

Complaint Investigation Report
Parent v. Augusta

September 9, 2009

Complaint #10.009C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Parent
Address
City, Zip

Respondent: Cornelia Brown, Superintendent
12 Gedney St..
Augusta, ME 04330

Special Services Director: Donna Madore

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on July 30, 2009. The Complaint Investigator was appointed on August 3, 2009 and issued a draft allegations report on August 6, 2009, later amended on August 10, 2009. The Complaint Investigator conducted a complaint investigation meeting on August 18, 2009. On August 21, 2009, the Complaint Investigator received three pages of documents from the Complainant, and received a 7-page memorandum and 158 pages of documents from the Augusta Public Schools (the "District"). Interviews were conducted with the following: Donna Madore, director of special education; Lynne Adams, assistant special education director; Linda Bailey, teacher; Kevin Dutil, educational technician; Krista Chase, school counselor; David Klippert, school counselor; and the Student's father.

III. Preliminary Statement

The Student is xx years old and is currently receiving special education under the eligibility criterion Other Health Impaired. This complaint was filed by (the "Parent"), the Student's

father, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to fully and adequately implement the Student's IEP with respect to communicating with the Student's parent in violation of MUSER §IX.3.B(3);
2. Failure to fully and adequately implement the Student's IEP with respect to the Student being permitted to leave the classroom in violation of MUSER §IX.3.B(3);
3. Failure to fully and adequately implement the Student's IEP with respect to school counseling services in violation of MUSER §IX.3.B(3);
4. Failure to provide extended school year services in violation of MUSER §X.2.A(7);
5. Failure to provide requested education records regarding the Student in violation of MUSER §XIV.3;
6. Failure to fully and adequately implement the Student's IEP with respect to enforcing the rules of the CBI classroom in violation of MUSER §IX.3.B(3).

V. Summary of Findings

1. The Student lives in Augusta with the Parent, and will be attending xx grade at Cony High School. She began receiving special education services under the category Other Health Impaired in xx grade.
2. In 2002, the Student underwent surgery to remove a pituitary tumor. In addition to a disruption of cognitive pathways (leading to behavioral and cognitive impairments) caused by the tumor and the surgery to remove it, the associated treatment for the tumor resulted in the Student developing diabetes insipidus.
3. The IEP in effect when the Student began the 2008-2009 school year, dated May 21, 2008, provided for the Student to receive specially designed instruction 400 minutes weekly in a special education classroom, with the rest of her school day spent in regular education classes. The IEP further contained supplementary aids, services, modifications and supports, including the following: "[The Student] may leave the room at any time if she needs to go to the bathroom or get a drink;" and "Access to special education or counseling staff if frustrated – she must inform the teacher by showing the teacher her pass."
4. As the Student was not consistently attending her regular education classes and was getting poor grades, her IEP team, at a meeting held on October 23, 2008, determined to amend the IEP to provide the Student with placement in the self-contained Cony Behavioral Intervention ("CBI") program for all but one class, instead. The Written Notice of the meeting also provided that the Parent would receive a copy of the Student's Grade Report on a weekly basis, and that communication between the school and the Parent would occur in a timely manner whenever the Student behaved inappropriately.

5. The rules of the CBI classroom included: “No personal displays of affection anywhere in the building;” and “Fighting is unacceptable at anytime.”

6. The Student’s IEP team met again on March 24, 2009 for the annual review of the Student’s IEP. As set forth in the Written Notice of that meeting, the team determined that the Student should remain in the CBI class, where she should continue to be permitted to use the bathroom or get drinks when needed, and to access various individuals in the school to help her de-escalate. The Written Notice further stated that continued communication with the Parent would occur in a timely manner. Additionally, the Written Notice stated that the Student “will continue to receive counseling 1-2 times per week for the remainder of the 2008-2009 school year.”

7. The IEP dated March 25, 2009, although it provided for “cooling off periods” and staff support as needed, and was accompanied by a Positive Behavioral Support Plan that included access by the Student to various staff for support, did not contain any provision for the Student to receive the weekly counseling services described in the Written Notice.

