

Complaint Investigation Report
Parent & Parent v. Cape Elizabeth

December 4, 2009

Complaint #10.029C
Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Parent & Parent
Address
City, Zip

Respondent: Alan Hawkins, Superintendent
320 Ocean House Rd.
Cape Elizabeth, ME 04107

Director of Instructional Support: Dominic DePatsy

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on October 7, 2009. The Complaint Investigator was appointed on October 8, 2009, and issued a draft allegations report and amended draft allegations report on October 13, 2009. The Complaint Investigator conducted a complaint investigation meeting on October 22, 2009 (rescheduled from the original date of October 20, 2009 at the Respondent's request), resulting in a set of stipulations. On October 28, 2009, the Complaint Investigator received a 14-page memorandum and 311 pages of documents from the Complainants, and received a 12-page memorandum and 624 pages of documents from the Cape Elizabeth School Department (the "District"). On October 29, 2009, the District submitted 22 additional pages of documents that were not previously available. Interviews were conducted with the following: Cynthia Sortwell, M.D., psychiatrist; Liz Fagan, S.L.P.D., speech/language pathologist; Lori Coffin, speech and literacy specialist; Mike Bell, case manager; Sheanna White, tutor; Ira Dorfman, social worker; Claire Labrie, former special education director for the District; Alina Perez-Smith, Ph.D., psychologist for the District; Jessica Means, instructional support teacher and behavioral consultant for the District; Beth Mylroie, teacher for the District; Belinda Snell, guidance counselor for the District; Nancy Baker Miller, social worker for the District; Maureen Cahill, occupational therapist for the District; Kate Vandervalk, speech pathologist for the District; Rob Moriarty,

educational technician for the District; Dominic DePatsy, director of student support services for the District; the Student's father; and the Student's mother.

III. Preliminary Statement

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

IV. Allegations

1. Failure to develop the Student's IEP after the meeting of 4/15/09 in conformity with the determinations of the IEP team regarding vocational training and job skill goals in violation of MUSER §VI.2.J(4);
2. Failure to develop the IEP after the meeting of 4/15/09 in conformity with the determinations of the IEP team regarding social work services in violation of MUSER §VI.2.J(4);
3. Failure to ensure that all annual goals in the Student's most recent IEP are measurable in violation of MUSER §IX.3.A(1)(b);
4. Failure to include within the most recent IEP a description of when periodic reports on the progress the Student is making toward meeting the annual goals will be provided in violation of MUSER §IX.3.A(1)(c);
5. Failure to include within the most recent IEP a statement of the location of services to be provided to the Student in violation of MUSER §IX.3.A(1)(g);
6. Failure to include within the Student's most recent IEP a statement of measurable annual goals with respect to the Student's literacy skills designed to meet the Student's educational needs and enable the Student to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(b)(i);
7. Failure to include within the Student's most recent IEP a statement of measurable annual goals with respect to the Student's math skills designed to meet the Student's educational needs and enable the Student to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(b)(i);
8. Failure to adequately consider the concerns of the parent in the IEP decision making process in violation of MUSER §§VI.2(I) and IX.3.C(1)(b);
9. Failure to fully and adequately implement the Student's most recent IEP with respect to job skill placement in violation of MUSER §IX.3.B(3);
10. Failure to fully and adequately implement the student's most recent IEP with respect to history instruction in violation of MUSER §IX.3.B(3);
11. Failure to fully and adequately implement the student's most recent IEP with respect to speech and language services in violation of MUSER §IX.3.B(3);
12. Failure to timely review the Student's assistive technology evaluation in order to determine the Student's educational needs in violation of MUSER §§V.3.A(1), (2) and IX.3.C(2)(e);

13. Failure to provide education in the least restrictive environment in violation of MUSER §X.2.B;
14. Failure to provide a free appropriate public education by virtue of inclusion within the Student's current schedule of periods of time providing no educational benefit in violation of MUSER §II.11 and 34 CFR §300.101(a);
15. Failure to provide information to the Student's parents sufficient to enable them to fully participate in the decision-making process regarding the Student's needs and appropriate goals in violation of MUSER §VI.2(I)(1).

V. **Stipulations**

1. The Student's IEP team, at the meeting of 4/15/09, decided that the Student would be provided with a job in the community two days per week, scheduled so as not to interfere with his academic courses and preferably in the afternoon.
2. The Student's IEP team, at the meeting of 4/15/09, decided that the Student would continue to be provided with the same hours of social work service that he received during the 2008-2009 school year.

VI. **Summary of Findings**

1. The Student lives in Cape Elizabeth with the Parents, and is presently attending xx grade at Cape Elizabeth High School. He began receiving special education services under the category Multiple Disabilities (mentally retarded, ADHD and emotional disturbance) in xx, which classification was changed to Mentally Retarded in xx grade.
2. On March 25, 2009, the Student's IEP team met to review the results of the Student's triennial reevaluation and to conduct the annual review of the Student's IEP. One of the reevaluation reports was the psychological evaluation of Alina Perez-Smith, Ph.D, dated March 19, 2009. Dr. Perez-Smith tested the Student using the Wechsler Adult Intelligence Scale, 4th ed. (WAIS IV), and reported scores as follows: verbal comprehension – 87; perceptual reasoning – 56; working memory – 63; processing speed – 50; full scale IQ – 60. All of these scores were in the extremely low range, except for verbal comprehension, which was in the low average range. Dr. Perez-Smith stated that the Student's relatively strong verbal skills result in his presenting as more intellectually capable than he really is.
3. Dr. Perez-Smith also had the Student's teacher, Ms. Mylroie, and the Student's mother complete the Adaptive Behavior Assessment System II rating scale, a tool to measure a student's ability to complete daily living skills and function in the community. The Student showed relative strengths in the areas of ability to relate to others, low average scores in the areas of communication and functional academics, and extremely low scores in the areas of skills for independence and self-care, daily living activities at home and at school and ability to abide by health and safety rules. Ms. Mylroie reported that the Student's abilities in the area of life skills (such as cooking, cleaning and self-care) were lagging behind his comparable peers.

4. Dr. Perez-Smith offered diagnoses for the Student of Mild Mental Retardation and Generalized Anxiety Disorder, and recommended that the Student continue in his current placement in the life skills classroom focusing on the acquisition of daily life skills, social communication skills, basic academics, safety and other skills deemed appropriate by the IEP team.
5. Ms. Mylroie reported to the IEP team that the Student was working on reading skills using the Reading Street program, and that he was 91% at the 4th grade level. The Student was also using the Great Leaps reading skills program, and had shown increased scores of 1% in phonics skills, 0% in phrases and 6% in stories.
6. At the March 25, 2009 meeting, the Parents asserted that the Student didn't need the functional life skills program, as he was receiving functional life skills instruction at home for 16 hours per week.
7. The IEP team determined to have an assistive technology evaluation performed for the Student, and the meeting was recessed to reconvene at a later date.
8. The IEP team reconvened on April 15, 2009. The Parents requested that the Student attend regular education academic classes, with the courses heavily modified to accommodate the Student's disability. The Student had previously attended a history class in this manner, and there was discussion about the possibility of the Student doing an independent study history course.
9. The IEP team reviewed the educational evaluation performed by Maura McDermott, dated March 20, 2009. Ms. McDermott administered to the Student the Wechsler Individual Achievement Test, 2nd ed. (WIAT II) and the Woodcock-Johnson Test of Achievement, 3rd ed. (WJ III). The Student's scores on the WIAT II were all in the intellectually deficient range, except for one score (pseudoword decoding) that was in the borderline range. The Student's lowest scores were on the numerical operations and math reasoning subtests (46 and 42, respectively), both in the 0.1% percentile rank, with grade equivalents of 2:8 and 2:6, respectively. The Student's word reading and reading comprehension scores (both 61) were in the 0.5% percentile rank, with grade equivalents of 4:0 and 3:6, respectively. The Student's composite reading score was 58, and composite math score was 40, both in the intellectually deficient range.
10. The Student's scores on the WJ III were as follows: reading fluency - 66 (1% percentile rank); math fluency - 49 (<0.1% percentile rank); and writing fluency - 51 (<0.1% percentile rank). All scores were in the intellectually deficient range. The Student's scores on the WJ III reading battery revealed that he was reading at the 3rd to 4th grade level, with vocabulary being a relative strength.
11. Mike Bell, the Student's outside agency case manager, reported that the Student currently had 14.5 hours per week of in-home supports, focusing on independent living, including such areas as shopping, money skills and street safety. He suggested that the District continue to work with the Student on job readiness skills.

12. Robin Thurber, a vocational rehabilitation specialist, emphasized the need to prepare the Student to live independently, and recommended that the Student's program focus on vocational skills rather than on academic skills. The Student's father responded that this was the Student's chance to have academic instruction, and that the Parents wanted the Student to have an educational experience.

13. The IEP team determined to provide the Student with some heavily modified academic classes in the regular education setting, but to continue to focus on teaching communication, vocational and independent living skills. The team also determined to continue the Student's current goals and levels of service in speech and in social work. Social work services in the Student's then-current IEP, dated March 11, 2008, were 30 minutes per session, plus 30 minutes per session of psychological services by a social worker.

14. The District developed an IEP for the Student dated April 16, 2009. The services listed in section 7 of the IEP include the following: specially designed instruction for 4.5 hours per session, delivered by an instructional support teacher in a special education setting; speech and language services 45 minutes per session plus consult for community placement delivered by a speech therapist both in the special education setting; three listings for occupational therapy services (45 minutes per session, 45 minutes per session and 15 minutes per session), all delivered by an occupational therapist in the special education setting; and social work services 30 minutes per session, delivered by a social worker in a special education setting. The locations of other services were described as follows: physical therapy in a special education and regular education setting, and school health services in the nurse's office.

15. The transition plan in the Student's IEP states that the Student is in a program with a focus on life skills/community-based experiences. The transition plan further states, in section 11b, under "Training/Education," that the Student "will complete a life skills curriculum. This will include a functional program to include but not limited to math, writing, reading, safety, health and wellness, and independent life skills. [The Student] will continue to take classes toward earning a diploma." Under "Employment," the transition plan states that the Student "will be exposed to a variety of job related sites in the high school. He will maintain daily/weekly jobs and explore job experiences within the community. [The Student] will continue to explore community/job experiences and increase his employability adaptive skills and social/work skills to complete a resume, gain letters of recommendation." Section 11d of the IEP references an independent study history course as one of the Student's expected classes. Section 11e provides, under the heading "Community Experience," "as a xxxx [the Student] will be involved with 2 job/community based opportunities."

