

Complaint Investigation Report
Parent v. SAD #40

April 13, 2009

Complaint #09.056C
Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Parent
Address

Respondent: Pamela Carnahan, Superintendent
44 School Street
Warren, ME 04864

Special Services Director: Karen Etheridge

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education (“DOE”) received this complaint on February 19, 2009. The Complaint Investigator was appointed on February 24, 2009 and issued a draft allegations report on February 26, 2009. The Complaint Investigator conducted a complaint investigation meeting on March 10, 2009, resulting in a set of stipulations. On March 13, 2009, the Complaint Investigator received 60 pages of documents and a list of proposed interviewees from the Complainant, supplemented by an eight-page response memorandum received on March 20, 2009, an audio cassette recording of the February 6, 2009 IEP team meeting received on March 24, 2009, and an additional 24 pages of documents submitted by Susy Sanders, Ph.D. On March 16, 2009 the Complaint Investigator received a 10-page memorandum and 352 pages of documents from M.S.A.D. #40 (the “District”). Interviews were conducted with the following: Karen Etheridge, director of student support services; Ed Crocker, case manager; David Kelley, clinical supervisor; Benjamin Vail, principal; Ann Kirkpatrick, principal; Jessica Yates, teacher; Gretchen Johnson, teacher; Peggy Collins, teacher; Michele Herrick, educational technician; John Normand, program coordinator; Ereik Sherin, Ph.D., psychologist; Tamara Palka, M.D., psychiatrist; Jean Robbins, social worker; Peggy Oulette, nurse practitioner; Michael Sorentino, plant manager; Lynn Atherns, warehouse worker; James Griffin, commanding officer; the Student’s mother; and the Student.

III. Preliminary Statement

The Student is xx years old and is currently receiving special education under the eligibility criterion Emotional Disturbance. This complaint was filed by the Student's mother (the "Parent"), alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to adequately consider the concerns of the parent in the IEP decision-making process with regard to both the August 27, 2008, October 6, 2008 and February 6, 2009 IEP team meetings in violation of MUSER §§VI.2(I) and IX.3.C(1)(b);
2. Failure to make a joint, informed decision at the October 6, 2008 and February 6, 2009 IEP team meetings by predetermining the outcome in violation of MUSER §VI.2(I);
3. Failure to adequately consider evaluations provided by the student's parent in violation of MUSER §V.3.A(1)(a);
4. Failure to develop an IEP after the IEP Team meetings of August 27, 2008, October 6, 2008 and February 6, 2009 in violation of MUSER §VI.2.J(4);
5. Failure to provide the student's parent with a copy of the student's IEP within 21 schooldays of the August 27, 2008 and October 6, 2008 IEP team meetings in violation of MUSER §VI.2.H(6);
6. Failure to provide education in the least restrictive environment by directing placement at the Sweetser Program in Belfast in violation of MUSER §X.2.B;
7. Failure to develop a behavior intervention plan for the student, using positive behavioral interventions and supports to address the child's behavior issues, in violation of MUSER §IX.3.C(2)(a);
8. Failure to conduct a Functional Behavioral Assessment of the student in violation of MUSER §§V.2.B(1)(b) and V.2.C(7);
9. Failure to provide instruction designed to meet the unique needs of the child in violation of MUSER §II.29.

V. Complainant's Proposed Resolution (from Dispute Resolution Request form)

This situation could be resolved by the District looking at evidence of new information and understanding the Student's disability and needs.

VI. Stipulations

1. The Student's IEP team has not called for a functional behavioral assessment to be conducted.
2. An IEP was not developed for the Student after the IEP team meetings of 8/27/08 and 10/6/08.

3. At the IEP team meeting of 8/27/08, the Student's parent asked that the day treatment program be changed to discontinue use of a point system with the Student's name on the board as it causes the Student to experience shame and anxiety; the District declined to make this change.

VII. Summary of Findings

1. The Student lives in Waldoboro with the Parent, and is presently being home schooled. He became eligible for special education services under the category Emotional Disturbance in October 2002.
2. According to a psychoeducational evaluation performed by Cheryl J. Lierow, M.S. on July 13, 2005, the District completed a functional behavioral assessment for the Student in January 2004.
3. A Positive Behavioral Intervention Plan dated January 22, 2007 was provided to the Investigator. It describes a series of increasingly restrictive interventions to be used with the Student. For example: "If [the Student's] actions/words are inappropriate or disrespectful, he will be given the opportunity to correct them and remain in the environment/setting. If [the Student] is not on task and disruptive, he will be asked to remove himself from the setting and given some time to regroup and refocus. If [the Student] is non responsive to adult directions, he will be given ten minutes to calm down away from the setting and then process his behavior with a teacher. If [the Student] is removed from the setting, he will be given the opportunity to rejoin the class when he demonstrated he can be safe, respectful, and cooperative."

The Positive Behavioral Intervention Plan also describes a behavioral modification point system maintained in each day treatment classroom: "Students receive feedback throughout the day regarding their effort towards basic behavioral expectations. Point sheet goals are changed as needed to target specific behaviors and to motivate students to increase their effort and practice new skills."

4. The Student underwent a psychological evaluation by Vicky Willey, Ph.D. on November 27, 2007. Dr. Willey ruled out a diagnosis of Asperger Disorder, and diagnosed the Student with Generalized Anxiety Disorder. In her recommendations, Dr. Willey wrote that "[n]atural consequences work really well with somebody like [the Student]. He does not appear to be harming himself or others, and if he gets angry and throws things around, he simply needs to pick them up."
5. On February 14, 2008, when the Student was in xx grade, the Student's IEP team met and determined that the Student would remain in the District's day treatment program at Warren Community School. Under the IEP, the Student would receive specially designed instruction by the day treatment teacher and educational technicians, in both the day treatment and regular education classrooms. In addition, the Student was to receive tutoring for 10 hours per week.

6. An incident occurred on March 21, 2008 that involved the Student refusing to follow directions to return to the day treatment room. He was rude and defiant towards staff members and resisted staff efforts to problem solve. Eventually, David Kelley (clinical supervisor of the day treatment program) stood in the Student's way as he attempted to return to his regular education class, and the Student attempted to push past him. Mr. Kelley repelled him and then the Student charged at him. Mr. Kelley and Michelle Herrick, the Student's educational technician, then proceeded to move the Student to the school office by holding his arms and wrists. He was released into a room, where he several times tried to run out. Each time he was briefly restrained. He also made threatening gestures and charged at Mr. Kelley. During the course of these events, the Student verbally threatened to hurt himself and Mr. Kelley. In the meantime, the school called the Parent who came to the school and, accompanied by a police officer, removed the Student from the premises.

7. As a result of the incident, the Student was suspended. A manifestation determination meeting took place on April 14, 2008 (it was originally scheduled for March 25, 2008 but was rescheduled when the Parent neither attended nor notified the District she was not going to attend). The IEP team determined that the Student's behavior was not a manifestation of his disability as: the Student was in control of himself and was aware of what he was doing; and the District was implementing the Student's IEP at the time of the incident. The team agreed that the Student should not return to school until a Risk Assessment was performed. Until then, the Student would receive tutoring services.

8. A Risk Assessment was performed by Dr. Erek Sherin on May 1, 2008 (Dr. Sherin made two earlier attempts to do the assessment, but the Student was unable to discuss the incident on those occasions). Dr. Sherin, in his report, stated that the Student's interactions with Mr. Kelley suggest that "[the Student] may have serious vulnerabilities regarding his ability to modulate his angry and aggressive reactions and interactions." Dr. Sherin reported that the Student was able to accept responsibility for his role in the incident, although the Student believed that if events proceeded again in the same way he could react similarly. Dr. Sherin concluded that the Student was ready to, and wanted to, return to school. Dr. Sherin cautioned that attention needed to be paid to "designing a program sensitive to [the Student]'s 'special' needs. This is particularly needed when addressing strategies for containing and controlling his challenging actions and reactions especially those associated with aggressive reactivity." Dr. Sherin also recommended that the Student's return to school should occur in a phased manner.

9. An IEP team meeting was held on May 12, 2008 to review the Risk Assessment. The team agreed that the Student should return to school in a phased manner: initially for 3 1/3 hours per day, followed by two hours of tutoring; then increasing his time at school by one hour with continued tutoring afterward; and finally a full day at school. The team also agreed upon a new behavior management protocol when the Student failed to follow staff directions: the staff should make brief and clear interventions and/or offers of problem solving; if these are unsuccessful, the Student is directed to the office where either the principal or assistant principal may spend 20 – 40 minutes attempting to develop a collaborative solution to the problem and readying the Student to re-accept the authority of the teaching staff; if not successful after 40 minutes, the Student would be sent home for the remainder of the day and

the administrators would determine whether he could return the next day or whether an IEP team meeting must be scheduled.

10. Over the next few weeks, there were numerous episodes of the Student being disrespectful to and noncompliant with teachers, and of the Student being disruptive in the classroom. The Student continued to be subject to the behavioral point program, and he at best reached only Level 2 (out of 4) of the privilege levels during this time. Nevertheless, at the request of the Parent, the District agreed to increase the Student's school day by one hour starting May 22, 2008.

11. Another incident occurred on May 27, 2008. The Student was disrespectful and disruptive, and was brought to the office. Mr. Olsen, the assistant principal, attempted to collaboratively problem-solve, but the Student was unable to process the issue. Mr. Olsen reported that the Student "appeared very agitated and hyper (manic-like)." The Parent was called and took the Student home. That evening, he was admitted to Spring Harbor Hospital.

12. As a result of this incident, the Student was suspended for two days. Mr. Kelley determined that the District should move forward with securing a placement for the Student in a private day treatment program.