8. In response to numerous complaints from the Parent that the Student’s IEP was not being followed, the Student’s IEP team met on May 27, 2009. The Written Notice associated with that meeting, dated June 1, 2009, stated that the IEP team made the following determinations: that the Student had “consistent access to the Vice-Principal, to the school nurse, to the school counselor, to CBI staff and to a quiet area or walk with staff as needed or she asks, and that such access would continue;” that the Student “be allowed the use of the bathroom at any and all times and the ability to get drinks as needed;” that the Student would continue to receive counseling 1-2 times per week for the remainder of the school year; and that continued communication between the school and the Parent would be in writing.

9. The IEP sent to the Parent with the Written Notice of June 1, 2009 again did not contain any provision for the Student to receive weekly counseling services.

10. On May 26 and 28, 2009, the Parent verbally requested copies of each of the Student’s IEPs and documentation of his requests for meetings during the time the Student was attending Cony High School. The District sent copies of all IEPs, Advance Written Notices and Written Notices relating to the Student on May 28 and 29, 2009. When the Parent continued to insist he hadn’t received the Student’s special education paperwork, the District made additional copies of those documents and notified the Parent that he could pick them up at the school superintendent’s office. The Parent picked up the documents on June 25, 2009.

11. Throughout the school year, the Parent made numerous phone calls to multiple individuals in the District, including calls to the superintendent’s office. In many of those phone calls, the Parent sounded angry and was perceived as being verbally abusive. On April 16, 2009, Ms. Madore sent a letter to the Parent warning him that she had been advised by the Augusta Police Department to seek a Protection From Harrassment Order against him. Ms. Madore requested that in future all communications from the Parent be in writing. The Parent continued to make phone calls. On June 9, 2009, Dr. Brown sent a letter to the Parent telling him that it was unacceptable for him to call the superintendent’s office several times each day

and be verbally abusive with the staff. She requested that all future communications with her office be in writing.

12. On June 2, 2009, the Student was in the track area outside of the school building with some other students from the CBI class, supervised by two of the educational technicians assigned to the class. The Student claimed that one of the other students grabbed her by the back of her neck and pushed her head into the grass. The Parent reported the incident to the Augusta Police Department, and a police officer conducted an investigation. According to the incident report filed by the police officer, the other student denied having assaulted the Student, and the two educational technicians stated that they did not witness the assault. Both the other student and the educational technicians stated that the Student and the other student had been playing around and playfully hitting each other before the alleged incident. The Student told the officer that the incident had left no physical marks. According to the incident report, the officer concluded that this was a mutual incident and requested that the case be closed. He recommended that the two students be kept away from each other. The District did not take any disciplinary action in regard to this incident.

13. The next day, June 3, 2009, the Student told her guidance counselor, David Klippert, that she was very upset and was considering dropping out of school. The counselor spoke with the Parent, and they determined to amend the Student's IEP without a meeting to provide that the Student would attend school from 7:30 to 11:30 until the end of the school year. The Student would also have the opportunity to make up any unfinished work in order to be able to successfully complete her course work. The District sent out a Written Notice and amended IEP incorporating this determination.

14. On June 11, 2009, the Parent called Mr. Klippert and told him that he did not believe that the abbreviated day was providing the Student with the education she was entitled to, and requested that the Student be returned to a full educational day. The Parent and District agreed to amend the IEP to this effect without a meeting, and the District sent out another Written Notice and IEP containing that amendment.

15. As of the end of the 2008-2009 school year, the Student required another 7.5 credits in order to be able to graduate at the end of her xx year. The school permits students to take as much as 8 credits per year. The Student's current schedule for her xx year will result in her obtaining the required credits to graduate providing that she passes all of her classes.