16. The Student's April 16, 2009 IEP contains 12 annual goals and 33 short-term objectives. The goal addressing literacy skills reads as follows:

"1. [The Student] will improve his reading comprehension and complete Reading Street level 4.3 to 4.4 as measured by Reading Street benchmarks and teacher assessments";

"1. [The Student] will improve his oral reading fluency from 130 words per minute in Great Leaps to 140 wpm and will move his wpm on the DIBELS from a 'at risk' level

to 'some risk' level. [The Student] will also read from Frye's Instant word list from words #400 to 500. All as measured by Great Leaps, DIBELS and informal teacher assessment;"

"5. [The Student] will improve his writing in the organizing by paragraphs to match the characteristics of the Grade 2 format according to the PAAP Developmental Characteristics of Writing, as measured by informal assessment, daily work, grades and teacher data;"

"5. [The Student] will continue to improve his patterns of spelling (sounds and patterns in the English language) as measured by new words in Reading Street 4-3 to 4-4 curriculum and teacher assessment."

17. The IEP goals addressing math skills are as follows:

"2. [The Student] will improve from an understanding of division to a level 2, level of complexity 4 on the PAAP to computation involving basic division, as measured by informal assessment, daily work and teacher data;"

"2. [The Student] will improve his functional math skills to being able to count money up to \$75, make change and comparison shop for sums up to \$25, as measured by informal assessment, daily work and teacher data;"

"2. [The Student] will improve from a PAAP rubric level 2, level of complexity 2 to a rubric level 2, level of complexity 3 as measured by the PAAP rubric and student work."

18. Some of the other IEP goals and their statements of how they will be measured are:

"3. [The Student] will improve his ability to follow multi-step directions given a new learning skill set and on task expectations at work when provided visual cues, as measured by informal assessments and teacher data;"

"4. Given specifically designed instructions, [the Student] will demonstrate use of positive strategies to solve problems to include but not limited to noncompliant language and behavior, as measured by anecdotal records and teacher data;"

"7. [the Student] will continue to demonstrate improved fine motor skills as seen by his ability to demonstrate increased independence with school and self-help tasks throughout his school day as seen by task completion and teacher/therapist observation;"

"10. [the Student] will demonstrate a reduction in perseveration surrounding his worries, as evidenced by an improved ability to shift off from his worries as evidenced by re-engagement in his academic programming with staff direction, 50% of the time, with a reduction in the amount and types of prompts required, as measured by therapist observations and records."

19. Also included among the Student's IEP goals are that the Student will complete individualized courses of study with modified curricula and instructional supports in the mainstream setting in both physical science and history with pass/fail grading.

20. With reference to when periodic reports of the Student's progress toward meeting his goals will be provided, the IEP states that quarterly updates or progress notes are to be sent to the Parents concurrently with the issuance of report cards on four specified dates (11/7/08; 1/23/09; 4/3/09; and 6/18/09).

21. On June 18, 2009, the District prepared and delivered to the Parents Progress Notes which listed the goals and objectives contained in the IEP and stated, for each, one of the following: “Objective Met,” “Satisfactory Progress,” “Limited Progress” or “Work Not Begun.”

22. Beginning in the spring of 2009, the District, with the Student’s involvement, developed a job placement for the Student at AAA Travel Agency (“AAA”). Shortly after the 2009-2010 school year began, the Student went to a job interview at AAA, after having first been prepared for the interview by Ms. Mylroie, and other staff members. Ms. Mylroie also accompanied the Student to the interview.

23. To Ms. Mylroie’s observation, the interview appeared to go very well, and the Student appeared very excited and eager to go to that placement. That day, Ms. Mylroie e-mailed to the Student’s mother an assessment of how the interview had gone, providing a review of the planning and preparation that had gone into the placement and the interview, quoting the Student as saying “I think I am going to like working here,” and describing the work that the Student would be doing with travel brochures. That evening, the Student’s mother sent an e-mail to Ms. Mylroie in which she stated that the Student had called her from school to express his disappointment in the job placement, that he had arrived home in tears and said that the staff had not listened to him regarding his job preferences. She told Ms. Mylroie that her account was “whitewashed... self-congratulatory and patronizing,” and concluded with the statement that she hoped that “in the future more time will be spent planning the placement, and that the majority of the school day will be invested in teaching [the Student] the skills he needs for interesting and rewarding work.”

24. The next day, after discussing the situation with the Student, Ms. Mylroie decided that the opportunity for the Student to have a successful experience at AAA had been lost, and she determined to discontinue the job placement. In the weeks that followed, during the time that the Student was scheduled to attend the job placement, the Student was actively engaged in a job search effort until eventually a second placement opportunity was identified at Bull Moose Music.

25. The District determined that the Student’s schedule could not accommodate a history course during the fall 2009 semester. The Student’s IEP team did not meet to review this situation, and the IEP was not amended to reflect a change to this goal.

26. During the 2009-2010 school year, the Student was to receive 45 minutes of direct speech and language service in a group setting, co-taught by a speech and language pathologist and a social worker. During the first two weeks of the 2009-2010 school year, the Student did not receive this service because the students’ schedules had not yet been finalized. During the next 3 weeks, the group session was held only once, and on that occasion the Student was unable to attend because he was out in the community. The group session did not take place on the other two weeks as a function of the school schedule’s intersection with the schedules of the providers. This same scheduling problem occurred and will continue to occur one

week per month for the remainder of the school year. The first group session that the Student attended was on October 7, 2009.

27. On April 15, 2009, the Student's mother gave signed consent for the District to conduct an assistive technology evaluation. The Evaluation was performed during the summer, and a report delivered to the District in August 2009. Ms. Mylroie met with the Parents on September 4, 2009 and received their comments and suggestions, although she was not able to discuss what the District's response was to the evaluation at that time. Ms. Mylroie met with other staff to review the evaluation and ultimately placed an order for certain equipment later that month. Mr. DePatsy, on September 10, 2009, wrote to the Student's mother and offered to convene an IEP team meeting to review the evaluation. The Student's mother requested an informal meeting with only some members of the IEP team present, but the Student's mother had raised some additional issues and Mr. DePatsy decided that a formal meeting was necessary. The District offered the date of October 8, 2009 for a meeting, but the Parents declined to have that meeting.

28. During an interview conducted by the Complaint Investigator with Claire Labrie, Ms. Labrie stated the following: She was the special education director for the District during the period from 1996 to 2006. In that capacity, she became familiar with the Student, attending many IEP team meetings, meeting informally with the Parents and observing the Student in the classroom. The Student was placed in the functional life skills program during her tenure with the District, although he also attended some regular education classes. The life skills program was an appropriate placement for the Student. He was one of the higher functioning students in the life skills program, but not the only one functioning at that level. Academically, the Student is not able to do the work required in the regular education setting, and that setting would not be appropriate if the purpose of placing the Student there was for academic instruction. It would only be appropriate to place the Student in a regular education setting in order for him to be able to observe and model the behavior of non-disabled students.

29. During an interview conducted by the Complaint Investigator with Cynthia Sortwell, M.D., Dr. Sortwell stated the following: She is a psychiatrist, and has been treating the Student since April 2000. She sees the Student approximately once every two months for the purpose of adjusting his medication; she does not engage in psychotherapy with the Student. She knows that the Student is in a special education placement in school, but is not familiar with the details. She has not seen recent cognitive testing data and cannot specifically comment on the Student's aptitude, however, she believes that the Student is very limited and needs a program with an emphasis on vocational and daily life skills. As far as she is aware, the Student seems to be comfortable with his school program, although she knows that the Parents are frustrated.

Behaviorally, she believes that placement in a regular education setting is not appropriate for the Student, as the Student has severe attentional difficulties; even in her office the Student is unable to focus. Additionally, the Student can at times become completely obsessed with one thought. The Student functions more at the level of a 5 year-old than a high school student. If he is exposed to high-school level academic material, he might be able to parrot some of it

back, but he couldn't apply the information more generally. The Student's thinking is very concrete, and he can appear to be more intellectually capable than he really is.

30. During an interview conducted by the Complaint Investigator with Jessica Means, Ms. Means stated the following: She is an instructional support teacher and behavioral consultant for the District, and has held that position since August 2008. She helped to develop the Student's behavioral intervention plan and response protocol, and is part of the Student's crisis team. She has observed the Student in the life skills classroom and in the general school community. The Student's behaviors have improved this year to the extent that they haven't warranted her attention.

Having worked very closely with the Student and as part of the life skills team, she believes that the functional life skills program is the most appropriate placement for the Student. The Student has an IQ of 60, and the behaviors that she was brought in to address indicated that the Student needed to develop functional skills and adaptive coping skills to enable him to function in the community after he completes school. Those behaviors included verbal and physical aggression towards staff and other students, hyper-sexualized comments, as well as suicidal and homicidal ideation.

The functional life skills class contains a diverse population of students (7 in total); their level of need and intellectual abilities vary. The Student is probably right in the middle of that range. There are other students in the class that the Student can relate to on a level of cognitive ability comparable to his own. When she observes the Student in hallways between classes, he stands out among his non-disabled peers. The Student has basic social skill deficits; he doesn't always understand personal physical proximities and social cues. The Student can get easily overwhelmed and flustered. When one engages the Student socially, he tends to dominate the conversation.

The reports from his regular education classes have been generally favorable, with comments that the Student is curious and engaged. Teachers have expressed concern about the extent to which they must modify the class curriculum for the Student, that they are essentially creating a separate course just for the Student.

The Student's IEP team feels that there should be a balance between the functional components of the Student's program and opportunities to participate in the regular education environment so the student can acquire the skills he needs to maintain employment and function successfully as an adult in the community. This combination of modified regular education classes and functional life skills programming is what the District has been providing to the Student. There are only 6 ½ hours of programming for the Student each day, and the Student needs to develop functional life skills as well as academics, although all four of the academic content areas are provided in the life skills program. As an additional barrier to the Student taking more classes in the regular education setting, the high school doesn't have diploma level classes for all subjects; many are only provided at college prep level or higher. This makes it very difficult to modify the curriculum in a way that would enable the student to benefit from instruction.