13. Upon the Student's release from the hospital a week later, a clinician from Spring Harbor contacted the District and informed them that the hospital staff had determined that the Student was not a threat to anyone and was not demonstrating any threatening behaviors to himself or others. The Student's biggest concern now was that he be able to feel safe with school staff.

14. At that point, the Parent reported that the Student asked not to return to school because he felt unsafe there. The Parent requested that he be provided with tutoring for the remainder of the year, and the District agreed.

15. On June 13, 2008, the Student's tutor called the office because the Student was making suicidal statements. He was told to come to the high school, and the Parent was called. At the high school, the Student "presented as extremely agitated and hostile," and swung a book at Dr. McCabe, a psychological examiner. The Student also pricked himself with pins. A police officer was called in, and the Student punched and kicked him and attempted to grab his gun. The Parent took the Student to the emergency room. It was discovered that the Student had not taken his medication for 4 days, and the Student was sent home without being admitted with the understanding that he would take his medication.

16. The Student's IEP team met on August 27, 2008 to consider the Student's program for the 2008-2009 school year, when he would be in xx grade. The district proposed placing the Student in a private day treatment program, but the Parent advocated for allowing the Student to attend xx school. It was ultimately determined that the Student would attend xxxx xxxx School in the day treatment program with direct support from the day treatment staff on a daily basis. The Parent asked that the Student be allowed the chance to attend the school without being in day treatment, and then expressed her concerns with the program's behavior

management system that places the Student's name and level of behavior on the classroom board and gives him a point sheet with rating points for each class. The Parent explained that these practices are emotional triggers and cause the Student embarrassment. The District declined to alter their program.

17. After a promising start at the xx school, the Student's behavior began to deteriorate. He became disruptive and defiant, and made statements that reflected deep emotional distress. He resisted efforts to process and problem solve. Mr. Kelley observed that the Student "can sometimes move back into compliance if staff is willing to ignore incidents. However, these incidents are clearly out of place in the public school setting and the impact on staff and peers is detrimental." The Student was also at Level 1 of the behavioral point system for a sustained period of time.

18. On September 23, 2008, the Student was again suspended from school after refusing to close his laptop computer and give it to his teacher, Jessica Yates. When Ms. Yates attempted to close the computer, the Student pushed her hands away. Ms. Yates called the principal, Benjamin Vail, who came to the classroom where the Student complied with Mr. Vail's request to close the computer. The Student complained about always being on Level 1, and then was rude to Ms. Yates when she attempted to explain why the point system was used. Mr. Vail asked the Student to be respectful of Ms. Yates, and asked whether he was prepared to follow Ms. Yates' directions. When the Student answered equivocally, Mr. Vail told the Student he needed to come with him to the office where the Parent would come get the Student, and he would then be suspended. The Student complied and left with the Parent.

19. The Student's IEP team met on September 29, 2008. The Parent's advocate, Gerry Huber, requested that a behavioral consultant for the District be asked to attend to help develop positive interventions to be included in the Student's behavior intervention plan. Such person was not invited. The District expressed its view that the current placement was not working, and that the Student's needs could not be met in a public school setting. The team was unable to reach consensus and the District determined to offer placement in a private day treatment program where he could get more clinical services, specifically Sweetser at Belfast ("Sweetser"). The Parent agreed to visit the school and decide whether she would agree with that placement; if not, the team would reconvene.

20. At the meeting, the Student's therapist, Gayle Knee, expressed her opinion that the behavior system being used with the Student, involving his name on the Level board and a point sheet, was inappropriate for a child who had suffered trauma, as it caused feelings of intense shame. Ms. Etheridge stated that the problem was not the Level system or point sheets, but that the Student's behaviors were beyond the scope of the program. Mr. Kelley agreed that the point system was not the issue, stating the Student had failed to respond to the methods of engagement practiced by the staff.

21. The Parent and the Student went to Sweetser and afterward the Parent notified the District that she was rejecting the offer of placement there. As a result, the IEP team again convened on October 6, 2008. At the meeting, the District reaffirmed its determination that a private day treatment program was the appropriate placement for the Student. Other alternative

placements were discussed and rejected as inappropriate by the District. The District presented Spurwink at Chelsea (“Spurwink”), another private day treatment program, as an alternative to Sweetser, but District staff did not recommend it. Ms. Huber asked whether a functional behavioral assessment should be conducted, and Mr. Kelley replied that a risk assessment had been conducted the previous spring, that the Student was hospitalized after that, and that the Student’s therapist (Ms. Knee) stated that the Student’s needs were more severe than those that could be dealt with in a public school setting. Mr. Kelley felt that this indicated the Student’s level of functioning was beyond a functional behavioral assessment. After the October 6 meeting, the District reissued the IEP dated February 14, 2008.

22. On November 7, 2008, the Parent submitted to the District a Notice of Intent to Homeschool with an effective date of September 29, 2008.

23. As a result of hostile behavior by the Student towards the Parent as well as suicidal ideation, the Student was re-admitted to Spring Harbor Hospital on November 11, 2008 and discharged four weeks later.

24. After the Parent told the District that she submitted the Notice of Intent to Homeschool without a clear understanding of what it meant and the legal obligations that went with it, the Student’s IEP team met again on February 6, 2009 to conduct its annual review. The Parent provided two letters to the District at the meeting. One was from Ms. Knee, who described the point system as “shame based,” causing the Student to judge himself negatively. Ms. Knee also expressed her conclusion that some District staff had become frustrated and engaged in power struggles with the Student. She expressed her opinion that the Student required an alternative type classroom setting, where he could work at his own pace. The other letter was from Peggy Oulette, a psychiatric nurse practitioner, who stated that the Student was currently stable on his medication, was less anxious and depressed, and his impulsivity and anger were significantly improved. She recommended that the Student be re- instated in school, and be given an educational setting that encouraged him to be self- confident and focused on strength-based approaches. The Parent also informed the team that the Student was being evaluated by Dr. Susy Sanders the next day. The District said it was unwilling to change its position, although it was willing to engage in further discussions with the two individuals who wrote the letters. The District also asked the Parent to provide it with a copy of Dr. Sanders’ evaluation report.

25. After the meeting, the District issued an IEP for the Student dated February 6, 2009, in which the least restrictive environment was identified as private day treatment, specifically, Sweetser.

26. On February 7, 2009, Dr. Sanders sent a letter to the District in which she stated that she conducted an initial evaluation of the Student and provides an initial recommendation. She offered her opinion that the Student suffers from posttraumatic stress disorder, but more fundamentally has a mood spectrum disorder with hypo-manic features. She further stated that children with this condition usually engage in studies in the public schools, and that there are medications specific to this condition that the Student has not yet had the opportunity to access. During the time that the Student is adjusting to his new medication, she recommended

that he remain in home schooling. She further recommended that: "[r]equiring [the Student] to attend a day treatment school program with disturbed children will add significantly to his present stress and will interfere with his ability to stabilize." She encouraged the District to contact her to further discuss the plans for the Student's treatment.

27. The Parent again provided to the District a Notice of Intent to Homeschool on February 8, 2009. The Parent chose to do this based upon her belief that the placement offered by the District did not offer the Student an appropriate education; that it would, in fact, cause him to regress.

28. On February 28, 2009, Dr. Sanders issued a full evaluation report regarding the Student. In the section titled Review of Psychiatric Records, Dr. Sanders cited notations in Spring Harbor evaluations that the Student "had lost control of his anger, and that he gets really mad and is unable to control his impulses, that he has suicidal and homicidal thoughts, and that he would rather die than live this way." Dr. Sanders concluded that the Student is suffering from mood dysregulation exacerbated by his trauma experiences. She believes that treating his mood dysregulation must take precedence over treating the posttraumatic stress. She explained that the antidepressant medication that had been previously prescribed for the Student often exacerbates mood problems. She stated that "[a]s he has yet to be treated purely with a mood stabilizer...it cannot be ascertained whether or not he will be able to function in a normal classroom setting." She encouraged the District to make use of recommendations given for children with mood dysregulation in creating the Student's IEP, and attached recommendations for a model IEP to her report. She suggested that "[a]ll efforts should be made...to work towards soothing interactions that serve to support [the Student's] dignity and help him to find a sense of worth in the midst of this current struggle. Predictable routines are important, but rigid structures that exacerbate his intense mood shifts should be avoided." This report was not provided to the District except in the context of this complaint investigation.

29. On March 30, 2009, at the suggestion of the Student's new psychologist, Dr. Robert Dodge, the Parent and the Student visited Spurwink. They were both favorably impressed, and have notified the District that they wish the Student to attend that school.

30. During an interview conducted by the Complaint Investigator with Ed Crocker, Mr. Crocker stated the following: He is a case manager at Sweetser, and became involved with the Student when he was suspended from school. He is not very familiar with the Student's school program. As a case manager, his job was to support and advocate for the family's needs. He attended two IEP team meetings with the Parent, and he also spent some time with the Student and the Parent at their home. At the first IEP team meeting, he was not very familiar with the family. He spoke in general about the programs at Sweetser and Spurwink. During the meeting, the Parent became very upset and was yelling and screaming. He was able to calm her down, and got her to agree to go with him to look at Sweetser.

He gave the family information about Sweetser and accompanied them there. They toured the facility and then met with staff. He felt that the Student's needs and abilities matched up well with the Sweetser population, and he told the Parent that he thought Sweetser would be a

good place for the Student. The Parent didn't want to hear it, and seemed to feel that the Student was "better" than the other students at Sweetser.