16. During an interview conducted by the Complaint Investigator with Lynne Adams, Ms. Adams stated the following: She has been assistant special education director for the District for 4 years, and has been involved with the Student and the Parent since the Student's xx year. Communication between the District and the Parent has always been an issue. Early on, it was agreed that the school would communicate with the Parent by phone as well as by sending home written progress reports. Sometimes the Parent would say he wanted everything in writing, other times he said he wanted everything verbally. The Parent would complain that he wasn't being called immediately after a problem arose with the Student (she was not in class, she failed to turn in an assignment, etc.). The Parent complained that he didn't want to get phone reports from a teacher, he only wanted the case manager to call. The Parent accepted the offer of the guidance counselor, Mr. Klippert, to take responsibility for

making all phone reports, but a few months later the Parent said he didn't want to hear from Mr. Klippert any more.

The Parent called the school many times nearly every week. There was never a week that went by without either a staff member giving the Parent a report by telephone or sending out a report in writing. If a person he called wasn't able to pick up the phone at that time, the Parent would call someone else. The Parent might leave messages for four or more people. Then when those people would decide which of them would be most appropriate to respond to the calls and that person would call him back, the Parent would complain that the other people he left messages for didn't also call him back. When Ms. Adams wasn't available to take a call from the Parent, he would typically fill up the time available for leaving messages on the voice mail system, and then would call back to continue the message. It was often difficult to return the Parent's calls, because he didn't always have an answering machine or voice mail. There were a number of times when the District, in response to the Parent's complaints, offered to set up a meeting, and the Parent said he didn't want a meeting. There were also times when a meeting was set up and then the Parent didn't attend.

Some time during the 2008-2009 school year, the Parent's phone calls became more challenging. He would say things like: "I have a rage disorder. Don't make me get mad at you." There were also four or five incidents with the Parent at school, where the Parent's behavior escalated and he was asked to leave. In at least one case, school security had to become involved. One of those incidents occurred when she and the Parent met together in a small room, and afterwards she was so distraught that she said she would no longer meet with the Parent by herself. After that, even in a phone conversation, when the Parent would say something like "Don't make me angry," she would become terribly upset. At that point, she told Ms. Madore she was also no longer willing to talk to the Parent on the phone. That was when Ms. Madore wrote a letter to the Parent telling him to stop calling the school.

During a phone call with the Parent on January 8, 2009, the Parent told her that he and the Student "were not prepared to give up another summer for summer school."

With regard to the reference in the Written Notices to the Student receiving counseling 1-2 times per week, that was a mistake. It should not have been described as a determination, but rather as a discussion. The District does not put counseling into students' IEPs as a service. The counselor is available to all students. Nevertheless, she believes that the Student regularly met with the counselor, Ms. Chase.

17. During an interview conducted by the Complaint Investigator with Donna Madore, Ms. Madore stated the following: She has been director of special education for the District for 5 years. With regard to communication with the Parent, she believes District personnel have spent more time trying to communicate with the Parent than they have with any other parent. It's not clear to her what he wants. He expects to be called immediately when something comes up at school, but sometimes that is not possible. In the mean time, the Student might call or text the Parent with her version of the event, and she gets him upset. The Parent seems to believe whatever the Student tells him.

The Parent makes very many phone calls, and tends to repeat the same messages. The District is trying to limit communications to written form, but the Parent insists on calling. The District would prefer a system where the Parent calls one person, and that person responds within a reasonable amount of time. The Parent won't agree to this. He has also scared staff members, becoming very agitated and making veiled threats. At school, he has backed both Ms. Adams and Ms. Bailey into a room and intimidated them.

The only incident she is aware of when the Student was not permitted to go to the bathroom occurred in xx grade, before the Student was found eligible for special education. She has gathered together all staff and the nurse and explained the Student's medical condition. Everyone knows that the Student is permitted access to the bathroom and to water. The Student, however, sometimes uses the bathroom as an excuse to go somewhere else in the building. The school initiated a pass system to try to deal with this, but the Student has been able to manipulate the system and still sometimes goes where she's not supposed to. On the occasion when the Student was brought to the detention room, it was because the Student was having a really bad day. The Student was told to wait there until the vice-principal arrived, but she was not punished for leaving the room to go to the bathroom.