She does not agree that the Parents' concerns were not considered by the IEP team; she believes that some of the Parents' requests were accepted and some were rejected, but that they were all considered. She also does not agree that the IEP goals are not measurable. The behavior goals are all measurable - Ms. Mylroie and the educational technicians in her class record behavioral data at regular intervals, and she employs a scientifically valid means of analyzing the data. When the data showed that the Student's behavior was improving and he was meeting his goals, the IEP goals were changed to focus on different behaviors. The quarterly progress notes only allow for providing a ranking (either "Objective Met," "Satisfactory Progress," "Limited Progress," or "Work Not Begun"). Although this is all that the District requires, the Parents have had ample access to the Student's academic work. There have been many IEP team meetings, as well as frequent meetings with Ms. Mylroie, and she has shared graphs charting the behavior data with the Parents.

31. During an interview conducted by the Complaint Investigator with Maureen Cahill, Ms. Cahill stated the following: She is an occupational therapist employed by the District for the past 6 years. She has worked with the Student since she started with the District. She attended the April 15, 2009 IEP team meeting, and she recalls a discussion about job skills and job placement. There was discussion specifically about the Student's interest in travel leading to a possible placement at AAA, and the Parents seemed supportive of the idea. This appears in the IEP transition plan under the heading "Community Experience" where it mentions two job opportunities. She also recalls the Parents saying they didn't want the job to interfere with the Student's academic instruction.

She agrees that the occupational therapy goals in the student's IEP are somewhat general, but each goal is followed by short-term objectives that are more specific and measurable. Whenever she works with the Student, she records data as to what the Student was and was not able to do, so she is constantly tracking his progress. She summarizes this data in the progress notes.

She does not agree that the IEP team does not consider the concerns of the Parent. The Parents usually come to meetings with a written outline of their concerns, and the team always discusses them, some in more detail than others. For example, the Parents wanted her to see the Student twice a week rather than once. The team discussed their concern, and decided to keep it at once per week, but to monitor progress and revisit the issue if the results were not satisfactory.

With regard to the assistive technology evaluation, she does not recall when the Student's mother signed the consent to conduct the evaluation. When school resumed in the Fall (August 27, 2009), she reviewed the results of the evaluation and then met with Ms. Mylroie a week later to discuss what equipment was going to be ordered. The order was placed on September 10, 2009. She didn't discuss the evaluation with the Parents, but believed that Ms. Mylroie would be doing this. She did e-mail the Student's mother to inform her when the order was placed.

She believes that the life skills program is highly appropriate for the Student. She understands that the Student is expected to begin living in a group home setting in the near

future. The Student still needs to learn basic housekeeping and food preparation skills to be able to do this. He needs to learn how to work at a job and to make himself presentable. Even if he is also working on these skills at home, continual reinforcement is very important. Also, there has been a lot of turnover in the personnel providing home services, and there has been a problem with consistency of those services. Whatever the situation may be with the home services, the Student is not showing enough improvement in these areas and needs to keep working on them. The Student's mother has always stressed the need for her to work on daily life skills in therapy sessions with the Student, such as buttoning his shirt, tying his shoes and using a knife.

32. During an interview conducted by the Complaint Investigator with Kate Vandervalk, Ms. Vandervalk stated the following: She is a speech/language pathologist for the District. She worked with the Student in the summer of 2008, all last year and this year. Currently, the Student attends a 45-minute group session co-treated with herself and Ms. Baker Miller, where the Student works on pragmatic and articulation goals. She also provides one hour per month consultative services to staff involved with the Student's job placement and experiences out in the community, to address carrying over these goals into the community.

With regard to group sessions generally, when school begins she first receives the students' schedules from guidance and begins the process of scheduling her therapy sessions. For the first two weeks of school there is a drop/add process when the students' schedules can change, so for those first two weeks none of her students receives services. The Student's group session was ultimately scheduled for A Block on Wednesdays. The third week, she had a dental procedure and was unable to work, but Ms. Baker Miller held the group without her and worked on pragmatic social communication skills. The fourth week was one of those weeks (it happens only occasionally) when there is no A Block on Wednesday, so there was no group session. She finally provided services in a group session the 1st week in October.

At IEP team meetings, the Parents' concerns are considered but the team doesn't always do what they request. For example, the Parents wanted there to be another speech/language session each week, but the team decided it was more important for the Student to be working on job skills. The Parents also requested that she employ a program called Interactive Metronome, but the team looked into it, found that it was not evidence-based, and therefore decided not to use it.

She believes the short-term objectives that accompany the Student's speech therapy goals are all measurable. During sessions, she keeps a record of tally marks for instances of semantic or articulation breakdowns, and then observes and records whether the Student is able to self-correct. Similar data is collected when the Student is out in the community. To determine progress, she recorded spontaneous speech samples, had them transcribed and then judged by two different listeners as to intelligibility. She shared this data with the Parents. She also attended some of the frequent meetings between Ms. Mylroie and the Parents when they reviewed the Student's progress in the classroom.

She believes that the life skills classroom with outside community-based activities is very appropriate for the Student. The Student is cognitively very limited. Modifying curriculum is

only the tip of the iceberg in terms of meeting the Student's needs in the regular education classroom, and the curriculum needs to be "watered down" so much that it no longer looks like the course curriculum at all. Also, the Student has a particular interest in history; this wouldn't apply to other subject areas, like math. Getting the Student prepared for his post-secondary school life is more important.

33. During an interview conducted by the Complaint Investigator with Nancy Baker Miller, Ms. Miller stated the following: She is a social worker under contract with the District. She currently sees the Student for individual social work sessions and as part of a pragmatic social language group co-treated with Ms. Vandervalk, plus unscheduled meetings with the Student when he needs her assistance. In addition, she consults with Mr. Dorfman and with other school staff regarding the Student and communicates frequently with the Parents. Last year, she was also involved in crisis intervention with the Student, although there has not been a crisis so far this year. No other student gets as much of her services as the Student, and this is probably true for staff members generally. The Student has made good progress with her, as the Student's mother has acknowledged.

The speech and language group consists of 3 students in addition to the Student (a 4th student will soon join the group). They are all students from the life skills program, and they all need instruction in pragmatic social skills such as understanding social situations, establishing and maintaining friendships, making eye contact, how to greet people, how to begin and end a conversation and learning to take turns. On any of these topics, some students' skills are stronger than others. The Student is not stronger than the others in the group in all these areas; he continues to benefit from participation in the group. The Student does have the advantage of his individual sessions with her (usually students have either individual or group sessions but not both), so that there can be carryover from one setting to the other. The Student has made progress with how to be a friend, and there are at least 2 other students in the group with whom the Student shares some common interests and who could potentially be friends with the Student. Not all the other students are lower-functioning cognitively than the Student, and although the Student is the oldest, some of the others are close to his age.

Group sessions typically don't start right away at the beginning of the school year because the students' schedules change. It takes a couple of weeks before group sessions start going. This year, the group ended up scheduled during "B" block, which usually happens on a Wednesday when both she and Ms. Vandervalk are in the school. Some weeks, however, "B" block does not happen on Wednesday, and the group session does not take place during those weeks. This typically happens one week per month, and this is usually explained to parents at the IEP team meeting. The Student was not in school for the first group session this year (he was away for an interview), and then there were two weeks when "B" block didn't happen on Wednesday. The first group session that the Student was present for this year was on October 7, 2009.

She believes that the life skills program is the appropriate placement for the Student, and there are a variety of things in that program that benefit him. The Student's social, environmental and academic needs are being met there. He feels a sense of ownership towards that class – that is his classroom. The staff members in that room provide constant cueing, prompting and

reinforcement to the students and problem solving goes on moment-to-moment. This is all very important for the Student. The staff is very responsive to the Student and is good at being in tune with what he needs. The occupational therapist comes in on Thursday and does a shopping, cooking and eating program with the students that is very beneficial to the Student. These are skills he needs to develop. These activities also involve a social component (e.g., sharing, how to eat with others) and the students receive redirection and reminders to help them acquire these social skills.

The staff did a great job with the job placement project, involving the Student in the process, conducting mock interviews, coaching him on how to dress and what to say. The process has been very positive for the Student.

With regard to academics, the Student's IQ (60) is in the extremely low range, but he has some adaptive skills that allow him to do a lot with that IQ. He is in a science class this year in the regular education environment with students that all have higher skills than the Student. Ms. Vandervalk, Ms. Cahill and she are in and out of the classroom, offering familiar faces available for support. Putting the Student in this setting is valuable to him, providing he can benefit academically. If the curriculum has to be modified so much that it no longer matches what is going on in the classroom, then the Student will not understand what is going on and it is not clear how much value this will have for the Student.

She understands how the Parents may feel that their concerns are not being considered by the IEP team because some of their requests have been deemed not appropriate, but it is not true that they were not taken seriously or carefully considered. Some meetings the Parents attended with an advocate, and this didn't always foster dialogue. The advocate doesn't always hear what others are saying and says things in a challenging way. There have been issues where the Parents and staff didn't agree and friction started to build.

With regard to the social work goals, measurement is subjective and is based on her own observations of the Student, staff reports and the Student's behavior plan data. She does not have a behavior chart in front of her – this would be too distracting. She knows that there has been improvement, but the percentage number is somewhat arbitrary. She thinks that the goals could be rewritten and improved. The Student is demonstrating more flexible thinking, is more open to suggestions and is better able to get back on track without needing to resort to the lifespace room. The Student no longer comes to her room, sees that she is with another student and then enters anyway.

With regard to communication with the Parents, she does this frequently. She gets many e-mails and phone calls. She sends e-mails to describe observations, concerns, gains and accomplishments. She has kept communication lines open with the Parents.

34. During an interview conducted by the Complaint Investigator with Ira Dorfman, Mr. Dorfman stated the following: He is a licensed social worker and has been seeing the Student privately once a week since May or June 2008. He has been to several of the Student's IEP team meetings, but has not observed the Student at school or observed the Student's program setting. He has consulted on several occasions with Ms. Baker Miller.

He principally works with the Student on anxiety, family issues and the tasks of development. The Student is aware that he is more limited than his non-disabled peers, and the Student worries that he will not be able to live successfully. The Student has made a lot of growth in the last year, becoming more mature and greatly decreasing his negative, attention-getting behavior. He believes this growth is the result of a number of factors: the Student's hard work and effort; the effort of the Parents; the Student's home services through Maine Medical Center; and the hard work of school staff. He believes that the Student has forged close relationships with Ms. Baker Miller and several of the educational technicians.