At the second IEP team meeting, he supported the Parent in her decision to reject Sweetser. He offered to go with the Parent to Spurwink, saying that he has had good experiences with students that were placed there. He also suggested looking at other public school programs located near the Parent's home. Team members responded by saying that their program was better than the other public schools, and if they couldn't keep the Student safe, those other public schools wouldn't be able to either. Ms. Huber also made suggestions. The District didn't want to consider anything other than Sweetser, and he thinks they needed to offer the Parent more than one option.

He was surprised that the District was "expelling" the Student for the kind of behavior that was at issue – refusing to close a computer and slapping a teacher's hand. He has had many clients with much more serious safety issues with whom schools have continued to work. He knows that there is history that he is not aware of, but it was clear to him that the District had reached a point where they were giving up on the Student.

His own experience of the Student was that he seemed immature, and went right to "baby mode" when under stress. He assumed this was related to the Student's childhood trauma. He found that the Student had a very strong attachment to the Parent. For her part, the Parent always seemed to justify the Student's behavior, offering some excuse for his misconduct.

31. During an interview conducted by the Complaint Investigator with Peggy Oulette, Ms. Oulette stated the following: She is a family psychiatric and mental health nurse practitioner at Sweetser and has been working with the Student since June 30, 2008. She manages the Student's medications. She performed an initial 2-hour evaluation and then met with the Student for a half hour on 5 occasions. When she first encountered the Student, he was emotionally labile and fragile. She did not have concerns regarding his posing a safety risk for others, but was worried about his own vulnerability. It appeared that he was not stabilized with his medication. She is somewhat familiar with the program at Sweetser in Belfast. Typically, a student is only referred to that facility after all levels of care have been attempted and have been unsuccessful. It didn't seem to her that this had been the case with the Student. The Student has shown some improvement with his current medication, and she believes he is ready to return to school. She has concerns, however, that the longer he stays away from school and interaction with his peers, the greater the chance he will slide back into depression.

32. During an interview conducted by the Complaint Investigator with Susy Sanders, Ph.D., Dr. Sanders stated the following: She is a licensed psychologist specializing in mood disorders as well as trauma. She conducted an evaluation of the Student on February 7, 2009, and concluded that the Student was suffering from mood dysregulation. From her review of the Student's records, it was clear to her that the Student was not improving with his medication regimen, and needed to be put on a mood stabilizer. He had never been given a trial on a mood stabilizer alone, and she believed his medications were actually creating problems for him. She believes the District was reacting to the Student based in part on the misperception that he was experiencing trauma flashbacks, rather than symptoms of his mood dysregulation. Most schools are not familiar with children having this condition. Children

with mood dysregulation are very sensitive to being around children with severe emotional disturbance, and if this describes Sweetser at Belfast, then it would not be a suitable program for the Student.

33. During an interview conducted by the Complaint Investigator with John Normand, Mr. Normand stated the following: He is program coordinator of Spurwink Services at Spring Harbor Hospital. While the Student was hospitalized there, he oversaw delivery of tutoring services to the Student. From his records, it appears that the Student initially had difficulty staying focused on the academic work, and required frequent redirection. On the first day, he left the 2-hour class after only 45 minutes. He subsequently showed improvement in his ability to focus. There were no behavior incidents out of the ordinary involving the Student.

34. During an interview conducted by the Complaint Investigator with David Kelley, Mr. Kelley stated the following: He has been clinical supervisor for the District's day treatment program during the last 11 years. The Student was initially placed in the day treatment program when he was in xx grade. The amount of time the Student spends in the day treatment classroom has varied over the years. Beginning in xx grade, the Student began to complain that he felt stigmatized by being in the program, and the staff has tried to give him more independence. This has generally been unsuccessful. In xx grade, the Parent demanded that the Student begin the year in the regular education classroom without support. The District reluctantly agreed and the Student had a terrible year. The Student was very disruptive and spent a lot of time in the principal's office. He became aggressive and made little academic progress. At the beginning of xx grade, the Parent asked that the Student be returned to the day treatment program. During xx and xx grade, the Student spent some of his day in the regular education classroom and some in the day treatment classroom, requiring support during most of the day.

The Student struggles with accepting help. He needs direction and support, but feels embarrassed by that and gets angry at the person trying to help him. The Student is not comfortable revealing what he doesn't know, complaining of feeling stupid and "retarded." He says that he has no friends because he is in day treatment, and that other children call him "sped" and "retard." The Student exhibits a pattern of behavior, whereby he starts out working well with a staff member, and then the relationship deteriorates. This happened in xx grade with Ms. Herrick. When the Student began to complain about her, she was directed to pull back and the regular education teacher performed some of her duties. After a time, the Student began rebelling against the regular education teacher. This is also part of a pattern whereby the Student attempts to manipulate his environment as a way to avoid accepting responsibility for his behavior. When the Student is successful in this regard, he feels he is in control and gets emotionally elevated. The Student also manipulates the Parent into becoming his ally in assigning blame to others for his own conduct.

With regard to the point system, the students' names appear on a board at the back of the day treatment classroom. The number of points they received the day before determines at which level they are placed with regard to privileges during snack, lunch and recess. It is a reference that tells students and teachers where the students are supposed to be during those times. The point sheets are filled out during the day, and are carried from class to class by the aides.

Throughout the day, teachers comment on the points the students are earning, warning that they may lose points, encouraging them they still have a chance to earn points, etc. The purpose of the system is both to motivate students and to create a record of how they are doing with classroom behavior. It also reminds students on what they need to work, and the point sheets are tailored to each student and changed over time as the issues the students need to focus on change.

The program has used this system during its 11 years of existence, and he doesn't believe that the point system feels shameful to children, or that the staff views it that way. He believes that the emotional feedback the students receive from teachers is much more important than the points they earn. He doesn't believe that the point system is a genuine issue for the Student, either. In school, the Student doesn't appear to be bothered by it. He thinks the Student is using it as an excuse, and that the Parent has become stuck on this issue. The program has had other trauma survivors, and they were not bothered by the point system.

With regard to performance of a functional behavioral assessment, the staff does this constantly. With each significant behavior incident, the staff asks what happened and why, and how can they change what they do with the student. For this reason, he didn't think a formal assessment was necessary after the incidents at the end of the Student's xx grade and beginning of xx grade.

With regard to the District's decision to place the Student in private day treatment, and Sweetser specifically, he believes that the Student requires more therapeutic intervention than the day treatment program can provide. He sees the Student as caught in a "double bind," where the Student needs the help of other adults, but cannot accept that help and becomes angry. He would not be willing to put his hands on the Student again if restraint was necessary, as he would be concerned for his own safety. In the incident of March 21, 2008, when he had to restrain the Student, the Student did not settle down when in restraint. He continued to escalate. Normally, children are reassured when adults take control; this didn't happen with the Student. He does not believe a public school is equipped to restrain a child at the level that the Student requires. The Student also hasn't come back to school with renewed functioning after his severe outbursts.

The District's day treatment program is regarded as a model program. Other districts refer their students to the program, and send observers to learn how to develop their own programs. The program is a bridge between public school and private placement that many other districts don't have. When students go beyond what the program can do safely and successfully, they can no longer be served in the public school and the next step is private day treatment. The District's program is an educational program with clinical support; the next step is a more intensive mental health services program in tandem with academic instruction.

The District usually places students needing private day treatment at Sweetser, and students have gone there, stabilized, and then worked their way back into the District's schools. He thinks Sweetser is superior to Spurwink, and that there are no other comparable alternatives. The Student is comparable to other students referred to Sweetser, and would fit in with the student population there.

35. During an interview conducted by the Complaint Investigator with Gayle Knee, Ms. Knee stated the following: She is a licensed Clinical Social Worker in private practice. She became involved in the Student's care in the fall of 2008, working with him around the issue of his abuse. She became somewhat familiar with the Student's program at Warren Community School, particularly the point system. She spoke with Ms. Yates about this, saying it was a shame-based system and was not a good choice for children who had suffered abuse. She had planned to meet with Ms. Yates later and talk more about this and about alternative behavior management methods. Then she went to the IEP team meeting of September 29, 2008. She made these same observations about the point system at the meeting, stating that she was willing to work with the District in designing a more appropriate behavior management system for the Student. It was clear to her that the District had decided they didn't want the Student in their school. There seemed to be animosity between the team members and the Parent. It was obvious that the District wanted the Student to go to Sweetser and was not willing to consider any other options, such as her suggestion of an alternative education program at Nobleboro. She disagrees with the description of her comments in the District's Written Notice of that meeting. She did not say that public school, or the day treatment program, was not an appropriate placement for the Student. She said the shame-based point system was not appropriate for the student; if the District would modify their behavior management system, it could work for the Student. She also did not say that the Sweetser program was the program the Student needs.

She does not believe that the Student is a safety risk in public school. He can have fairly stubborn behaviors, but they are not outrageous. He does a lot of verbal posturing. There are children being served in public schools who do far worse things. Some of her clients have thrown desks across the room, but they haven't been thrown out of school. The Student can definitely be helped to de-escalate with the right treatment. Home schooling is working well for the Student, but he needs to return to a school setting.

36. During an interview conducted by the Complaint Investigator with Erek Sherin, Ph.D., Dr. Sherin stated the following: He is a psychologist who provided psychotherapy to the Student during the period from March 2008 through August 2008 for a total of approximately 12 sessions. During this time, he also spoke on occasion to District staff about the Student, and conducted a risk assessment of the Student at their request. He was somewhat aware of the Student's school program, but not the specifics of the program.

His operative diagnosis for the Student was major depression, recurrent at moderate levels, although he came to suspect more serious conditions. Shortly after he began working with the Student, the Student was involved in the March 21, 2008 incident, leading to the administration of the risk assessment. After that it seemed like there was one crisis after another. Most of his work with the Student was managing the elements involved in the Student being in crisis. For this reason, he never got to the point where he developed a solid patient-therapist relationship.