She is not aware of any incidents where the Student was not permitted to access one of her support persons to help with cooling down. When the Student wants to leave the room, she is asked where she is going. Sometimes the Student leaves without saying. The CBI program is an "eyes on" program (staff members try to always know where the students are), and the Student doesn't like this.

The Student's IEP does not reference counseling as a related service because it is not being offered as a special education service. When an IEP team makes a determination that a student requires the services of the school psychologist, this will be put into the student's IEP. The Written Notice for the Student should have said that the Student would "be able to access" counseling rather than "receive" counseling. Ms. Chase is a "crisis counselor," available to all students. The Student had been seeing a counselor outside of school, but then refused to go. Ms. Chase agreed to make herself available to the Student in place of the outside counselor. As far as she knows, the Student met with Ms. Chase 1-2 times per week as stated in the Written Notice.

When the Parent asked for school records, he requested "all paperwork that shows when I requested IEP Meetings." As IEP team meetings were held when he asked for them, she decided to give him copies of the Written Notices. Then the Parent asked for all IEPs since the Student's xx year. All those records were mailed to the Parent within a few days, and were also left for the Parent at the superintendent's office. The Parent picked them up there on June 25, 2009.

She has been in the CBI class to observe on many occasions. There are rules for the students to follow in order for them to earn "Cony Bucks," which buy them privileges. She has observed students breaking the rules, and staff members consistently redirect the students and discuss other choices they could have made.

The Student has made a lot of growth over the last year. If the Student is “on board,” she can be successful in her xx year and pass all her classes. Staff will make sure the Student gets to her vocational program classroom. The Student’s ability to succeed will depend on what else is going on in her life.

18. During an interview conducted by the Complaint Investigator with Linda Bailey, Ms. Bailey stated the following: She is a special education teacher assigned to the CBI program, and has been the Student’s teacher and case manager since October 2008. For most of the school year, the Parent was getting frequent, very thorough reports on how the Student was doing academically and behaviorally, in addition to quarterly grade and IEP progress reports. The Parent called frequently, sometimes 3 or 4 times per day, but was civil and appropriate. In April, however, his demeanor changed, and he became aggressive, belligerent and threatening. She discussed the problem with Ms. Adams, and then Ms. Madore and Mr. Holland. They all had experienced the same type of behavior from the Parent. Ms. Madore told her that she should no longer speak with the Parent on the phone, only in person with someone else present. Ms. Madore then sent the Parent a letter telling him not to call anymore. After the letter went out, she still sometimes picked up a phone call and it would be the Parent; at that point, however, the calls were brief and the Parent was appropriate and non-threatening.

She met with the school nurse when the Student first came to the CBI classroom, so that she could fully understand the Student’s medical needs. The CBI classroom was next to the nurse’s area, and the Student was given permission to use the bathroom in that area whenever she wanted to. The CBI program was the most restrictive program in the school, and the students were not permitted to be in general school areas without supervision. Initially, a staff member would stand by the door and watch the Student to make sure she went to the nurse’s area. Towards the end of the year, however, when the Student was demonstrating that she was responsible, the staff felt that they could trust her to go where she was supposed to. With regards to drinking water, there was water available in the classroom, and staff often reminded the Student that she needed to drink. The Student could also go out of the classroom to fill her water bottle. There was no time when the Student was prevented from going to the bathroom or to get water when she asked to do so.

With respect to leaving the classroom to cool down, the Student was permitted to go the counselor’s office anytime she felt the need and the counselor was available. The Student could also go to the nurse or the vice principal’s office, or even go to the cafeteria if she was willing to have an educational technician go with her. In addition, there was a “quiet room” within the CBI classroom – a room with soft chairs, a television and cd player available to the students when they needed to cool down. The Student didn’t even have to ask permission to use the room – she could just go into it. Sometimes a staff member would suggest, but not require, that the Student use the “quiet room.” The only times she was not permitted to use the “quiet room” was when another student was using it and it would not have been safe for the Student to be there at the same time.