He believes that the Student's group sessions with Ms. Baker Miller may be less beneficial than they were last year due to the change in the make-up of the group. Ms. Baker Miller told him that some of the students in the life support classroom this year have multiple, severe handicaps and struggle with both speech and locomotion, although some of those that struggle with speech are not as limited as they appear to be.

The Student is aware that he is limited, and at the same time he is xx years old and an adolescent, so he is thinking about his place in the world – who he is, how he fits in and what his capabilities are. He is saying he wants to be a man and asking what does that mean. It would therefore be in the Student's best interest to be challenged to a greater extent than what he experiences in the life skills program. The increased challenge might heighten the Student's anxiety, but that wouldn't necessarily be a bad thing. He thinks that the Student's participation in the regular education science class is a good thing, and he would like to see the Student encounter further academic challenges and for the District to have greater expectations and provide greater social opportunities for the Student.

He believes that the District has worked really hard with the Student on his job skills and job readiness. The Student has been quite excited after some of his job interviews. When he met with the Student a few days after the AAA job interview, however, the Student told him that the AAA job was not going to give him enough responsibility and was not challenging enough.

He would like to see the Student develop greater independent living skills, so that he could successfully live in a group home setting, engage in recreational activities and maintain friendships. He is not sure what kind of employment the Student will be able to successfully pursue after graduation.

35. During an interview conducted by the Complaint Investigator with Beth Mylroie, Ms. Mylroie stated the following: For the last 6 years, she has been the teacher in the functional life skills program at Cape Elizabeth High School. The Student has been in her class since xx grade, and she also worked with him during summer programs when the Student was in middle school. Currently, there are 8 students assigned to the life skills program, although not all the students are there at all times. Some students come in for particular blocks or for guided study. Academically, the Student functions at a higher level than the other life skills students. While the Student appears to be on top of his academic work, however, he sometimes has a hard time giving direct answers when he is asked specific questions about it.

The Student is currently doing 3rd grade math and 4th grade English. Last year, there was a student in the life skills class that was functioning on a level very similar to the Student's, but that student's program changed this year.

Socially, the Student is in the middle of the range of skill levels in the class. The Student has a very good friend in the life skills class this year with whom he interacts appropriately, and he interacts nicely with a couple of the other students as well. This year, she sometimes turns to the Student as a behavioral "role model" for some of the other students. The Student is not always aware of inappropriate behaviors. By focusing on the behavior of other students and asking the Student "What do you think?" it provides an opportunity for the Student to own the appropriate, expected behavior while reinforcing it for the Student. These are "teachable moments," and they allow for the maturation of those social skills. She uses this technique with other students in the classroom as well.

For English instruction, the Student has his own program that he works on outside of the classroom with an educational technician. The Student has made good progress in his ability to read a paragraph, state the main idea, identify the main character and make predictions. Still, when he moves on to a new story, it is hard for the Student to transfer skill sets. Considering the Student's slow processing speed and executive function deficits, he is making progress but slowly. The Student is not a quick reader, and doesn't always remember what he learns. He requires constant repetition in order to progress. The Student currently is continuing to work with the Great Leaps reading program that he began in middle school. Each unit of the program is a one-minute timed exercise, and the Student must complete the unit with 80% accuracy before he can move on. The program is in 3 sections – phonics, phrases and stories – and he recently completed the phonics section. The Student is also using the Reading Street program that he began in xx grade. At that time, the Student was assessed and placed at the 3rd grade reading level. He is now at the 4th grade level. Each unit of the program is a series of stories that build reading skill sets. For each story, there is pre-teaching, vocabulary work and a series of questions about the story to promote and assess comprehension. There is also a test for each unit. It is a very scientifically-based program, one that involves a lot of collection of data. In addition to those two programs, the Student is also reading short stories to apply the skill sets he's learning; the Student read 13 short stories last year. She discusses with the Student who the main character is, what the reader can tell about where and when the story is taking place and what the reader can predict about what may happen. Over all, the Student is now working more independently.

For math instruction, the Student has one-on-one instruction and is not working with other students. The Student benefits from prompts and reminders and from frequent repetition. He eventually gets the concept, but he is inconsistent. He has good and less good days, and needs that consistency in instruction to stay on board. The Student is working with the Saxon program, a scientifically-based, sequential curriculum. On Thursdays, the emphasis for the class is on budgeting and money math, but here too, the expectations for the Student are higher than for the other students in the class. Last year, the Student couldn't grasp the concept of rounding up, but now he does (although he can be inconsistent). He is still learning to apply the concept to other areas, e.g., money. Last year, the student struggled with measurement of shapes and objects, but now he can do it independently. The Student is also

better able to work independently on word problems, and better understands the concept of fractions. The Student has also improved his math vocabulary; he now knows what interest means, what a checkbook is and that a check has value.

The Student is also taking a “protected” science class this year. The Science department recognized a need to develop a curriculum suitable for some of the lower-achieving students in the school. The class is taught by both a regular education teacher and a special education teacher, and there is an educational technician present as well. The curriculum had to be even further modified for the Student. The Student attends the class on a pass/fail basis, completes assignments and also gets support from a guided study that he does in the school library. The Student has lunch in the regular lunchroom.

The Student’s experience in the regular education history class last year was a positive experience for the Student. The Student’s success was in large part due to the preparatory work she did with the Student before the class began, familiarizing him with the vocabulary and the key concepts. The student also needed the support of guided study to be successful. Although the Student acquired a lot of information from the class, it was often incomplete and superficial. The year before, the Student was in the regular education setting for physical education and keyboarding. Staff observed increased problem behaviors around both classes. He ultimately had to discontinue both classes – the physical education for physical reasons, and the keyboarding at his own request because he was unhappy with the fact that there was no talking in the class.

With regard to daily living skills, the Student is across the board lacking in skill sets for independent living as measured using informal assessment tools provided by adult case management, STRIVE University and others. The Student can’t independently make a shopping list, go to the grocery store and make a meal. He can’t make a budget. The Student will not be a candidate for STRIVE University because he lacks these skill sets. Other students in the life skills program far exceed the Student where life skills are concerned. The Student requires consistent instruction, and he doesn’t get that from his at-home program. The first 6 or 7 weeks of this school year he had no life skills support at home. She doesn’t believe that the Student has ever bought a pair of pants for himself, knows what his shoe size is or ever does laundry except at school. She is not certain that the Student understands “stranger danger” and can make good judgments out in the community. She communicates with Mr. Bell, the Student’s case manager, and Mr. Bell tries to work on what the Student isn’t getting at school. The Student’s life skills program is designed to address and support his needs so that he will be capable of moving into a group home in the spring as anticipated. For example, on Thursdays, students create a healthful menu while staying within a budget, and discuss comparison shopping. They then go shopping out in the community, where the Student has the opportunity to do things such as place an order at the deli, maneuver a shopping cart down the aisle and talk to the check-out person. The social experience alone is very beneficial to the Student.

The Student is not taking a social studies class this year. When the Student’s program was discussed at the IEP meetings in the spring, everyone agreed that the Student would benefit from a job placement in the fall. The Student is a xx this year, and needs to build job skills

and develop a resume for when he transitions to adult case management. The decision was that the Student should have a job placement twice a week, without missing out on any of his academics if possible. There was also discussion about a history course, possibly as an independent study. The schedule wasn't put together until the end of May or early June. The science class fit into the schedule, but not the social studies. If the job placement wasn't in the schedule, then there would have been time for social studies. The District wants to give the Student everything, but the reality is that it's not possible.

The Student's mornings consist of English, math, science and life skills. The afternoons include guided study for science, keyboarding, job placement and community skills. On the days that the Student doesn't go to his job, he spends that block of time working on the computer using the Plato program, which builds job skills and social skills in the workplace. He uses some of the community skills blocks of time to process his experience at work and to write about it in his journal, to describe and reflect about what he did, what he struggled with and what he learned. Part of the discussion at the IEP team meeting was that the Student's schedule was going to contain blocks of time to support the Student's working, so that he could be successful in his job experience. The Student's work in this area is geared towards real-world applications. For example, in the spring the Student talked about wanting to work at the airport, and wanted to be in charge of airplanes taking off and landing. She and the Student brainstormed about what kind of skills this kind of job might require. The Student then researched all the different jobs involved at the airport, and whether there might be an internship opportunity there. This exercise developed the Student's awareness of how to go after a job that he thinks he might want.

After the Student learned that there were no internship opportunities at the airport, he said he still liked the idea of travel. This led to a job placement at AAA. She went with the Student to the job interview, and helped him prepare. The Student was very excited about this opportunity, and during the interview asked several times "When can I start?" The interviewer talked about a project involving organizing and putting away new brochures. The Student came back to school and was very excited, saying "I can't wait to start." He wrote an e-mail to the person he interviewed with. The next day, the Student came in and said he didn't want the job. She didn't know what happened. They took a walk, and the Student was very concerned and anxious, and he used some words that didn't sound like they were his own. The Student has language deficits and slow processing time. He can get really worked up and confused and doesn't always know the appropriate language to express his feelings. Sometimes he says or does something that is a reflection of an internal breakdown. The Student may have gone home, been very excited about the job, but said the opposite. In any event, at that point, she believed that the job placement at AAA had been irreparably damaged and decided not to send him there.

Over the next few weeks, the Student was using the job blocks of time to look in the want ads, use Google to research possible jobs, find out where they were, whether transportation would be available, what the hours of operation were and to set up job site visits. Eventually, the Student came up with 4 possible placements, and he had to find out who the managers were and call them to ask if they wanted an intern. The Student ultimately ended up with a job at Bull Moose Music in Portland and has gotten glowing reviews there. He will have an

opportunity later to work at another job, and he now understands that it takes weeks of planning to line that up.

Overall, she believes that the life skills program is an appropriate placement for the Student, and that he will continue to make gains. She notes that with a student like the Student, it is typical that the rate of progress is faster in the younger years and levels off later on.