He has done a great many risk assessments for the District and the surrounding school districts. The Student is the only child that ever refused to comply with a risk assessment.

Other children have cooperated only grudgingly, but they still did the work. The first time he attempted to do the risk assessment with the Student, the Student asked that the Parent be present with him. He told the Student that it needed to be done with the Student alone, and the Student refused to do it. The second time the Student was unable to talk about the experience. He was surprised because the assessment is not deeply invasive. It took two weeks before the Student could talk about the incident at all, and then he did so haltingly. The Student wasn't hostile to him; the incident was just very disturbing to the Student and he was very uncomfortable talking about it.

With regard to that incident, it sounds like there was triggering taking place on multiple levels. The Student got triggered, and Mr. Kelley got triggered, perhaps something to do with the Student's reaction to being restrained. He has great regard and respect for Mr. Kelley, and has successfully collaborated with him around many very challenging children. He thinks the Student was testing the control process in the school. It's unfortunate that the more calming intervention by vice-principal Olson couldn't have happened earlier.

After the risk assessment, the Student resumed therapy. The Parent continued to be present at each session, although he would have preferred that she hadn't. He began to appreciate a much deeper level of disturbance than what he saw initially. The Student began to be more hostile to the Parent, and this surprised the Parent. Then, during one session, the Parent said something to the Student that triggered him. The Student became very agitated and then really lost control. He has never had anyone in his office lose control to the extent that the Student did that day. He saw very disturbed behavior, and although the student wasn't hitting anyone, he was quite violent. He was ready to jump out the door or to hit the Parent. It was clear the Student was struggling with powerful forces, and it took a long time for him to calm the student down. The incident in his office concerned him because it demonstrated how easily the Student could be triggered. The Student definitely needs ongoing, long-term psychotherapeutic treatment to deal with his traumatic abuse history.

He was concerned about how to get the Student back into school and be able to thrive. It felt like the atmosphere in the school was troubled and maybe even poisoned. The school was concerned with his unpredictability and volatility. The tools they were using weren't working or were making it worse. The Student was reporting remarks made by staff that seemed provocative, like they were testing the Student unnecessarily. He believes it's probably not healthy for the Student to be in the District's school. This doesn't mean that the Student can't be in any public school environment. Sometimes a school setting can become contaminated, but this doesn't necessarily mean the child requires private day treatment. He has worked with very disturbed children who were in public school settings. The right school with the right people might be able to work with the Student. This doesn't mean that the Student won't be triggered, but the school might work with the Student differently. We won't know until we try.

He doesn't remember the point system coming up in therapy as a significant factor. He believes there is nothing inherently wrong with that kind of behavior management tool. It works to the extent it works; the student has to "buy in" to the system. It's only as good as the way it's administered to the individual child with his individual needs.

He is not surprised that there was a recent diagnosis of mood dysregulation. The Student is a very troubled and unstable young man, very at risk. What someone wants to call it is less important.

37. During an interview conducted by the Complaint Investigator with Jessica Yates, Ms. Yates stated the following: She is a teacher in the day treatment program at xxxx xxxxSchool. She was an educational technician for 3 years, and this is her second year as a teacher. The Student was in her class at the beginning of the current school year. He was in a regular education classroom with support for math, science and “specials,” and had language arts and social studies in the day treatment classroom. The Student started out doing really well. He was quite proud and excited about the points he was earning. She tried to expand on this success and encouraged him whenever he responded appropriately. The Student soon experienced more difficulty functioning in the classroom. He made inappropriate comments and engaged in attention-seeking behaviors. When he would get his peers’ attention for this behavior, it would escalate the disruptive behaviors.

When the Student was behaving inappropriately, she would first try intervention with him in the classroom. If this was not effective, they would return to the day treatment classroom and try to help the Student regain control of his behavior. Sometimes this worked and sometimes it didn’t. If not, they could try calling the Parent. If the Student was not responding to directions, they would call an administrator, who would come to the classroom and give the Student a reminder. If the Student still wasn’t responding, the administrator would ask the Student to come to the office. From there, sometimes he was able to return to the classroom and sometimes he would go home. She could see that the Student was trying really hard to hold himself together, but that he couldn’t handle it. Sometimes he would start crying, sometimes he would mumble. It was clear he was very distressed and having trouble dealing with what was going on internally.

She had a phone conversation with Ms. Knee shortly before the September 29, 2008 IEP team meeting. At that point, Ms. Knee had only met with the Student once or twice. Ms. Knee said that academics were the least of the Student’s concerns, and that he needed to go to a specialized school to work on his post-traumatic stress disorder issues. Ms. Knee mentioned such a school in South Carolina, and said that the Parent was resistant to sending the Student there. Ms. Knee didn’t see how the District’s program was going to meet his needs, and referred to the point sheet as part of a shame-based system. To her observation, the Student sometimes pulled out his point sheet and used it to defend his behaviors, but when he was really upset it had nothing to do with the point system – it came from his internal struggle.

She agrees that the Student shouldn’t remain at the school. He wasn’t making academic progress, and probably needs to be working on things other than his academics. His behavior was deteriorating. He engaged in disturbing behavior, like wrapping himself in paper towels in the bathroom. His last day at school, he refused the direction of the principal; this is something other students don’t do. He pushed past her to get to the phone, and pushed her hands away when she tried to remove his laptop. He did these things willfully, and not

because he couldn't control himself. These are not the behaviors of the other students in the program. She ultimately felt unsafe with the Student in the classroom.

38. During an interview conducted by the Complaint Investigator with Tamara Palka, M.D., Dr. Palka stated the following: She is a second year fellow in psychiatry at Spring Harbor Hospital. She rotated through the unit that the Student was in during the period November 11 – 26, 2008. During this time the Student was having anxiety symptoms, mostly around past issues with his father. He was able to do the interviews with her, and had no problems with his concentration. The Student was worried about school, and upset that the District was seeking to place him outside of the District. School was important to the Student. He talked about the incident with the computer, and thought that the punishment of "expulsion" was too harsh for having batted away the teacher's hands. The Student was unhappy about having to stay home for his schooling, and was sad that he didn't get to see his friends anymore. During the time she saw him at the hospital, he was not a danger to himself or physically violent towards other patients in the unit. He acted the part of the "class clown" in the group. She did hear about other patients he had trouble with after she left the unit.

39. During an interview conducted by the Complaint Investigator with Jean Robbins, Ms. Robbins stated the following: She is a licensed clinical social worker at Spring Harbor Hospital. The Student was admitted on November 11, 2008 after he had threatened to shoot the Parent with a toy bow and arrow and said he was having suicidal thoughts. During his hospitalization (through December 9, 2008), she worked with the Student on coordinating his discharge planning and held family meetings with the Parent. The Student struggled with anxiety, a lot of it around fears that his father would come back and hurt him and the Parent. The Student also experienced nightmares from his past abuse. He needed to know that there were adults around him. He was tearful at times, sometimes going to the "quiet room" to cry. He was never assaultive with the staff or his peers; he mainly got angry at himself. He was socially engaged with the other children in the unit. The Parent had applied to have the Student admitted to Becket House, a residential treatment facility, because the Student was fearful in his home. The Department of Health and Human Services didn't approve the placement. On the Student's discharge, she set him up with an ACT team (a psychologist, social worker and case manager) through Sweetser, the highest level of care available to him.

The Student didn't talk about school issues while in the hospital, although the Parent did. She believes that if the Student had a program structured so that he felt safe he could get through either public school or private day treatment. She is familiar with the Sweetser program, and she thinks that with his levels of anxiety, the Student would do better at Sweetser than in the public school. She is concerned that the Student decompensates so quickly when he becomes fearful. She thinks he would also do better with a smaller class size and a teacher always available to redirect him.

40. During an interview conducted by the Complaint Investigator with Gretchen Johnson, Ms. Johnson stated the following: She is a teacher in the day treatment program at Warren Community School, in grades xx and xx. The Student was in her class for those two grades. When he first came, he was delightful and charming, and she felt that she made a nice connection with him. The Student was willing to go to his regular education classroom, but

was also comfortable in day treatment. After about 2 months, the Student started not following directions, especially around transition. He would withdraw into himself, and then come out later ready to follow directions. The Student did well in regular education math class as long as the aide was present; when she was not there, he would withdraw, tune out what was going on around him and doodle. After about 4 months, she noticed he was acting fidgety, almost like a marionette. He would use a lot of arm movement, looking like he was trying to keep from striking out. He would move around the classroom while bouncing up on his toes, literally dancing around the classroom, and seemed to build up energy while he did it. At the same time, his speech would be faster and more animated, and he would run thoughts together. Eventually, the Student was able to say this behavior was something he did when his thoughts were disturbing. The Student's avoidance of work began to increase, as did his need to control situations.

She had hopes that she would see improvement in xx grade, as the room and his classmates, some of whom seemed to be friends with him, would now be familiar to the Student. The Student too seemed excited about xx grade. It didn't last long. His need to control, avoidance of work and argumentative response to directions all increased. Even in day treatment, when he had help, he wanted to argue about simple directions. He became more belligerent with staff, and seemed more high-strung in regards to his body language and movement. As before, he would withdraw into himself, but now when he did let his feelings out he had escalated to a high level of inner turmoil. He was using his voice and his language to demonstrate how he felt and he was disrespectful. He didn't seem to care what he said or how he said it. She felt she needed to watch him really closely, and he needed support all through the day, even in "specials." His aide had to be right next to him in regular education classes, and the attention of the staff was on the Student much more than on the other students in day treatment. His behaviors were much more pronounced than those of other students. In the day treatment classroom, he alienated the other students, telling them "You're a retard" and "I don't need to be in this class." He made it very obvious he didn't like the other students.