The rules of the CBI classroom include no physical displays of affection and no fighting. The rules were consistently enforced, but that doesn’t mean they were never broken. For example,

there was a problem with the Student inappropriately touching another student when they were in the hallway or cafeteria, in a way that made the other student feel uncomfortable. The other student complained to the vice-principal about this, and it was investigated. The Student denied the accusations, but both she and other staff members had witnessed incidents of this touching. The Student was going to be suspended, but when the Parent became irate, the school decided to reduce the sanction to after-school detention.

The Student is scheduled to take classes in her xx year that will enable her to graduate at the end of the year, providing she passes all the classes. She believes that it is realistic to expect the Student to do so. The Student is very capable academically; the issue is the Student's willingness to participate. The plan is for her to be the Student's teacher for most of her academic work. She believes she works very well with the Student, and that this will produce successful results. She also is familiar with the Student's teacher in the vocational program, and thinks she will be able to help the Student with that course as well.

The Student has made real progress this year, and is more capable of listening and following directions, responding appropriately and staying calm. The Student has a great capacity to give and to help others. She now seems to have more faith and confidence in herself. Nevertheless, the Student is very difficult to deal with, and is very willful. She believes that the Student sometimes tells the Parent things about school just to "push his buttons," and that he too readily accepts what the Student tells him.

19. During an interview conducted by the Complaint Investigator with Kevin Dutel, Mr. Dutel stated the following: For the last two years, he has been an educational technician in the CBI classroom. One of the first things he was told when the Student came to their class was that she was to be able to leave the class whenever she wanted to use the bathroom or to get water. The nurse's area is very near the classroom, and the Student just needed to tell a staff member that she was going to go there. Normally, students were not permitted to use that bathroom, but an exception was made for the Student. The counseling area is also very near to the classroom, and the Student would sometimes get mad and just leave to go there without telling anyone. The only time this was a problem was when the Student would say she was going to the bathroom and then she wouldn't return for a while. The staff would discover that she had gone from the bathroom to guidance without telling them, or they would find her in the cafeteria talking with a friend. Still, he never saw the Student prevented from leaving the classroom when she needed to go to the bathroom, for water or to talk to a staff member.

With regard to the rules of the CBI class, staff members were always telling the students to keep their hands to themselves and to respect others' space. At the time of the June 2, 2009 incident, the Student and the other student were horse-playing. At some point, the Student told the other student he was being too aggressive, and the other student stopped. He never saw the other student assault the Student. There was also a problem concerning the Student inappropriately touching another one of the students and making suggestive comments. Staff members would consistently say "Hands off!" to her and otherwise discourage that behavior.

In May 2009, when it appeared that the Student might not pass all of her courses, he suggested to her that she attend summer school. The Student was adamant that she was not willing to go to summer school.

20. During an interview conducted by the Complaint Investigator with Krista Chase, Ms. Chase stated the following: She is a licensed clinical professional counselor doing substance abuse and mental health counseling at Cony High School. She has been working with the Student since the Student's xx year. During this past year, the Student met with her on a regular twice-weekly basis, once a week for one-on-one sessions and once a week as part of a girls' group. The Student sometimes didn't keep her appointment, especially if she was mad at her or at one of the other girls in the group. Also, she sometimes had to cancel an appointment with the Student due to a crisis involving another student. The Student found this difficult to accept.

Her office is in the nurse's area, where the Student frequently visits. She is not aware of any instances where the Student was having a crisis and was not allowed to leave class to access her or some other adult. There were issues in the past with the Student not being allowed to leave for a bathroom break. Teachers told her that they believed the Student was abusing her medical privileges, and she suspects they were correct; there were probably times when the Student just wanted to be out of the class and used her medical condition as an excuse, as one would expect from almost any teenager. This past year, she believes the CBI class staff members, except for perhaps a few times at the beginning of the year, have been allowing the Student to leave the class whenever she asked. She thinks that the CBI teachers know her better than any other teachers the Student has had. They are very compassionate and understanding.