With regard to the assistive technology evaluation, the Student was evaluated over the summer and the report was sent to the school and the Parents in August. She met with the Parents on September 4, 2009, and told them that she would be meeting with Ms. Cahill the following week, they would decide what equipment to order, and then run that by the IT department to make sure the school didn't already have that equipment before putting in the orders. The Parents were expecting that everything would be in place by the first day of school. The Student's mother had some suggestions about the technology, and she told the Parents that she would share the suggestions with Ms. Cahill. Some of the programs that the Student's mother wanted were eventually ordered. At this point, everything has been ordered and at least one item, the SOLO program, has been installed.

She has met and e-mailed with the Parents more than any other student's parents. There is usually one meeting per month and one or two e-mails per week. The Student's mother also visits the classroom on a regular basis. She has shown the Student's mother the math program and materials and the reading program and materials. The Student has homework 3 or 4 days a week. Quizzes, tests, math worksheets and graded homework are always sent home. She also told the Parents that she is generally at the school by 7:00 and stays until 4:30, and invited them to call her.

36. During an interview conducted by the Complaint Investigator with Mike Bell, Mr. Bell stated the following: He is a children's case manager for Pine Tree Society, and has been the Student's case manager since the summer of 2008. The Student had been receiving case management services from Pine Tree several years before that. As case manager, his role is to connect the family with appropriate services, to advocate for the Student in the educational setting and to bring together the various providers and school staff to find collaborative solutions when there are problems. When there is a conflict between the Parents and the school, he tries to remain as objective as possible and to reach his own conclusion as to what would be in the Student's best interest. In the last 12 months, he has observed the Student in the life skills classroom 2 or 3 times for about 1 hour each time; on those occasions the Student was mostly engaged in academic work. He has also spoken on several occasions with Ms. Mylroie about the Student's program in the life skills classroom. He has never observed the Student engaged in activity that he believed did not provide an educational benefit to the Student, nor has Ms. Mylroie described to him a component of the Student's program that he believed did not provide an educational benefit to the Student.

Since May 23, 2008, the Student has received home support services focused on developing social skills, independent living/functional skills and safety. Presently, the Student is not able to make a shopping list, go to the store and buy the items on the list, cook the food and clean up afterwards. There have been a few changes in the personnel delivering those services

during that time, although the supervision of services has stayed the same, and there was a gap during September 2009 when the Student was not receiving services on weekdays due to an incident between the Student and the previous provider. He believes that the Student has been well-served overall by these services.

He believes that there is some overlap between the Student's home services and his school life skills program, although he is working with Ms. Mylroie to try and reduce that overlap and to better coordinate their efforts. For example, Ms. Mylroie was recently discussing the difficulty the Student has with planning, and they will try to incorporate work on planning in the home services. The home services providers also try to build on skills the Student learns in school. In general, the Student has difficulty generalizing from what he learns. For example, he can add and subtract but hasn't learned to transfer those skills into the area of money. He is working on that in school, and with home services he will practice those skills out in the community. He believes that the Student's school life skills program provides many lessons of value for the Student.

He is not certain whether the Student should be receiving his academic instruction in the life skills classroom. The Student has a lot of skills, and he believes the Student could be successful in a less restrictive setting with a modified curriculum and proper supports for both attention and instruction. In an English class, the Student would find the reading very difficult (comprehension is such a challenge for him) as well as the writing (fine motor control is also a real challenge), so perhaps that subject would not be appropriate. Math also might not be appropriate, given the Student's skill level. Something like a science class seems appropriate, however. The Student has occasionally expressed frustration with his being in the life skills program, although the Student in general feeds off other people's emotions and wants to please, so that this could be the result of the Parents' influence.

He believes that the Student's vocational skill instruction and job placement is not only necessary but is the most important part of his school program. The Student is approaching adulthood and the time when he will be transferred to adult case management, which will provide a lesser level of services. At the IEP meetings in the spring, the Parents were apprehensive about including vocational skill instruction and job placement in the Student's program. They finally agreed that it could be included, but they stressed that the job placement needed to be well-planned, and that the Student needed to be included in the planning and to understand the expectations of the job. After the meetings, he understood that a job placement was going to be developed for the Student in the fall, and the placement at AAA was identified. The next thing he heard about it was that it didn't work out for the Student. He has gotten very mixed messages about what happened. The school says the Student didn't want that job, and the Student's mother says that the Student was confused and wasn't sure where he fit in at that workplace. He didn't want the placement to be terminated just because there were issues, and he tried to get the parties to collaborate on how they could make it work.

He understands why the Parents feel that their concerns are not being considered at IEP team meetings. The Parents are usually given a chance to express their thoughts initially, but once it becomes clear there is a disagreement, they might be cut off with a statement like "We've

already been down that road.” Then Mr. DePatsy will say things like: “There’s a clear disagreement and we’re going to make a decision without regard to what your thoughts are.” or “That’s the way it is and we don’t need your signature on it.”

With regard to speech/language services, the Parents at the IEP team meeting were requesting direct services, while the District’s position was that consultative services should be provided. His understanding at the end of the meeting was that the team had agreed that there would be consultative services as well as some level of direct services one-on-one with the pathologist.

37. During an interview conducted by the Complaint Investigator with Rob Moriarty, Mr. Moriarty stated the following: When he was a student at Cape Elizabeth High School, he participated in a mentoring program and served as a mentor for the Student. After he graduated, the Parents asked him to continue to act in that role, and he agreed to do so. Also, he was a substitute educational technician for the District in the life skills classroom last year and during the summer program. He has not been in the Student’s classroom this year.

It has been his experience that the Student tends to rise or fall to the level of the students around him. There are one or two students in the life skills class that function at a relatively high level, but they are younger than the Student, and the Student spends more time with the other, lower-functioning students. He believes the Student is capable of functioning at the level of an xx-year-old, but after the student spends a whole day with the lower-functioning students in the life skills class, he acts more like a 12-year-old or younger. He believes the Student would be better off in the regular education classroom with one-on-one support. He has observed the Student in the lunchroom, and many students from the regular education program stop and say hello to the Student or engage him in conversation. He was told by Ms. Mylroie or one of the other educational technicians that the Student participated in the regular education health class very successfully.

He believes that the Student benefits from the academic work he does in the life skills classroom, but the Student often finishes well before the other students and has to wait for the others to catch up. This summer, Ms. Mylroie talked about using the Student as a sort of “big brother” to the lower-functioning students, and he questions how much benefit the Student would derive from that. He believes that the Student spends time in the life skills class on skills that he already has, like washing dishes or preparing food. When the class went on a trip to the IGA market, they took the Student along even though he already knew how to shop, because they couldn’t leave him behind at the school. The shopping trip could have been made more educational for the Student, but it was presented at a very basic level.

38. During an interview conducted by the Complaint Investigator with Liz Fagan, S.L.P.D., Dr. Fagan stated the following: She was formerly a speech/language pathologist with the District, and worked with the Student when he was in middle school and for a few sessions when he was in xx grade. She left the District at the end of the 2007-2008 school year, and is now in private practice. In July 2008, she performed a speech/language evaluation of the Student, and attended the IEP team meetings on August 26, 2008 and September 4, 2008. She has been to the high school life skills classroom a few times, and has the impression that most of the instruction that occurs in that classroom focuses on daily living skills. She is not

familiar with the Student's current schedule. When the Student was in middle school, he was in the life skills program, spending one block on life skills, and the other blocks on academics (she is not sure whether those classes were in the life skills classroom or not). The Student also received speech/language therapy, occupational therapy, physical therapy and social work therapy.

She believes that the life skills class is not an appropriate setting for the Student, although she thinks he could reasonably spend some of his class time there. The Student has some real strengths— splinter skills – and is not like a Down's syndrome child who is uniformly cognitively deficient. She believes that the Student should be in the regular education environment as much as possible, and that he will obtain an educational benefit in regular education classes if he is provided with a modified curriculum and support from an educational technician. More importantly, the Student needs to be in the regular education environment for purposes of social skills development. She worked on social language skills with the Student in co-treated group sessions that included both disabled and non-disabled students, although the Student was hard to pair with other students – either he didn't like them or they didn't like him. The Student is very eager to please, and after high school, she thinks he is capable of maintaining employment in a clerical position, such as stocking shelves. She thinks the Student's program should be focused on reading, writing, math and executive function skills (e.g., planning, organizing, prioritizing, using schedules, etc.), and that he can get job experience during the summer.

39. During an interview conducted by the Complaint Investigator with Alina Perez-Smith, Ph.D., Dr. Smith stated the following: She is a clinical psychologist contracted by the District. She performed a psychological evaluation of the Student in March 2009 and a functional behavioral assessment ("FBA") in the fall of 2008. While conducting the FBA, she was in the functional life skills classroom four times for lengthy observations of the Student. The Student has two male peers in that class, both of whom he considers friends. One of those students appears to be at about the same cognitive level as the Student, although he spends more time in regular education settings than the Student, and they both receive functional academics together. The other student is lower functioning, and he does not work with the Student on academics.

She believes that the life skills program is a good overall placement for the Student. There are pros and cons to his spending more time in regular education settings. Last year, she observed the Student in his regular education history class. The Student appeared to be attentive and engaged, and tried to ask and answer questions during the class. The teacher reported that this was typical for the Student in that class. She is not sure, however, how much the Student benefited cognitively from his attendance in that class. The Student is good at retaining facts, but is not able to apply them more generally. She does believe that the Student benefited socially from the experience, however, the more time he spends in regular education academic classes the less time he has to develop life skills. If the Student's goal is to be able to live independently, then life skills and job skills need to be a higher priority. The best program for the Student is one that seeks a balance among functional skills, job experience and participation in regular education activities.

40. During an interview conducted by the Complaint Investigator with Belinda Snell, Ms. Snell stated the following: She has been a guidance counselor at Cape Elizabeth High School for 22 years. Her experience with the Student is limited to a few meetings with the Student's mother to discuss graduation requirements. The Parents want the Student to get a regular diploma rather than a certificate of attendance.

At the April 15, 2009 IEP team meeting, there was discussion about a way for the Student to get credit for a U.S. history course. The team agreed that it made sense for the Student to have this course. The discussion focused on a plan to have a history teacher consult with Ms. Mylroie in order to help her develop a U.S. history curriculum in the functional academics program. After the meeting, she spoke with a teacher, Mr. Jordan, who was enthusiastic about working on this with Ms. Mylroie. She later saw the Student's mother in the hall and told her about Mr. Jordan's willingness to participate, and the Student's mother thanked her for the information. In June, she received an e-mail from the Student's mother that contained a proposal for an independent study course. She was surprised, as this was not discussed at the IEP team meeting. She wrote back to the Student's mother and told her that the proposal looked like it was in the proper form, and told her that she needed to move quickly in order to get the course approved. The forms for independent study approval are in the guidance office, but she serves only a clerical function in relation to the approval process, entering data about independent study into the computer system.