With regards to the point system, the point sheets are specific to each student, and are a good record of the behavior the teachers were seeing during the day. Students don't take the sheet with them from class to class; they review it at the end of the morning and before they leave for the day. The teacher gives each student 1, 0.5 or 0 points for each class. If a student was getting 0.5 or 0 points, the teacher would talk with him/her at the time about why they were getting those scores and what they could do to still get a better score. On the board at the back of her room there are cards labeled "Level 1," "Level 2," and "Level 3." The students' names go on the appropriate card at the end of the day based on their point totals, and this tells them what privileges they have the next day. This is just a small part of the board; it is mostly filled with positive messages. The students are given lots of opportunities to turn things around and pull up their scores. Level 2 is not hard to achieve.

The Student didn't like the point sheet, and felt it made him stick out. He tended to be more vocal than the other students when she reviewed his point sheet at the end of the day. He might wave it around and say: "I don't need this," or "I had all 1s." She also often saw the Student's disappointment with his points and level. He found it difficult to accept

responsibility for his score: the descriptions of his behavior were inaccurate; it was someone else's fault; "Everyone is out to get me."

She agreed with the determination that the Student did not belong in a public school. She thought he needed a more structured environment, and one that was focused more on helping him deal with his internal issues. By the end of his xx grade year, the Student was not willing to work with the staff, and was very vocal about his dislike for doing schoolwork. He was defiant with even simple directions, getting right in her face and stating demands. He didn't respect people's personal space. He pushed things off the desk and broke some things. She felt the Student wasn't safe and staff wasn't safe with the Student in the school. She felt almost useless, because the Student obviously had a lot of private and personal issues that were guiding his day, and she didn't know how to reach him without opening them up.

41. During an interview conducted by the Complaint Investigator with Peggy Collins, Ms. Collins stated the following: She is a xx grade teacher at Warren Community School, and had the Student for everything but math. The Student worked well with the other students in her class. The Student had support from Ms. Herrick in her class, and he definitely needed to have an aide there. With Ms. Herrick present, the Student was someone with whom she could work. She heard from the music teacher that when the Student was in that class without an aide his behavior was horrible. She could see that the Student would have liked to be the "class clown," but Ms. Herrick wouldn't allow him to do that. Since she didn't have to be the Student's disciplinarian, they got along well. Ms. Herrick sat at her table, because the Student said he wanted to be a regular kid and didn't want Ms. Herrick hovering. Sometimes he came to Ms. Herrick for help with his work. The Student needed help with academics and didn't like to work at home. She didn't see him behaving badly towards Ms. Herrick, and the Student wasn't rude to her either. It seemed like the Student wanted to have a good point sheet go home every day. The Student talked about some of the things his father did to him, and it was clear that he had a lot of anger towards his father. He was always more trouble in class after he came back from a weekend visit with his father.

42. During an interview conducted by the Complaint Investigator with Benjamin Vail, Mr. Vail stated the following: He is the principal for xxxx xxxx School, and has been a school principal for 6 years. In August 2008, the IEP team decided to allow the Student to attend the day treatment program at xxxx xxxx School. The Student started the year off well. His first direct involvement with the Student was with regard to an incident involving the Student waving an open safety pin at other students. The Student was not argumentative, although he did try to minimize the importance of the safety concern. He seemed in control of himself. The Student's behavior didn't seem malicious, and no suspension was imposed. The next incident involved the Student's laptop computer. He was called to the classroom by Ms. Yates because the Student was defiant and refusing direction. When he got to the classroom, the Student obeyed his direction to close the laptop, but wasn't really responsive. He asked the Student to come with him to the office, and the Student refused. He asked again, and said if the Student was refusing, he would have to have a police officer come to the school. The Student then got up and went to the office with him. The Student seemed to be in control of himself and knew what he was doing. He acted as though he was trying to control his environment and let the adults know he was in charge. In the office, he told the Student there

was one simple safety rule: students have to follow directions. He told the Student he would have to call the Parent and have her take the Student home until the IEP team could meet again. The Student burst into tears, and asked if he himself could make the call to the Parent. Mr. Vail said that he would make the call, but would allow the Student to talk to her. The Student picked up the receiver anyway. He spoke to the Student and the Student replaced the receiver. When he got the Parent on the phone, the Student abruptly stopped crying and spoke to the Parent in a normal voice. When the Parent came to get the Student he told them both that the school would welcome the Student back, but not these behaviors. The Parent was supportive. The Student tried crying again, but when he didn't get the response from the Parent he was seeking, the Student stopped again. He told the Parent that the Student was being extremely manipulative.

He has had students from time to time who didn't follow directions. The Student was unusual in being so in control of himself and so manipulative. Other children may be having a bad day and you can usually see they're having trouble holding it together. They are agitated when they're being defiant. The Student didn't seem upset. He would welcome the Student back if the Student could return to the behavior he exhibited at the beginning of the year.

43. During an interview conducted by the Complaint Investigator with Ann Kirkpatrick, Ms. Kirkpatrick stated the following: She has been the principal for Warren Community School for the last 7 years. The Student entered her school beginning in xx grade. During the years he attended school there, the Student had stretches of good times, and then periods of time when he would be unwilling to follow even simple directions. This behavior could escalate quite quickly, sometimes resulting in her having to call the Parent. Towards the end, even the Parent was unable to help turn him around. He finished the xx grade out of school because he was unable to follow the rules of both the regular and day treatment classrooms. By that time, the Student had exhausted all the school's resources. He had overstepped the bounds of what the District could do for him in a public school setting.

When the Student was younger, she was able to deescalate him and get him back into class; as he got older, he was more difficult to get back on track. The Student was very unpredictable, and she was concerned for his safety. When he was unable to follow directions, he did whatever he wanted to. He would leave class and not be where he was supposed to be. He made several attempts to leave the building. During the incident of March 21, 2008, she observed the Student in the room with Mr. Kelley. The Student would charge at Mr. Kelley, and Mr. Kelley would put his hands up in front of his face to protect himself. The Student would run into Mr. Kelley's hands and then fall back. Mr. Kelley didn't push or move, and he remained expressionless. The Student seemed to be treating it as a game, but he was also revving up. After the Student's hospitalization, the Parent and Ms. Huber wanted the Student to return to school full-time. The team compromised and allowed him to return for a full morning. She thinks that was a mistake, and that a full morning was too much for the Student. A lot is asked of a student in xx grade in terms of instruction and expectations, and for the Student to self-regulate for that amount of time was difficult. It was a great relief to the Student when Mr. Wilson would pick him up for tutoring.

She never heard the point system described as a problem or as degrading for the Student until the August 2008 IEP team meeting. The District initially wanted the Student in private day treatment, but the Parent claimed the Student was doing better and didn't even need to be in day treatment. The District agreed to allow him to return to school in day treatment, but then the Parent said she didn't want him to have the point system. The Parent wanted to pick and choose the parts of the program she would agree to. Every child in the day treatment program is subject to the point system, and it is individualized for each student. She has never seen a child for whom the point system was unsuccessful. Children are very proud of their accomplishments, and when they lose points are able to verbalize the reasons why. She thought it was one of the most important pieces of the program for the Student.

She is familiar with other students from the District who had been referred to Sweetser, and the Student fits comfortably within that group.

44. During an interview conducted by the Complaint Investigator with Josiah Wilson, Mr. Wilson stated the following: He is a tutor for the District, and started working with the Student in May 2008 when he was suspended from school. The Student was a good kid, and usually did his work. He was fun-loving, and liked to discuss baseball. He was not aggressive or defiant. After the Student returned to school, he would pick the Student up at 12:00 and work with him in the afternoon. Once the Student went back to school, things went downhill, and the Student wasn't able to do his work as well as before. The Student seemed to have a lot on his mind about what had happened in the school in the morning. He's not sure the Student wanted to be in school; he thinks the Student preferred to be at home. The Student had days when he said he was going to kill himself, he scraped his arms and got upset with himself. The Student shared some of his abuse history with him, and he felt that the Student had more issues going on than most students in day treatment. The last day he worked with the Student was on June 13, 2008. He doesn't know why the Student became upset that day, but he felt the Student was in a really bad place. He doesn't remember the incident with an empty pop bottle described by the Parent. The Student took off, climbed a stack of boxes and threatened to kill himself. He took the Student to the high school where he met with Dr. McCabe. He would have been willing to work with the Student again. He did not feel unsafe with the Student; his only concern was that the Student might have been too attached to him.

45. During an interview conducted by the Complaint Investigator with Michelle Herrick, Ms. Herrick stated the following: She has been an educational technician at Warren Community School for the last 3 years. Last year she was assigned to work with the xx grade day treatment group, including the Student. The Student always had an aide in the class with him, and usually it was she. The year started out very well. The Student was cooperative and usually followed directions. She thought she had good rapport with the Student. He would seek her out for help with work, or if he needed to leave the classroom. Usually she would allow him to leave, and would accompany him to make sure he was safe. If the Student said he wanted to walk on his own, she would trail behind. Sometimes she could see that he was getting worked up and needed to leave the room, and she would suggest that they go out. The problems started when she had to say no to him, as when he had just come back from being out of the class and asked to leave again. She might say that the class would be over in 10

minutes so he should just wait. Then he would become belligerent and say that he had a right to leave, and would leave whenever he wanted to.