She has had many meetings and phone conversations with the Parent, including some conversations that lasted about an hour. It was her impression that the Parent wanted the Student to be involved in an intensive therapeutic relationship with her, but the Student was not ready for that work and the Parent found that difficult to accept. She also knows that the Parent tried to get the Student into therapy outside of school, and she supported that effort, but the Student wasn't willing. The Parent expected a lot from teachers and complained to her about lack of communication, but he didn't always understand the role of teachers and their limits. She looked into this issue, and it's her belief that District personnel went above and beyond the basic requirements in their effort to provide the communication that the Parent wanted. Typically, two or three people would call the Parent in any given week. Nevertheless, they couldn't meet all of the Parent's needs and he had a hard time with that. On one occasion this past year she discussed summer school with the Student, who said: "No way am I doing summer school."

21. During an interview conducted by the Complaint Investigator with David Klippert, Mr. Klippert stated the following: He is a school counselor for the District, providing academic development, career development and personal/social development guidance. He has been working with the Student for the last two years. He offered her privacy to explore what was going on in her life inside and outside of school, and helped her put a voice to what she was experiencing. He also helped the Student with her IEPs, and she understood that he would

help her get what she needed. As a school counselor, he tries to be out in the community – in the lunchroom and hallways as well as the classroom. He would see the Student in those environments nearly every day. She did not have a regularly scheduled appointment with him, but could make appointments if she wanted to see him. When things were not going well, he might see the Student every day; when things were going well, he might not see her for three weeks.

He believes that the Student had as much access to staff support as she wanted or needed most of the time. She reported getting what she needed about 97% of the time. There were times when there were misunderstandings around providers not being available right when the Student wanted them. After an occasion when he was not able to see her, the Student might over-generalize and say “Mr. Klippert never has time for me.” There were times when the Student got frustrated and there was nothing District personnel could have done that would have helped. Sometimes the Student just didn’t want to be in school. He didn’t perceive it as a problem with any particular teacher or provider.

From his observations in the classroom and his work with CBI students, he believes that the rules of the CBI classroom regarding physical contact are consistently enforced. If not, he would have heard about many more problem incidents than has been the case. He talked with the Student about the incident on June 2, 2009, and helped her articulate her feelings about that. Those discussions led to a collaborative decision that the Student should come to school for only ½ days. He discussed the idea with the Parent and the Parent agreed that it was a good idea. A few days later, the Parent decided that it wasn’t a good idea.

He spoke to both the Student and the Parent about summer school for credit recovery purposes, and the Student was not interested.

He got involved with the communications effort with the Parent based upon the Parent’s complaints that there were teachers with whom he didn’t work well. He offered to collect information from the Student’s teachers and call the Parent once a week, and the Parent agreed. He did that for about a month, and then the Parent decided that he shouldn’t continue because the Parent thought that it was too much work for him to do it all. It was difficult to figure out what the Parent wanted. Over the years, the District worked really hard and tried multiple ways to communicate with the Parent. He thinks the Parent was unable to appreciate what the District was giving to him. He was involved in one incident where the Parent had to be escorted from the school by a school security officer. He tried to de-escalate the Parent, but by the time he got involved, things had already become too heated.

22. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: He has been asking for more communication from the school ever since the Student was in xx school. He never asked that communication be in writing; he has a hard time with written communication, and has always asked for it to be verbal. He does not believe that staff members were unable to contact him; he has always had voice mail. Maybe they only let it ring twice. If they left a message, he always called back. He wanted to be called as soon as possible after something happened, and wasn’t happy when he didn’t get the call until 5:00 p.m. He was glad that Mr. Klippert offered to be the contact person for the

school, and afterwards Mr. Klippert was calling on a regular basis. It was Mr. Klippert who decided to stop doing it after a month, because it was too much work and he had other responsibilities. The last two months after Ms. Madore wrote the letter asking him to stop calling, Ms. Bailey stopped making weekly telephone calls.

He agrees that he said he wasn't going to allow the Student to go to summer school. The District should have made the Student stay after school and get her work done so that she wouldn't fail any courses. Her report card shows that she failed two courses, yet they still didn't give the Student summer school.