41. During an interview conducted by the Complaint Investigator with Lori Coffin, Ms. Coffin stated the following: She is a speech pathologist and literacy specialist, and is contracted with the District to consult with regard to a few students there. The Student's mother heard about her from a parent of one of those students and asked the District to hire her to review the Student's literacy program. The District agreed, and she reviewed the Student's program and met with the Parents and then with Ms. Mylroie. She found the Student's literacy program to be completely appropriate, scientifically-based and a good fit for the Student's learning profile. Ms. Mylroie was using the program in an appropriate way, and was also doing other appropriate activities with the Student to support the program. With regard to the literacy goals in the Student's IEP, she found the goals to be very vague and difficult to measure. She discussed with Ms. Mylroie how to rewrite them to provide a better measure of the Student's progress. Recently, the Student's mother e-mailed to ask what her role was going to be going forward, and Mr. DePatsy informed her that her work with the Student was finished.

42. During an interview conducted by the Complaint Investigator with Dominic DePatsy, Mr. DePatsy stated the following: He has been the Director of Instructional Support for the District for the last four years. Prior to the filing by the Parents of this complaint, he never told staff members not to talk to the Parents. Several of them didn't want to talk with the Parents alone because they had experiences when, after a meeting with the Parents, the Parents distorted things that were said. Another staff member was reluctant to speak with the Parents because the Parents said harsh things about that person. He advised the staff that they should only meet with the Parents in the presence of at least one other person. After the Parents filed this complaint, they began trying to speak to each of the staff members in a way that suggested they were trying to turn staff members against one another. When this was

brought to his attention, he told staff members to direct all inquiries from the Parents to him. Even then, there was still a lot of e-mail communication going on.

With regard to the social work services listed in the IEP, the second entry under speech and language is the group session co-treated by Ms. Baker Miller and Ms. Vandervalk. This probably should have been made clearer in the IEP.

With regard to the 1st goal in the IEP, Section 4 of the IEP states that the Student was measured reading at level 4.0 in the Reading Street program. Therefore the goal of moving him to level 4.4 is a reasonable annual goal. It would not be reasonable to expect a student of the Student's limited abilities to make one year's progress in a year. The Student has made nice, steady progress in reading over the years.

With regard to math, the District normally uses everyday math for its students, but this program is too language-based for the Student so the District purchased the Saxon program for the Student to work on. This is a sequential program, and the Student has made some progress with that as well. It would be great if the Student could get to grade level 4 in math, but he takes about three years to make one year's progress.

The Student's IEP team spent a lot of time discussing whether the Student should remain in the life skills program. The Parents want to place the Student in regular education high school classes, but there are students identified as having a learning disability, with much greater cognitive abilities than those of the Student, that struggle in that setting. The Student needs concrete learning programs with lots of repetition. He believes the focus for the Student should be on life skills rather than on academics, as the Parents insist. The Student is going to be out in the world in only 1 ½ years. The Student could not be successful in Remedial English class. Another student who was in life skills went to that class and the Parents heard about it, so now they want that for the Student, but the Remedial English class is a highly structured program at a reading level well above the Student's capabilities. The District could try to water it down for him, but the Student's reading program is individually tailored to the Student's needs. There are no students in the Remedial English class functioning at a level as low as the Student's.

With regard to life skills, the District doesn't know what life skills instruction the Student gets at home. The Student's occupational therapy focuses on daily living skills, and he receives this therapy during the life skills block. Other therapies are also scheduled during this time. The IEP team as a whole made the determination that the Student belonged in the life skills program, although the Parents disagreed. The Student considers the life skills students to be his peer group. Some of the other students in the life skills program are younger than the Student, but some have stronger cognitive abilities than the Student.

The Parents get more information about the Student's program than any other parent with whom he has worked. They get a schedule every day that states what the Student was working on, whether there is homework and how the Student's day went. Ms. Mylroie has had multiple meetings with the Parents and showed them materials from the Student's educational program. With regard to consideration of the Parents' concerns, the IEP team has

always heard and considered what the Parents brought to the meetings. With regard to Dr. Fagan's report, he never said that it had to be delivered 10 days before the meeting. He asks that parents who intend to present outside consultant reports provide them to the team at least 3 days in advance, as required of the District, but the team will consider reports even if the parents don't do this. He attempts to develop team consensus, but when the Parents and the rest of the team disagree, it's his job to tell the Parents that the District will make the decision. There have been many things that the District has agreed on with the Parents: the Student's behavior plan, for example, and hiring Ms. Coffin to review the Student's literacy program.

With regard to the assistive technology evaluation, he offered to meet informally with the Parents and Ms. Mylroie, but something came up and he had to cancel the meeting. When the Parents raised other issues concerning the Student's program, he decided that the meeting should be an IEP team meeting, and offered to schedule it. The Parents said no.

The Student is successful and seems happy at school. If he weren't happy, the school staff would be seeing problem behaviors.

43. During an interview conducted by the Complaint Investigator with Sheanna White, Ms. White stated the following: She is a teacher at South Portland, and is certified in special education. She was hired by the Parents to tutor the Student from January 2008 through August 2008, and again during this past summer. She worked with the Student on reading and math. She is not familiar with the Student's program at school. She saw a few worksheets that the school sent home, but never saw much homework. She never contacted anyone at the District to try and get more information.

The Student has some great strengths in the area of communication and he has a very good vocabulary. He loves history and social studies, and she built many of the reading lessons around those subjects. The Student has a very good memory for facts, but has difficulty transferring knowledge without guidance. When the Student is interested in a subject, he can remember a lot and can contribute to discussions. She doesn't, however, think the Student would be appropriate for a regular education high school classroom because the reading level would be too difficult. Also, instruction in that setting is more book-knowledge-based and less hands-on. The Student needs to interact with what he is learning, and it would be difficult to create an environment like that in a regular education classroom.

With regard to math instruction, she hasn't seen much improvement in the Student's ability to do math problems over the time she has been working with him. She has found that when the Student goes away for a couple of weeks, he returns having retained little of what he learned. She has taught the Student essentially the same math curriculum this summer as she did the summer before. She thinks he understands the concepts, and that the inconsistency in his work is often a question of losing focus. She has not worked with the Student on division, and she thinks that this would be a challenge for the Student because multiplication is difficult for him. The Student is much more consistent with addition and subtraction. She has been working with the Student on life activities applications of math, such as counting change, or doing a budget. The Student is not very consistent in his application of math skills to these

areas, and he still has difficulty knowing which bills and change he should give the cashier to pay for his purchases.

44. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: At the IEP team meeting of April 15, 2009, the District emphasized putting vocational skills into the Student's program. She was initially reluctant to agree to this, but other team members thought it was important, so the Parents agreed it could be in the program as long as it was carefully planned as to how many times per week, what the Student would be doing and what the goals would be. It was specifically agreed that the Student would go to a job one afternoon per week in xx grade and two afternoons per week in xx grade, and that goals would be developed for the IEP that would apply to these job experiences. She does not believe that the terms of this agreement were stated in the Written Notice that followed the meeting.

When the Student started school on September 1st this year, there was no job set up for him. At a meeting with Ms. Mylroie on September 4, 2009, Ms. Mylroie said that there was no job planned because she didn't get paid to do planning during the summer. The Student had already mentioned AAA in the spring, and preparation for the job should have occurred over the summer so that the Student began to benefit from his first day back at school. The interview at AAA didn't happen until September 10, 2009. She believes that the Student didn't engage in any meaningful activities during the block designated for job placement during those 10 days. Prior to that time, the Student had already done interest surveys and worked on job readiness. Also, the Student is a concrete learner, and it would not be useful for him to work on job skills during a time when he was not working so that he couldn't see the practical application of those skills to his work.

The day of the interview, the Student called her from school just before he got on the bus to come home. He said he didn't want to go to the job at AAA, and said he hated it. He was still upset when he got off the bus, saying he didn't want to do what they told him he would be doing. She does not remember what he said he didn't like about it. The Student always wants to please, and he would never misbehave in an interview situation. He is also slow to process. He could have gone through the interview process and only later realized it was not what he wanted. It should have been made clear to him in advance what he would be doing at the job. She wanted that placement to work, and thinks it is important for the Student to develop office skills, but she was upset when she got the e-mail from Ms. Mylroie describing the interview experience as a big success. She didn't intend for Ms. Mylroie to give up on the job placement; she hoped the school would help the Student see the connection between what he would be doing at AAA and what he was learning in school.

She questions the value of having the Student research other job opportunities after the AAA placement was discontinued. He shouldn't be developing skills now regarding how to find a job because he's not yet ready to enter the job market. The District should be focused on determining what the Student's needs are at the job placement and what skills he needs to develop in order to eventually enter the job market.

At the April 15, 2009 IEP team meeting, the team determined that social work services for the Student would remain the same as last year as to hours, content and grouping, including direct services to address the Student's anxiety and participation in a group setting. The IEP only references 30 minutes for the Student's individual session, but nothing about the group. She sent an e-mail about this, and Ms. Mylroie said she would discuss it with Ms. Baker Miller. She never saw an amendment to the IEP. The Student never received services in the group setting until the 6th week of school. She can understand why it didn't happen for the first three weeks, but he should have received services after that.

Regarding the IEP goals, she wants everything to be clear, more detailed and specific. For example, the Student is having trouble with alphabetizing at his job at Bull Moose Music. She would have liked as a goal in his IEP for him to be working on this, with a clear and specific basis for measuring his progress in learning that skill. The speech and language goals are particularly vague. Measurement by anecdotal records and observation seems too informal. There isn't enough relationship between the statement of the goal and how the goal will be measured. The providers don't seem to do assessment at the beginning of the year to establish a baseline against which to measure progress.

With regard to the Student's literacy goals, literacy is a relative strength for the Student. She thinks the Great Leaps program is okay, and believes he is making progress in that program. The Student was supposed to begin working on the 5th grade reading level in the SRA reading program, but then the District changed to the Reading Street program and now the Student is working at the 4th grade reading level. The Student's current IEP goal only reflects one month of expected progress. The program is not setting the bar high enough for the Student.