Towards the end of the year, the Student was questioning authority, hers and that of other staff, most of the time. The Student would get into her personal space and become argumentative if he didn't like the answers he was getting. The Student would stand over her while she sat and try to intimidate her. She could see that he was trying to control himself, but he would escalate if he didn't get what he wanted. He seemed to be losing his control, and she needed to show him she wouldn't let him be in charge. By that time, however, it was usually too late for him to calm down. He would start pacing the room. She would tell him: "You were given a direction. You need to show me you can follow that direction." He would say: "You can't make me." She felt the Student was going to explode, and she felt unsafe many times with him.

She believes the staff made many adjustments to the Student's program to try and make it work. She personally used every trick she knew. The Student always blamed others, and never took responsibility for his behavior. He needed someone to be right there with him, but then he wouldn't accept that. Towards the end, she felt the program wasn't working for him.

Regarding the point system, the Student was happy when he was on Level 3 and upset when he was on Level 1, like other students. He didn't like it when he ended the day on a bad note and the next day had to face the consequences; he wanted a fresh start. She would often give the Student 0.5 or 0 because he disrespected her or one of the teachers. This would cause him distress, but sometimes he would say "Give me all 0s. I don't care." She thinks the point system helped motivate him and helped him change his behavior. Towards the end of the year, the Student would talk about how the point system made him feel bad. He said he didn't like that the other students could see he was on a low level. She thinks, however, that this was just manipulative behavior on the Student's part.

46. During an interview conducted by the Complaint Investigator with Karen Etheridge, Ms. Etheridge stated the following: She is the director of student services for the District, and is in her third year in that position. Generally speaking, the Student's behaviors were very inconsistent. It was hard to know from one day to the next what the staff would get from him. Towards the end of xx grade, the dominant behaviors were total defiance and non-compliance. His attitude was: "I'm not going to do it. No one can make me do it." He was also displaying unsafe behaviors, and her staff felt unsafe. She was also concerned about the Student's threats of suicide. The Student needed more intervention than the District could provide. Day treatment at the District is an academic program with a therapeutic component; the Student needs a therapeutic program with an academic component. The day treatment program does not want to restrain children; that is not the program's purpose.

The day treatment program is tailored to each student's individual needs. Each student has his/her own behavioral goals, and these are reviewed at least twice a year. Each student also has a Positive Behavior Support Plan that is tailored to his/her needs. There are also differences with regard to the counseling services a student receives: whether with a social worker or a psychologist; whether individual or group. The program additionally includes a

life skills component. The District tried many times to meet the Student's needs, and made many modifications to his program by targeting his particular behaviors. He was successful for years before the xx grade.

The point system and student Levels were not broadcast around the school. They were posted on a board at the back of the room as a reference so the teacher would know where the students were supposed to be. The system also helped the students to self-regulate. The behaviors on which the students were being rated on the point sheets were based on each individual student's behavioral goals. Based on reports from the staff, she believes the point system was motivating to the Student. It was the Parent that had a problem with it. The District has dealt with many trauma victims successfully.

In making the determination to refer the Student to private day treatment, the District considered many alternatives. The District felt very strongly that public school was not going to work. All but two of the alternatives, Sweetser and Spurwink, were unsuitable. If the Student had been of high school age, there would have been several additional options to consider. The District has had some negative experiences with Spurwink: they gave up on some students after many years; they have a high staff turnover rate; and they hired some people that were let go by the District. The District has had good experiences with Sweetser, and has been able to reintegrate students after they were placed there. She believes the Student would be a good fit at Sweetser. Although the other students there also have safety issues, they have them to a greater degree than the Student, and probably require more use of restraint than the Student would require. She believes the Student would be motivated to improve his behavior there to avoid being like the other students. She doesn't look at Sweetser as a long-term placement. She expects that the Student will get the therapeutic and emotional help he needs and then reintegrate into the District.

At the October 2008 IEP team meeting, she did say that the District had already made its decision. She asked the Parent many times if she had any new information, and all she offered were the two new letters. One was from Ms. Knee, and it contradicted what Ms. Knee had said at the prior meeting. The other was from a nurse practitioner who had not tried to contact the school to enable the district to converse with her. The Parent provided a letter from Dr. Sanders after the meeting, and the District reviewed and considered it. The letter was not a completed evaluation (in fact, it didn't contain evaluative information) and was very vague.

When the Student's IEP team met on August 27, 2008, the Student already had an IEP in place. The purpose of the meeting was to look at placement and behavior. The Student's IEP was reviewed and found still appropriate, and no changes were made to it. When the team met on September 29, 2008 and October 6, 2008, no new IEP was developed because it was the District's determination that the Student would be placed at a private day treatment program. The expectation was that once that placement was made, the team would meet with staff at the private day treatment facility and work with them to develop the new IEP.

The District did not perform a functional behavioral assessment for the Student in May, 2008 because the team made a manifestation determination that the Student's behavior leading to

his suspension was not a manifestation of his disability, and therefore the District was not legally obligated to perform one. The nature of the District's day treatment program is that every day the staff is focusing on the Student's behavior and modifying the behavior plan. A functional behavioral assessment was therefore also unnecessary.

She feels that the District really tried to work with the Parent, and tried many things to help the Student. She feels, however, that the District can't help him due to all the external factors (his abuse and trauma). The District just wants the Student to get the help that he needs.

47. During an interview conducted by the Complaint Investigator with Michael Sorentino, Mr. Sorentino stated the following: He is the manager of the Maine's Best bottling plant. The Parent worked there as a secretary, and brought the Student to work several days during the summer of 2008. The Student put caps on bottles and did cleaning and yard maintenance. The Student was a good kid - enthusiastic and very helpful.

48. During an interview conducted by the Complaint Investigator with Lynn Atherns, Mr. Atherns stated the following: He works in the warehouse at the Maine's Best bottling plant. The Student worked there for 2 – 4 weeks during the summer of 2008. The Student was no problem; he listened to what you told him and did what he was told to do. He got along with everybody.

49. During an interview conducted by the Complaint Investigator with James Griffin, Mr. Griffin stated the following: He is commanding officer in the Sea Cadets program. The Student was involved in the program from late 2007 to early 2008. When the Student attended drills, he was very enthusiastic and did not present any problems. The Student was always involved and ready to learn.

50. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: The Student reacted the way he did on March 21, 2008 because of the way Mr. Kelley treated him, standing there with his arms folded and glowering. All he had to do was say, in a soothing voice, "[Student}, we have a problem. Let's go down the hall and talk about it." Once Mr. Kelley and Ms. Herrick grabbed him, his PTSD reaction was triggered. She was in the quiet room with the Student and Mr. Kelley. When she walked in, the Student was curled in a ball and was crying. After she came in, the Student went off again, running towards Mr. Kelley and threatening "I'm going to kill you!" Mr. Kelley repelled him by pushing outwards. Mr. Kelley was not soothing. The Student again curled in a ball and asked Mr. Kelley to turn off the lights because his head hurt (the Student had a history of migraine headaches). He asked twice saying "please." Only when she asked him did Mr. Kelley finally turn off the lights, and did it in an angry fashion.

On June 13, 2008, the incident started when Mr. Wilson threw an empty pop bottle into a trash can to get the Student's attention. This again set off a PTSD response. Mr. Wilson told her about the bottle later that day. When she went to the high school, the police officer was in the office with the Student. She saw the Student assault the officer, and try to grab his gun. The Student was also very inappropriate with her, and she had never seen that before. The Student was out of control.

The Student had a really good summer. No one had any issues with his behavior. When the Student returned to school in September, the staff was always looking over his shoulder, and deducting points for every little thing. When this happened his anxiety escalated, he got defensive and then defiant. She doesn't understand why the District wasn't willing to modify its use of the point system to meet the Student's needs. When the District wouldn't discontinue it, she asked whether they could just not put his name on the board and send his point sheet home in an envelope so she could look at it with him at home. They wouldn't make those changes.

When she went to look at Sweetser, the place looked grim, and smelled of urine and sweat. The students were autistic and retarded, not like the Student. The classroom doors were locked. This would create anxiety in the Student because of his past abuse, which included his father locking him in the basement.

The Student went back into the hospital in November 2008, and was there for 4 weeks. His breakdown was the result of the EMDR therapy he was engaged in. During that time, she was trying to have him admitted to Becket House, a residential treatment facility. There he could be with students that had the same issues as the Student, and who weren't "mentally retarded." She couldn't get approval for the placement.

Right now, she is still awaiting the results of the trial on the new medication. The Student is taking Risperidal and Lamictal. He is very depressed because he can't be with his peers or do sports. Instead he is stuck in the house all day with her. He needs to be with his peers, in an appropriate setting.

51. During an interview conducted by the Complaint Investigator with the Student, the Student stated the following: He believes the District shouldn't have put his name and Level status on the board in the classroom. It really bothered him when other children could see that he had been a "bad boy." Also, Mr. Kelley shouldn't have come after him the way that he did, although he shouldn't have come at Mr. Kelley, either. That was bad, but it was because Mr. Kelley was looking like his father.

He didn't like Sweetser when he went to visit there. It smelled bad and was dirty. There were children there that were talking about him. It didn't feel like a place he belonged. When he went to visit Spurwink, it was clean and people were nice. He felt like he could trust them. Also, he knows someone who is a student there (his step-father's nephew). He would like to go to Spurwink for a year, and then go back to xxxx xxxx School. He thinks that would give the staff time to "cool off." He misses his friends at xxxx.

He feels like his new medications have made him feel a little better. He doesn't "freak out" as much. Before, when he got really mad he would stay mad for two hours or so. Now, he can get over it much faster.