With regard to the Student being allowed to leave the classroom, it didn't make any sense that the teachers required her to have a pass when she went to the bathroom. On one occasion, they took the Student to the detention room and told her to wait there for the vice-principal. The Student left to go to the bathroom, and when the vice-principal found out, he gave the Student detention. When he complained to the vice-principal, the vice-principal laughed at him.

The Student had multiple choices of people to go to that could help her cool down, and she was supposed to be able to leave the class when she needed to do that. The teachers said that the Student was walking out without telling them where she was going, and they were confronting the Student about this before she was given a chance to cool down.

He denies that he was ever asked to leave or was escorted out of the school building. There was an incident where the security officer allowed him to finish his phone call and then walked with him out of the building.

He agrees that he picked up the Student's IEPs and Written Notices from the Superintendent's Office on June 25, 2009, but there were documents that the District submitted to the complaint investigator that weren't provided at that time. He had asked for any and all records from the Student's school going back to xx grade.

There were many times when Ms. Chase cancelled appointments with the Student. The Student told him that Ms. Chase wasn't being there for her, and then was lying about it. Ms. Chase was supposed to give the Student double sessions to make up for the fact that he couldn't get the Student into counseling outside of school. This wasn't supposed to include group sessions.

There is supposed to be no physical contact between students in the CBI classroom, but they allow the students to horse around. This is documented in the police report for the June 2, 2009 incident.

VI. Conclusions

Allegation #1: Failure to fully and adequately implement the Student's IEP with respect to communicating with the Student's parent in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

Although the Student's IEPs did not expressly reference communication between the school and the Parent, the Written Notices document that the IEP team discussed the need for and agreed to provide this communication. It is readily apparent both that the District, through many different individuals, made great efforts to satisfy the Parent's request for this communication, and that the Parent was never going to be satisfied. Not only was the Parent unable to accept that he might not always get all the information he wanted at the moment he wanted it from the person from whom he wanted it, but as the year went on, the Parent became increasingly unreasonable and belligerent. The District was not obligated to continue verbal communication, over the phone or in person, in the face of the Parent's threatening and abusive words and behavior.

Allegation #2: Failure to fully and adequately implement the Student's IEP with respect to the Student being permitted to leave the classroom in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

The Student's IEP dated May 21, 2008 provided that the Student was permitted to leave the classroom at any time if she needed to go to the bathroom or to get a drink, and to have access to special education or counseling staff if she was frustrated. In the latter event, she must inform the teacher by showing the teacher her pass. The IEP of March 25, 2009 provided that the Student was to have "cooling off periods" and staff support. In the Positive Behavioral Support Plan that was appended to the IEP, the Student was permitted to access Mr. Holland, the nurse, or guidance counselors by appointment and with permission from a CBI class teacher.

The complaint investigator uncovered no persuasive evidence that these provisions were not being substantially complied with, notwithstanding the possibility that there were occasions when conflicts arose between these directives and the need for classroom staff members to know where the Student was in order to fulfill their obligations to keep the Student safe and to maintain school order. Most encouraging were those reports that suggested that the Student was becoming more reliable and trustworthy, leading to a relaxation of the degree of vigilance being exercised by staff members.

Allegation #3: Failure to fully and adequately implement the Student's IEP with respect to school counseling services in violation of MUSER §IX.3.B(3)

VIOLATION FOUND

As noted above, the Student's IEPs contained no reference to counseling as a related service, notwithstanding that the Student's receiving counseling 1-2 times per week was included as a determination in Written Notices. Ms. Adams' response that the District's policy was to not include counseling as a related service for any student is troubling. If a special education student requires counseling in order to be able to successfully access his/her special education, then it should appear in that student's IEP. Ms. Madore made the distinction between a student requiring the school psychologist's services as a related service (in which case it would appear in the IEP), versus making counseling available to assist a student, as it

was available to all students in the school (in which case it would not appear in the IEP). The extent to which the Student's ongoing work with Ms. Chase was important and necessary for the Student to be successful in her educational program was unclear. It was likewise unclear whether the IEP team had carefully considered the issue of whether or not the Student required this counseling as a related service. It is quite certain, however, that the Written Notice as written created the impression (in the Parent as well as the complaint investigator) that the team had determined that she did require it. As the Written Notice is the official record of the decisions reached by the IEP team, therefore the IEP must be made to conform to the Written Notice. Better care should be taken in the future to ensure that the Written Notice accurately reflects the decisions made at the IEP team meeting.