With regard to the Student's math goals, the Student is very weak on basic computational skills, and has not been making progress in his math skills for years. The Student is working on the same kinds of math problems now that he did six years ago. The Student's basic math skills are erratic, showing a lack of true understanding. She understands that the Saxon program, which the Student has been working on for the last two years, is supposed to be a very good program, but it may not be right for the Student. The Student is very hands-on and concrete. Based on the work sheets that she sees, the Saxon program seems to be not very interactive, and this may be why the Student is not getting it. The Student really needs to learn how to make change and how to make a budget. That may be one of the math goals, but the Student isn't grasping the concept. The District should bring in a consultant who is well-versed in multiple math teaching strategies. The goal referencing division is not appropriate for the Student because he can't learn to divide if he doesn't fully grasp multiplication, and he can't multiply if he doesn't fully grasp addition and subtraction. The Student's last IEP had the exact same goal, and the progress reports stated that he was making satisfactory progress. She doesn't know what that could mean.

With regard to periodic reports on progress, she acknowledges that the IEP does state when they are to be provided, but the dates have the wrong years and typically, in the past, the reports were sent out one or two months late. Since the current IEP was developed, the first progress report was sent in June, as specified. As of November 9, 2009, she has not yet received the second report that was due November 7, 2009.

With regard to the location of services, it is not always clear where services are being provided. For example, she does not always know whether the Student is getting occupational therapy services in the occupational therapy room or in the classroom. The Student is supposed to be getting one-on-one math instruction, but on some days he has told her that he had math with the life skills class. She wants to know with whom the Student is being grouped. She wants to know where the speech/social work group is happening and who the other students are in the group. She wants to know about the other students in the Student's reading class – whether the Student is with same-age peers of similar cognitive abilities working on similar materials. When she asks questions like this of Ms. Mylroie, she gets vague answers. Ms. Mylroie might say that she can't answer right now, that she doesn't have the materials, or that the information is confidential.

The Student does sometimes get homework, such as math work sheets or science homework, but very little comes home. She has never seen any work related to literacy. The Student doesn't bring home a "homework packet." The Parents want to carry over the Student's school work at home; they want to reinforce the skills the Student is learning. They want to see vocabulary words, spelling lists and themes which the Student is studying. They could be asking comprehension questions of the Student. Ms. Mylroie showed her the Reading Street program, but couldn't show her the book that the Student was reading. She never heard that the Student was reading short stories; she never saw any stories or any work relating to stories. Recently, the Student got some books as a birthday present, and brought some of them to school. When he brought them home, one of them had questions from Ms. Mylroie attached. She wrote to Ms. Mylroie and said the book was not intended to be used at school, but was only for reading at home. The Student's literacy program should have been planned before the program started, and Ms. Mylroie should have been able to show her lesson plans and materials.

She feels that Mr. DePatsy has formed the idea that the Student belongs in the life skills program, that the Student can't do more than this, and that no matter what the Parents do or who they bring to the IEP team this is not going to change. She feels that the Parents aren't treated with respect, and they have never gotten any of the things they requested for the Student. At meetings now, she feels like the District staff members say what they've been told to say, and there's not an open discussion about what the Student needs. There's a lot of silence instead. She has never been told that she couldn't bring someone to an IEP team meeting, but Mr. DePatsy makes fun of her for bringing so many people. Mr. DePatsy told her that the IEP team wouldn't consider Dr. Fagan's report unless she submitted it 10 days in advance of the meeting. When her advocate said there was no such requirement, he agreed to accept it. Ms. Vandevalk told her that she can't talk to her unless Mr. DePatsy is present. The Parents' experience with Ms. Labrie was very different, as she was willing to talk about the Parents' concerns, validate them and work towards a compromise.

In middle school, the Student was in a resource room with students who had all kinds of disabilities. The teachers modified curricula so that the Student could do what the other students were doing. The Parents have told the District that they believe the Student deserves to have access to academic classes, but the District says he has to stay in his life skills room.

The Student's science class this year is wonderful, and his success there proves that he can do it. He needs more classes like this.

The Student only goes to his job two days per week, leaving three days when the Student could be using this block for a history class. She acknowledges that the Student is currently using this block to support his job placement, but she believes this is more time than is necessary. She also believes that the District over-utilizes the PLATO program; the Student has complained that he doesn't like doing it. If the Student is not properly engaged, he will start demonstrating challenging behaviors.

She was concerned when the Student's speech/social work group didn't start at the beginning of school. The Student has speech needs, and as it is they are addressed in a very diluted fashion in the group. If the group couldn't meet right away, then the Student should have been getting individual services until it could. There are two students in the group with IQs around 40, functioning at a kindergarten level. Their goals are very different from those of the Student, who is highly verbal and is working on a more complex set of skills. She doesn't see how all these students' needs can be met effectively at the same time. She also doesn't believe that Ms. Vandervalk has been providing the consult services specified in the IEP.

With regard to the assistive technology evaluation, the report was very encouraging, but when the Parents met with Ms. Mylroie on September 4, 2009, Ms. Mylroie said she hadn't had a chance to read it and wouldn't be able to get to it until early October. She was very upset by this because she believes some of that technology will make a big difference for the Student. The Parents were never invited to go to an IEP team meeting to review the report. When the IEP was not being implemented at the beginning of the year, she asked for an IEP team meeting to be held. The District offered the date of October 8, 2009, but this was too long to wait and the Parents weren't optimistic that anything would change anyway.

She understands that the Student is a difficult student to place – he needs a functional academic program, but he deserves a truly individualized educational plan. She believes, for example, that the Student could be successful in the District's remedial English class. Instead, the District put him in the life skills classroom and insisted that he work on low-level skills. The Parents don't want him working on life skills at school, because he gets this training at home under Section 24. The Student's time at school should be used for academics and for services to support the Student's vocational goals. She thinks that functional typing is okay, but the Student tells her that he spends some sessions doing internet searches. She wants to see a plan that says that by the end of the year the Student will have certain specified research skills. She doesn't really know what the Student is doing at school. The Parents don't get a curriculum or syllabus in his special education classes.

The Parents have purchased for the Student a condo in a privately run group home setting. Construction is expected to be completed by the summer, and then the Student will start spending weekends there. The condo will be where he lives after graduation. The Student has already been approved for living there based on his having enough independent living skills, and she thinks that he has the skills required to live there now. The Student can cook, do his laundry and bicycle around town. She agrees, however, that the Student can't presently

make a shopping list, go to the store to buy the items, come back and cook the food and clean up afterwards. He is working on those skills at home. The Student says he spends one hour per week at school going shopping, when he's already doing this with his home services worker. Ms. Cahill also works with the Student on his fine motor skills for tasks of independent living and she does a good job.

After the Student graduates, she hopes he will have a job that he looks forward to going to. Given the Student's reading ability and range of interests, she would also like the Student to take continuing education courses at University of Southern Maine or Southern Maine Community College, although she knows he's not going to get a degree.

45. During an interview conducted by the Complaint Investigator with the Student's father, the Student's father stated the following: The Student's IEP does not reference the team's determination that the Student would spend two afternoons per week at a job placement, although he is currently doing that. On the other hand, the IEP states that the Student is to be in a history class, but that has not happened.

With regard to the assistive technology evaluation, the Student told him recently that although some equipment has arrived, nobody has been trained on it and no one knows how to use it. The evaluation was ordered in April, and here in November none of it has been implemented. There never was an offer by the District to schedule an IEP team meeting to review the evaluation. The only discussion about an IEP team meeting was on the subject of the Student not having a job and having nothing to do in the afternoon.

All through the Student's primary and middle school years, the Student participated in regular education classes with the assistance of educational technicians and modified coursework. The District should be doing the same things for the Student now. The Student can already do the things that they are teaching him in the life skills program: he can make a shopping list, do the shopping and do his laundry. The other students in the program are all functioning at a lower level cognitively than the Student. The Student reports that he is bored with the vocational skills work they are giving him – it's the same material over and over again.

The Parents asked to be permitted to bring draft IEP goals to the IEP team meeting and were told they couldn't, but then the district showed up with draft IEP goals. There is no real discussion at the meetings. Staff members each say what they've been told to say, the Parents object, and Mr. DePatsy says he will decide and the Parents can go to due process. After the AAA job experience, when Ms. Mylroie misunderstood the Student's mother's e-mail and decided to scrap that job placement, Mr. Bell tried to talk with her about not giving up on it. Ms. Mylroie told him she couldn't talk to him without Mr. DePatsy being present. The District cut off Ms. Coffin's contract when Mr. DePatsy realized they weren't going to be able to use the report they asked her to write for the complaint investigation. It seemed like retaliation. The whole team atmosphere is a highly controlled environment where the Parents don't have any real say.

VII. Conclusions

In the most important respects, the program developed by the IEP team (with the Parents' vigorous participation) and delivered by the District to the Student, a particularly involved and challenging student, provided well more than "some educational benefit," the "basic floor of opportunity" comprehended by the free, appropriate public education to which he was legally entitled. *Hendrick Hudson Bd. Of Educ. V. Rowley, 458 U.S. 176, 200-01, 102 S. Ct. 3034, 73 L.Ed.2d 690 (1982)*. The Parents have made numerous allegations of violation, and they were all investigated, with some resulting in findings against the District. Sight should not be lost, however, of the overall lengths to which the District has gone in endeavoring to prepare this student to enjoy a successful adult life.

Allegation #1: Failure to develop the Student's IEP after the meeting of 4/15/09 in conformity with the determinations of the IEP team regarding vocational training and job skill goals in violation of MUSER §VI.2.J(4)
NO VIOLATION FOUND

With reference to vocational training or job skill goals, the written notice following the April 15, 2009 team meeting contains only the IEP team's determination to provide some heavily modified academic classes in the regular education setting, but to continue to focus on teaching communication, vocational and independent living skills. There was no evidence that the Parents sought to amend the written notice pursuant to MUSER §XIV.8 to include further determinations.

The IEP itself contains several references to vocational training. Under "Employment," the transition plan states that the Student "will be exposed to a variety of job related sites in the high school. He will maintain daily/weekly jobs and explore job experiences within the community. [The Student] will continue to explore community/job experiences and increase his employability adaptive skills and social/work skills to complete a resume, gain letters of recommendation." Section 11e provides, under the heading "Community Experience," "as a xxxx [the Student] will be involved with 2 job/community based opportunities." Thus, the IEP is not out of conformity with the general determination to focus on vocational skills.

