new positive reinforcement system. The District responded by implementing many of the recommendations, and by adding ongoing consultation with Dr. Jefferson to the Student's IEP.

The reports from those interviewed all support the impression that the Student's behavior has greatly improved over the last year, with the Student completing far more of the expected work. Staff involved in non-academic activities uniformly report that the Student does not require or utilize the adult support being provided in those settings. Whether and to what extent this improvement is due to the implementation of Dr. Jefferson's recommendations, as opposed to the Student's general maturation, the effects of greater stability in his home situation, and the simple fact of his remaining in the same school for the third year, is impossible to say. It can be said, though, that the District was ultimately responsive to the Parent's request that the issue of the Student's behavior be addressed, and to the report and recommendations of Dr. Jefferson. That it took a year for all that to fall into place for a student new to the District does not seem excessive.

**Allegation #4:** Failure to fully and adequately implement the Student's IEP with respect to the Student's 2016 ESY program in violation of MUSER §IX.3.B(3)

**VIOLATION FOUND**

The Parent's allegation with respect to the 2016 ESY program has two elements: a failure to provide transportation to the Student so that he could return home when his work was completed; and a failure to provide instruction in social pragmatics. The conversation about the ESY program took place during the IEP Team meeting of June 2, 2016. Initially, the District proposed that the Student attend ESY for two hours per day, four days per week. When the Parent objected that this represented insufficient instructional time, Mr. Merrifield proposed increasing the time to four hours per day instead of two. Dr. Jefferson expressed concern that four hours might be more than the Student could comfortably handle. This led to Mr. Opuda's suggestion that when the Student finished his work for the day, he could work the rest of the time in the garden or else just end his school day.

The Written Notice of that meeting reflected the decision to provide ESY services of four, four-hour days per week and to provide transportation to *and from* the program. Section 3 of the Written Notice expressly stated that "as a motivator, the Team agreed that once he has completed all of his assignments, he can earn a reward and then go home early." When it came time to implement the ESY program, it turned out that, as a function of the logistics of driving all the students to their various homes at various intervals, the District was unable to provide transportation to take the Student home once he had completed all of his assignments. Instead, transportation left on the hour, so that if the Student was finished at 11:15, he would have to wait until 12:00 before he could be taken home. This left the Parent with the choice to

either let the Student remain at school and engage in non-academic activities such as gardening, or else transport the Student home herself. She chose to do the latter, and the District reimbursed her for her mileage.

It appears that this failure to fully live up to the program described in the Written Notice was not the result of any ill will on the District's part, but was simply due to its not having fully considered how this customized travel arrangement, agreed to in an effort to best meet the Student's needs, would be compatible with the needs of the bus drivers and of the other children in the program. It did not result in the Student being deprived of any ESY services, but in the Parent being inconvenienced, for which inconvenience she was compensated by the District.

As to the matter of social pragmatics, while Mr. Merrifield did at one point refer at the June 2<sup>nd</sup> meeting to social skills as one of the areas to be included in the Student's ESY program, Ms. Morris then pointed out that there were limited opportunities during the ESY program for the Student to be involved in social groups and there was no further discussion of this subject. When it came time to describe the program in the Written Notice and IEP, there was no reference to social skills work as a component of the ESY program. No violation is found with respect to this component of Allegation #4.

**Allegation #5:** Failure to amend information contained in Written Notices, alleged to be inaccurate or misleading, at the request of the Student's parent within a reasonable period of time, or else notify the parent of its refusal to do so and of the parent's right to a hearing, in violation of MUSER §XIV.8

**NO VIOLATION FOUND**

MUSER §XIV.8 provides that a parent may request a school unit to amend information in a school record which the parent believes is inaccurate or misleading, and requires that the school unit which receives such a request must either make the requested amendment or else notify the parent of its refusal and of the parent's right to a hearing on the matter. This process is initiated when a parent calls to the school unit's attention a particular word, sentence or phrase which the parent asserts is inaccurate or misleading, with the language which the parent wishes to insert in place of that word, sentence or phrase.

In this case, the Parent bases this allegation on conversations and at least one writing in which the Parent generally asserted that one or more Written Notices were inaccurate as a whole, suggesting that Mr. Merrifield review audio recordings of the meetings to get a truer sense of what took place. This is not a request to amend as contemplated by the regulation, and did not trigger a duty to act on the part of the District. It is up to the parent to identify the particular language in the document that must be amended, and to explain in what way it is inaccurate or misleading or offer replacement language.

**Allegation #6:** Failure to provide periodic reports of the progress the Student made towards his annual goals during the last quarter of the 2014-15 school year in violation of MUSER §IX.3.A (1)(c)

**VIOLATION FOUND**

MUSER §IX.3.A (1)(c) requires that each IEP must contain a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided. Implicit in this provision is a requirement that such periodic reports of progress toward the goals be provided in the time frame specified in the IEP.

Towards the end of the Student's [REDACTED] grade year (2014-15), Ms. Brown, who was the Student's case manager, went on medical leave in mid-May. Whatever efforts were made to see that her IEP-related responsibilities were delegated to others, those efforts did not lead to the entry in the Student's IEP of progress reports on his goals. The District contends that the May 14, 2015 meeting served the purpose of informing the Parent about the Student's progress, but the teachers' reports at the meeting were stated in terms of the Student's overall progress, and were not specific as to progress towards meeting goals.

Despite this lack of reporting, it appears that the Parent and the rest of the Team were well able to conduct the annual review on October 22, 2015, which included a full review of the Student's goals for the coming year.

**VIII. Corrective Action Plan**

With respect to the matter of transportation during the 2016 ESY program, no corrective action is required. The Department believes that the problem was due to an oversight on the District's part when it agreed to transport the Student at irregular times without fully considering the logistics of providing that service and whether it was feasible. As indicated above, the Student was able to leave when his work was completed as the parties agreed, and the Parent was compensated for providing the transportation herself.

With respect to the matter of missing progress reports, the District shall describe in a memorandum, distributed to all case managers and provided to the Department and the Parent, the procedure to be followed in the event that a case manager leaves the position, temporarily or permanently, during the middle of a reporting period, so that progress reports are duly recorded for all special education students without disruption.