VIII. Conclusions

Allegation #1: Failure to adequately consider the concerns of the parent in the IEP decision-making process with regard to both the August 27, 2008, October 6, 2008 and February 6, 2009 IEP team meetings in violation of MUSER §§VI.2(I) and IX.3.C(1)(b)

NO VIOLATION FOUND

The Written Notices that resulted from each of the above IEP team meetings, as well as the audio tape of the most recent meeting, abundantly document that the Parent was given full opportunity to express her position and opinions, and that the District staff gave consideration to those positions and opinions. It is likewise clear that by the October 6 meeting, the staff had reached a point where they no longer felt safe with the Student and they no longer believed the Student was safe in their program, and thus they didn't agree with the Parent's request that the Student continue to be maintained in a public school setting. Likewise, the staff saw the issue of the point system as relatively minor, and not what was driving the Student's behavior problems. Failure to agree does not in and of itself constitute failure to adequately consider.

Allegation #2: Failure to make a joint, informed decision at the October 6, 2008 and February 6, 2009 IEP team meetings by predetermining the outcome in violation of MUSER §VI.2(I)

NO VIOLATION FOUND

The purpose of the IEP team meeting of October 6, 2008 was to review with the Parent her reaction to her visit to Sweetser, and review the District's determination from the September 29 meeting. As the Written Notice for the October 6 meeting makes clear, however, the team nevertheless discussed several new suggested alternative placements. The District had thoughtfully determined that the Student required therapeutic intervention beyond what would be available in any public school setting, and therefore rejected suggestions of this kind. There were three other private day treatment programs suggested: one was in Utah, and the District felt that residential treatment was more restrictive than was appropriate for the Student; another was in Saco, and the team agreed this was too far a commute for the Student; the third was Spurwink, and the District encouraged the Parent to visit that facility, as did Mr. Crocker. The District did provide its honest assessment that there were negatives associated with the Spurwink program, but stated its willingness to place the Student there if the Parent wished. The Parent chose not to look at that option. Thus, these alternatives were not dismissed out of hand, but with justification.

The purpose of the February 6, 2009 meeting was primarily to update the Student's IEP. The Parent did present new information at the meeting in the form of the letters from Ms. Knee and Ms. Oulette. It is unfortunate that the letters were not provided in advance of the meeting so that the District would have had the opportunity to speak with those individuals. With regard to Ms. Knee, she confirms the District's determination that the Student couldn't be successful in its program, albeit for very different reasons, and endorses an "alternative type classroom," presumably in a public school. She also states that she was unaware of the

Student being overtly threatening or assaultive to anyone. She apparently was unfamiliar with the incidents of March 21 and June 13, 2008. The District also felt that Ms. Knee's recommendation in the letter contradicted her statements at the prior meeting, but that assertion was contradicted by Ms. Knee. Regardless, as noted above, the District had made a reasoned determination that the Student needed more therapeutic intervention than was available in a public school setting and Ms. Knee's letter did not dictate a different result.

Ms. Oulette's letter was dismissed as not sufficiently evaluative, and authored by only a nurse practitioner. She states that she has been managing the Student's medication, that she has seen a significant improvement in his symptoms, and that he deserves to be re-instated in his school. Although the report as to the Student's symptoms should have been of some significance to the District, the District was justified in considering that Ms. Oulette was not well qualified to state an opinion as to the appropriate educational setting for the Student. Furthermore, the next day the District received a report from Dr. Sanders that said that the Student's previous medication was incorrect and that he should not attend school until his new medication is given a chance to work.

In short, while the District did not change its determination at the two meetings, it did consider new information from the Parent and others to an acceptable degree.

Allegation #3: Failure to adequately consider evaluations provided by the student's parent in violation of MUSER §V.3.A(1)(a)

NO VIOLATION FOUND

The evaluations of Ms. Knee and Ms. Oulette and the District's consideration of them are discussed in connection with Allegation #2 above. With regard to Dr. Sanders, she provided only an initial recommendation based upon an initial evaluation. Although Dr. Sanders discussed the potential negative effects on the Student of exposure to highly disturbed children, her recommendation was that the Student continue to be home schooled during the period that he was stabilizing on his new medication. This recommendation, being of limited duration, did not trigger an obligation on the District's part to consider a revision to the Student's IEP. As it turned out, Dr. Sanders, in her full evaluation report, continued to be unable to ascertain whether or not the Student would be able to function in a normal classroom setting. Furthermore, as a home schooled student (beginning at the latest on February 8, 2009), the Student lost his entitlement to receive the special education services that he received when enrolled in the District. MUSER §IV.4.H(3).

Allegation #4: Failure to develop an IEP after the IEP Team meetings of August 27, 2008, October 6, 2008 and February 6, 2009 in violation of MUSER §VI.2.J(4)

Allegation #5: Failure to provide the student's parent with a copy of the student's IEP within 21 school days of the August 27, 2008 and October 6, 2008 IEP team meetings in violation of MUSER §VI.2.H(6)

NO VIOLATION FOUND

The determination of the District on August 27, 2008 was to continue with the Student's IEP unchanged, and then to reconvene in another month. This decision was appropriately described in the Written Notice. On the other hand, the District's determination on October 6, 2008 was to change the Student's educational environment, and thus necessitated development of a new IEP. The District anticipated the Student would begin receiving instruction at a private day treatment program, and chose to wait until they could meet with staff from that program to develop the new IEP. One month later, with the Student not attending school, the Parent submitted the Notice of Intent to Homeschool. This relieved the District of the obligation to develop the IEP at that time. While a delay of one month without developing a new IEP is substantial, it does not rise to the level of a violation under the circumstances. After the annual IEP review on February 6, 2009, the District proceeded to develop an IEP, with appropriate gaps to be filled in once the Student accessed the education being offered.

As no IEP was developed at the Meetings of August 27 and October 6, there was no duty to provide the Parent with a copy.

[Discussion of Allegation #6 follows Allegation #9]

Allegation #7: Failure to develop a behavior intervention plan for the student, using positive behavioral interventions and supports to address the child's behavior issues, in violation of MUSER §IX.3.C(2)(a)

NO VIOLATION FOUND

MUSER §IX.3.C(2)(a) provides that an IEP team for a child whose behavior interferes with his learning must "consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." The Student was such a child. MUSER §II.21 defines "positive reinforcement interventions and supports" as "the use of positive techniques designed to assist a child to acquire educationally and socially appropriate behaviors and to reduce patterns of dangerous, destructive, disruptive or defiant behaviors." The definition further notes that these techniques may be based upon results of a functional behavioral assessment.

The District developed a Positive Behavioral Intervention Plan (the "Plan") for the Student on January 22, 2007, which was referenced in the IEP dated February 14, 2008 (according to Mr. Kelley, it was not physically attached due to an oversight). The Plan included interventions such as: problem solving using the Ross Green model (using empathy and understanding to reach a compromise decision); reinforcing positive comments and ignoring negative feedback; giving the Student the opportunity to correct disrespectful comments and therefore stay in the classroom; and giving the Student 10 minutes away from the setting to calm down when he is being non-responsive to adult directions. In this way, the District complied with the regulatory requirement to consider the use of positive behavioral interventions and supports.

After the March 21 incident leading to the Student's being suspended, the IEP team met to make a manifestation determination, concluding that the behavior leading to the suspension

was not a manifestation of the Student's disability. Pursuant to MUSER §XVII.1.D(1)(b), the Student then became entitled to receive "as appropriate, a functional behavioral assessment and behavioral intervention services *and modifications* that are designed to address the behavior violation so that it does not recur" (emphasis added). After the incident, the IEP team met and agreed upon a new behavior management protocol when the Student failed to follow staff directions, involving brief and clear interventions and/or offers of problem solving by the staff, followed by the Student being sent to the principal's office. These modifications met the technical requirements of the regulation although, as discussed below, they were not informed by a functional behavioral assessment.

Allegation #8: Failure to conduct a Functional Behavioral Assessment of the student in violation of MUSER §§V.2.B(1)(b) and V.2.C(7)

VIOLATION FOUND

MUSER §§V.2.B(1)(b) and V.2.C(7) direct districts to use assessment tools and strategies to gather relevant functional information to assist in determining the content of the student's IEP, including information related to enabling the student to be involved in the general education curriculum, and that directly assists in determining the educational needs of the student. The regulations do not identify which assessments are to be used for a given student; the nature of the student's disability dictates the type of assessment tools and strategies to be utilized. One of the available assessment tools is the functional behavioral assessment. MUSER §II.12 defines a functional behavioral assessment as a school-based process to determine why a child engages in challenging behaviors and how the behaviors relates to the child's environment. This includes direct and indirect assessments and data analysis designed to: identify the problem behavior in concrete terms; identify contextual factors that contribute to the behavior; and formulate a hypothesis regarding the general conditions under which a behavior usually occurs and the probable consequences that maintain the behavior. Obviously, this is an assessment of first resort when dealing with a student who exhibits challenging behaviors.

The District performed a functional behavioral assessment of the Student in January 2004. Presumably, this informed the development of the Positive Behavioral Intervention Plan discussed above. This assessment was not repeated or updated in a formal way since that time. A triennial reevaluation would not have been necessary if the IEP team met and agreed that it was unnecessary (MUSER §V.1.B(2)(b)). The Minutes of the IEP team meeting of 1/29/07, however, do not reflect that a reevaluation was discussed, although the Student's behavior was discussed and changes were made to his Behavior of Student goals.