Regardless of whether or not the counseling referenced in the Written Notice was identified in the IEP as a related service, it appears that the Student did, in fact, receive 1-2 sessions of counseling with Ms. Chase per week, the occasional cancellation notwithstanding. Accordingly, no compensatory services will be required.

Allegation #4: Failure to provide extended school year services in violation of MUSER §X.2.A(7)
NO VIOLATION FOUND

The basis for this allegation was the Parent's contention that the Student should have been provided with summer school to enable her to make up credits she lost by failing some of her classes. The Parent's concern in this regard was that the Student would not be able to graduate with her same-age peers at the end of her xx year. Without discussion of whether or not the use of summer school for this purpose for this Student would qualify as extended school year services under the applicable regulation, it is clear that the District was willing to allow the Student to attend summer school, but that both the Student and the Parent expressly rejected the idea. Furthermore, the Student is in a position to be able to graduate with her peers providing she passes her xx year classes.

Allegation #5: Failure to provide requested education records regarding the Student in violation of MUSER §XIV.3
NO VIOLATION FOUND

MUSER §XIV.3 grants to parents the right to inspect and review any special education records maintained by the school district relating to their child. Where a parent requires copies of records in order to be able to exercise that right (for example, if the parent was now living at a significant distance from the school district), the parent may request that the district provide copies of the records, for which the district may charge a fee (MUSER §XIV.7). The regulation further requires that the school district must comply with the request to inspect and review records without unnecessary delay, and in no case more than 45 days after the request.

Here, the Parent made numerous requests for educational records beginning on May 26, 2009. At times he asked for all the Student's IEPs, at times for all documentation of when he requested an IEP team meeting, and at times for all of the Student's special education paperwork since she started high school. The District agreed to provide copies free of charge,

and provided to the Parent all IEPs, Advance Written Notices and Written Notices pertaining to the Student. At the latest, the Parent received those documents on June 25, 2009. After that date, the Parent did not make a request for any additional documents, although he asserted to the complaint investigator that he should have received every document the District supplied during the complaint investigation.

Given the unclear nature of the Parent's document request, and the District's provision of documents fairly meeting the request within 45 days of the initial request as required by MUSER §XIV.3, the District cannot be said to have violated the regulatory requirement.

Allegation #6: Failure to fully and adequately implement the Student's IEP with respect to enforcing the rules of the CBI classroom in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

The rules of the CBI classroom prohibit public displays of affection and fighting among students. They do not prohibit every kind of physical contact. The fact that there may have been instances of behavior that did violate the rules is not proof that the rules were not being enforced. The class was structured to encourage compliance with the rules. Others observed CBI staff members intervening where students were violating the rules. In fact, there was evidence that the rules were at one time enforced against the Student for her unwelcome physical contact with another student.

The focus of the Parent's allegation in this regard was on the incident of June 2, 2009. The Student and another student, who were outside on the grounds of the school building at the time, were engaged in some horse play. As indicated, this by itself was not a violation of the rules. Mr. Dutil, who was with the students, observed that when the Student asked the other student to stop the contact, the other student complied. The Student then alleged that the other student grabbed her and pushed her down. The other student denied it, no one witnessed it, and there was no physical evidence that it happened. The Parent asked the police to investigate, and the officer concluded that the incident was mutual and recommended that the case be closed. Under those circumstances, the District reasonably chose not to discipline the other student.

VII. Corrective Action Plan

The District shall, without unnecessary delay, amend the Student's current IEP to include counseling as a related service, 1-2 times per week, and shall continue to provide that service unless and until the Student's IEP team makes a determination that the Student no longer requires it. The District will submit a copy of the amended IEP to the Due Process Office and the Parent.