It is true that the District did collect data regarding the Student's behavior on a daily basis through the point system and Behavior of Student Monitor Records and quarterly through the Individualized Treatment Plan. This provided a picture of how the Student was progressing regarding his behavioral goals, and the Plan appeared to be reasonably successful through the Student's xx grade. When, however, the Student's behavior began to unravel in xx grade, and particularly after the March 21, 2008 incident, the IEP team did not seem to consider that the Plan was no longer working for the Student. They did not deem it necessary to collect the kind of information that would have been brought out by a functional behavioral assessment,

specifically: What were the causes of the Student's recent disruptive or non-compliant behavior? What contextual factors were contributing to the behavior? Which interventions were no longer being successful, and which still produced positive results? Instead, the District described the Student's behavior as willful, and seemed to conclude therefore that nothing they did differently would lead to any improvement.

As the March 21 incident led to the Student's being suspended, the IEP team met to make a manifestation determination, concluding that the behavior leading to the suspension was not a manifestation of the Student's disability. The District argues that this therefore relieved them of the obligation to perform a functional behavioral assessment under MUSER §XVII.1.F(2)(b). Even where a team determines that a student's behavior is not a manifestation of disability, however, MUSER §XVII.1.D(1)(b) provides that the student must still receive, "as appropriate," a functional behavioral assessment "designed to address the behavior violation so that it does not recur." Given how long ago the last assessment had been performed, and the deterioration of behavior that preceded the incident, such assessment was then appropriate.

Similarly, when the Student started xx grade and, after an initial period of success, began to regularly score in the bottom level on the point system and display increasing deterioration of his behavior (and since no formal assessment had been conducted in xx grade), the IEP team should have called for a functional behavioral assessment as a tool to understand and program for the change in the Student's behavior. It is possible, of course, that the assessment would not have illuminated a way to modify the Student's behavior plan so as to enable him to be successful, but it may have done so, and the regulations required the District to make the effort.

Allegation #9: Failure to provide instruction designed to meet the unique needs of the child in violation of MUSER §II.29

VIOLATION FOUND

There were certainly many components of the District's day treatment program that were individualized for the Student. The Behavior of Student reports and the Student's point sheets were both individualized with regard to the selection of target behaviors to be monitored, and were modified over time to continue to focus on the behaviors most in need of work at the time in question. Likewise, the Positive Behavioral Intervention Plan was developed for the Student individually. The violation of this regulatory requirement occurred once the District had reason to know that the larger framework, of which these items were components, was not enabling the Student to succeed, and the District nevertheless failed to perform the requisite analysis to understand why this was so.

While acknowledging that the point system was not, per se, the cause of the Student's problems, nevertheless, it was apparent that the almost constant reminders to the Student that he was disappointing his teachers, his mother and himself caused him significant distress. A system that would have found more opportunity to reward the Student might have been more successful. The intervention plan, too, was not working as structured. By performing a

functional behavioral assessment, the District may have uncovered the role the point system was playing in the deterioration of the Student's behavior, and suggested alternative interventions. Other strategies, such as offering the Student a "safe" person and safe place to go to when feeling stressed, could have been tried. The District's response to the Student's lack of success was, in part, that there was nothing wrong with the system, because it worked with all the other students (although at other times the District spoke of students who had been referred to Sweetser because they were unsuccessful in the District's schools). The District claimed to have tried everything but, in addition to declining to perform a functional behavioral assessment, the District also failed to access an offer of assistance from Ms. Knee in modifying the Student's behavior management plan, and rejected the suggestion of the Parent's advocate that the District utilize a behavioral consultant. This refusal to consider that the particular behavior management system employed by the District was not working for this particular student, and that other strategies might be tried, constituted a failure to address the Student's unique needs. It also influenced the District's refusal to consider placement in another public school setting. It may well be that the District's day treatment program is one of the finest of its kind, but that doesn't lead inevitably to the conclusion that if the Student couldn't be successful there he couldn't be successful in any public school program.

In fairness, it should be noted that the District (along with everyone else) was unaware until after the last IEP team meeting of Dr. Sanders' diagnosis that the Student suffered from mood dysregulation, with its unique set of symptoms and sensitivities. A more complete understanding of this condition and its implications for behavior management should produce a behavior plan with a greater chance for success.

Allegation #6: Failure to provide education in the least restrictive environment by directing placement at the Sweetser Program in Belfast in violation of MUSER §X.2.B
VIOLATION FOUND

The Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C.S. §1400, et seq., has mainstreaming criteria which require schools, "to the maximum extent appropriate," to educate disabled children "in the least restrictive environment with children who are not disabled." *Ciresoli v. M.S.A.D. #22*, 901 F. Supp. 378 (D. Me. 1995), quoting *Hampton School District v. Dobrowolski*, 976 F. 2d 48, 50 (1st Cir. 1992). As stated in MUSER §X.2.B, "removal of students with disabilities from the regular educational environment shall occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." MUSER §X.2.C presents a continuum of educational settings that must be provided by each district, ranging from least to most restrictive. MUSER §X.2.C(2)(d) describes a public day school for children with disabilities for all or a portion of the school day (greater than 50%). The next setting on the continuum, MUSER §X.2.C(2)(e), is a private day school for children with disabilities. The District, in its most recent IEP, was proposing to move the Student from the former, less restrictive setting, to the latter.

The District based its determination to place the Student in a private day treatment program upon the belief that if the Student couldn't be successful in its own public day treatment program, then the only viable alternative was to move to the next step in the continuum of

least restrictive services. This determination, however, was made without the benefit of the District having performed a functional behavioral assessment and availed itself of other available resources to inform the design of a program meeting the unique needs of the Student. Until those measures were taken, and a program tailored specifically to the needs of the Student was implemented, the District was not in a position to reach its determination that the Student required a more restrictive setting.

Dr. Sherin, Ms. Knee and Ms. Robbins all stated their belief that, with the right program in place, the Student could be successful in a public school. Dr. Sherin was aware of “very disturbed” children being served in public schools, and Ms. Knee was familiar with children who exhibited more destructive and challenging behaviors than the Student and who were able to remain in public school. This is not to minimize the severity of the Student’s disturbance, but Ms. Etheridge did admit that the other students at Sweetser presented greater safety issues and required more use of restraint than the Student. Without greater effort on the part of the District to address the Student’s unique set of needs and sensitivities, the District’s conclusion that a private program is the least restrictive appropriate environment for the Student cannot be sustained.

It must be noted again that the Student’s most recent evaluation, by Dr. Sanders, arrived at a new diagnosis for the Student which brings with it a particular set of concerns for behavior management. Just as importantly, Dr. Sanders was unable to provide her recommendation as to whether a public school setting for the Student was appropriate until after the Student had stabilized on his new medications. It is possible that a more definitive assessment in this regard from Dr. Sanders or another qualified professional might provide crucial additional support for the District’s determination.

IX. Corrective Action Plan

In crafting the following Corrective Action Plan, the DOE was mindful of the following present circumstances: The Student is currently being home-schooled, the most restrictive of all educational environments, with indications that this is worsening the Student’s mental condition; Dr. Sanders was unable without further evaluation of the Student to make a recommendation regarding the Student’s educational placement; the investigation elicited descriptions of a troubled atmosphere around the Student in the District as well as animosity between the Parent and District staff; and the Parent has indicated her willingness to have the Student attend Spurwink for the time being.

As a home schooled student, the Student is presently not entitled to receive the “special education and related services that [he] would receive if enrolled in a public school” (MUSER §IV.4.H(3)). This Corrective Action Plan is therefore premised upon the Parent presenting him to the District for enrollment. Upon such occurrence, the District shall proceed in the following fashion:

1. The District shall hold an IEP team meeting to develop an IEP and make a determination regarding an interim placement for the Student for the balance of the school year as well as the summer. Appropriate staff members from Spurwink should be invited to attend as well as those health and mental health practitioners with current knowledge of the Student's mental health condition. The interim placement will serve the goals of getting the Student back into school, giving the Student an opportunity to be successful in a different educational environment, and generating additional data to be considered in making the ultimate determination with regard to placement.
2. While the Student is attending the interim placement, the District shall contract with Dr. Sanders or a similarly qualified mental health practitioner to perform an updated evaluation, including observation of the Student in the interim placement, with a view towards enabling that practitioner to present a recommendation to the District regarding the Student's appropriate educational environment.
3. The DOE recognizes that the violations found herein flow in large part from the District's failure to perform a functional behavioral assessment of the Student. As the Student in the near future will be attending a new, interim placement, however, such assessment will initially be impractical. Should, however, the Student thereafter become involved in a serious incident at the interim placement, the District shall then perform a functional behavioral assessment of the Student. The IEP team shall afterwards meet to consider the results of that assessment and determine whether it dictates any modifications to the Student's behavioral intervention plan.
4. Sometime between July 15, 2009 and August 15, 2009, the District shall convene the Student's IEP team (including staff from the interim placement facility), and shall invite the mental health practitioner who performed the above updated evaluation to attend the meeting at the District's expense. The team shall proceed to develop an IEP and behavior intervention plan, and shall reconsider whether or not the appropriate placement for the Student for the 2009-2010 school year is in a public school program, whether in the District or in an another school district's program. If the team determines that placement will be outside the District, there will then take place a subsequent joint IEP team meeting between the District and the receiving school to finalize the Student's IEP.
5. The Student's IEP shall include provision for parent counseling and training as a related service, to help the Parent acquire skills that will allow her to support the implementation of the Student's IEP.

In addition, the District shall conduct in-service training on the subject of functional behavioral assessment. The training shall be conducted by an individual qualified in regard to that subject from outside the District, and shall be attended by the District's special education staff. Documentation of the in-service training shall include: the name and qualifications of the presenter; an agenda of the training; hand-outs for the training; names and titles of those who attended the training; and anonymous evaluations of the training. The District will submit this documentation to the Due Process Office and the Parent.