Allegation #2: Failure to develop the IEP after the meeting of 4/15/09 in conformity with the determinations of the IEP team regarding social work services in violation of MUSER §VI.2.J(4)
NO VIOLATION FOUND

With reference to social work services, the written notice following the April 15, 2009 team meeting reflected the IEP team's determination to continue the Student's current goals and levels of service in social work. Social work services in the Student's then-current IEP, dated

March 11, 2008, were 30 minutes per session¹, plus 30 minutes per session of psychological services by a social worker.

The April 16, 2009 IEP at first glance appears to provide only 30 minutes per session of social work services. Through interviews, however, it was apparent that all team members understood that the Student would be receiving the second set of social work services as a group session co-treated with the speech pathologist. This is referenced in the IEP under speech and language services, 45 minutes per session (as discussed below, further specificity regarding the location of this service might have avoided the confusion). While not rising to the level of a violation, the IEP should be amended to clarify this point.

Allegation #3: Failure to ensure that all annual goals in the Student's most recent IEP are measurable in violation of MUSER §IX.3.A(1)(b)

VIOLATION FOUND

As a part of the definition of the IEP, MUSER §IX.3.A(1)(b) provides that an IEP shall contain a statement of measurable annual goals, both academic and functional, designed to meet the child's needs that result from the child's disability. Accordingly, the form IEP, in Section 3.D, requires that the IEP team identify the child's academic, developmental and functional needs. Then, in Section 4, the present level of the child's academic and functional performance is to be provided, so that the IEP team will create a record of the child's present level of functioning with reference to those areas of need identified in Section 3. The annual goals listed in Section 5, therefore, proceed from the previous two sections: goals are developed in those identified areas of need, utilize the child's present level of functioning as a baseline, and state the level of functioning the child is expected to attain over the coming year. This movement from baseline towards goal must also be objectively measurable.

Looking at the Student's April 16, 2009 IEP, Section 3 does not set forth all of the specific, identified needs of the Student, but rather contains more generalized descriptions of his program. Section 4 is not uniformly consistent in setting forth specific levels of functioning in the areas of need. The Student's being "able to read a passage in Great Leaps at 130 words/minute with 80% accuracy" appropriately states an objectively measurable baseline; the Student's having "made progress with spelling at 5th grade level" does not. Not surprisingly, the goal formulated for progress in reading fluency appropriately states a goal of improving to 140 words per minute as measured by the Great Leaps progress chart, while the spelling goal states that the Student will continue to improve his patterns of spelling as measured by new words in his reading curriculum. There is no attempt to quantify the number of words or word elements spelled correctly presently or anticipated in the future.

¹ The Student's IEPs state only the length of each session, not how often per week, month or year these sessions are to occur. Pursuant to MUSER §IX.3.A(1)(g), parents are entitled to know frequency as well as duration of services and if, as was the case here, the delivery of services will be impacted by the school's and/or providers' schedules, that information should be referenced as well.

The annual goals contain additional defects that make it difficult for a parent (and perhaps a teacher) to understand: there is sometimes a discrepancy between the statement of how progress will be measured contained within the goal itself and the statement of how progress will be measured in the column marked "How Goal will be Measured;" there are sometimes multiple goals contained within one goal statement; goals that appear to be objectively quantifiable are described as being measured by "anecdotal records and reports," rather than from recorded data; there is sometimes a lack of specificity, as when the occupational therapy goal describes improvement in fine motor skills involving self-help tasks without specifying which tasks are being worked on.

The purpose of the requirement that goals be clear and objectively measurable is both to inform parents, teachers, and therapists who will be engaging with a student what the student will be working on during the coming year, and to ensure that as the year progresses it will be possible to accurately assess whether the Student is making progress in his educational program. The statement of annual goals in the Student's IEP, although containing much useful and appropriate information, too often fails to serve that purpose.

Allegation #4: Failure to include within the most recent IEP a description of when periodic reports on the progress the Student is making toward meeting the annual goals will be provided in violation of MUSER §IX.3.A(1)(c)

NO VIOLATION FOUND

Section 4 of the Student's April 16, 2009 IEP, expressly states: "Quarterly updates or progress notes to be sent concurrent with the issuance of report cards for 11/7/08; 1/23/09; 4/3/09; 6/18/09." Unfortunately, all but the last date are one year off (an amendment to correct this would be appropriate), but the Parents recognized this error and understood what was intended. This information satisfies the regulatory requirement.

Allegation #5: Failure to include within the most recent IEP a statement of the location of services to be provided to the Student in violation of MUSER §IX.3.A(1)(g)

VIOLATION FOUND

MUSER §IX.3.A(1)(g) provides that the location of services specified in the IEP be identified. While there may be instances where the location of academic instruction is sufficiently identified as either a regular education setting or a special education setting, these designations may not be appropriate where related services are concerned, as these may possibly be occurring either in a classroom or in a specially designated therapy room or elsewhere. Here, for example, the Student's occupational therapy might be provided either in the occupational therapy room, in the life skills classroom or out in the community. It is the intent of the regulation that the Parents would be able to know in which one (or more) of these settings the services were to be provided. The IEP's designation of "SPED" for the location of each of the three listed occupational therapy services provided insufficient information. Likewise, the designation "SPED" for the location of the Student's social work sessions fails

to convey the necessary information to enable the Parents to understand what service is being referenced (the individual session in the social worker's office? the group session co-treated with the speech pathologist? a consulting service?). Had the location of the speech and language service that was intended to reference the group session co-treated with the social worker been better identified, rather than the designation "SPED," the Parents likely would have understood that this service had not been omitted from the IEP (see Allegation #2 above).

Allegation #6: Failure to include within the Student's most recent IEP a statement of measurable annual goals with respect to the Student's literacy skills designed to meet the Student's educational needs and enable the Student to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(b)(i)
NO VIOLATION FOUND

The Parents' chief complaint in connection with the Student's literacy goals focused on what appeared to be a goal of one month's progress in the Reading Street reading program over the ensuing year. The Parents' apprehension was understandable, given the wording of the goal: "[The Student] will improve his reading comprehension and complete Reading Street level 4.3 to 4.4." In Section 4(1) of the IEP, however, the Student is reported to have scored on level 4 of Reading Street. The goal is therefore reasonably understood to anticipate a gain of 3 to 4 months in the program, and this appears to be reasonable in light of the Student's cognitive deficits. As to the remainder of the literacy goals, and aside from the issue of whether they are well-stated and measurable (dealt with previously), the literacy consultant (Ms. Coffin) hired by the District at the Parents' specific request, and identified by the Parents as an individual to be interviewed in connection with this investigation, reviewed the Student's literacy program and found it entirely appropriate for the Student.

Allegation #7: Failure to include within the Student's most recent IEP a statement of measurable annual goals with respect to the Student's math skills designed to meet the Student's educational needs and enable the Student to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(b)(i)
VIOLATION FOUND

The April 16, 2009 IEP contained a goal regarding the Student's understanding of division that was essentially identical to a goal contained in the previous IEP, yet the progress notes from April 3, 2009 record satisfactory progress towards this goal. The goal is stated as achieving PAAP rubric level 2, level of complexity 4, which reads: "Students can solve problems requiring multiple operations – addition, subtraction, multiplication and division" (the PAAP rubrics were attached to the IEP). There was ample evidence to suggest that the Student was still inconsistent in his use of addition, subtraction and multiplication, and no evidence to suggest that the Student had a grasp of basic division, much less an ability to solve problems requiring multiple operations. Section 4(2) of the IEP states that the Student is at PAAP rubric level 2, level of complexity 2 in the area of measurement, but doesn't contain a similar statement with regard to the remainder of that rubric (adding and subtracting

numbers with up to four digits, multiplying single-digit numbers and dividing using single-digit divisors and up to two-digit dividends). The examples of the Student's homework from the current school year provided by the Parents feature addition of single digit numbers. This goal appears not to meet the Student's current educational needs. Again, more careful delineation of needs followed by statements of current levels of performance would help lead to goals that were educationally appropriate.

Another of the Student's current IEP math goals has the Student being able to count money up to \$75, make change and comparison shop for sums up to \$25. A similar goal from the previous year's IEP had the Student working towards being able to count up to \$50 and comparison shop for sums up to \$15, and the Student was reported to have made satisfactory progress. According to Section 4(2) of the current IEP, however, the Student "can count money up to \$50 with assistance," but "has difficulty counting larger amounts using dollar bills and coins up to \$50." If the previous goal had not been met, then it makes little sense to set the current goal higher, other than to give the appearance of greater progress than is actually taking place.

The final math goal has the Student improving from a PAAP rubric level 2, level of complexity 2 to a rubric level 2, level of complexity 3. Although the goal does not indicate whether this refers to the whole numbers rubric or the measurement and approximation rubric, it presumably refers to the latter as Section 4(2) states that the Student is currently at rubric level 2, level of complexity 2 in the area of measurement. Section 4(2) further states, however, that the Student works at that level "when provided with adult assistance and cues," whereas his "same-age peers are able to do [those] skills independently." Given the practical importance of measurement skills and the Student's proximity to graduation, increasing independence in the use of these skills would seem to more accurately address the Student's needs.

Allegation #8: Failure to adequately consider the concerns of the parent in the IEP decision making process in violation of MUSER §§VI.2(I) and IX.3.C(1)(b)
NO VIOLATION FOUND

MUSER §§VI.2(I) provides that the IEP meeting "serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions." That section of the regulations goes on to provide that "[t]he IEP Team should work toward consensus, but...[i]f the team cannot reach consensus, the [school district] must provide the parents with prior written notice of the school's proposals or refusals, or both, regarding their child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing or a State complaint investigation."

There was no evidence that the Parents were effectively precluded from participating in the decision-making process. The Parents often came to meetings with an outline of their concerns, and were permitted to present those concerns to the team. The Parents brought outside consultants or educators to meetings, and those individuals were permitted to present

their perspectives. There was further evidence that, in a number of instances, the suggestions of the Parents or their consultants were followed, as with the hiring of Ms. Coffin or the placement of the Student in a regular education history class. It was also plainly evident that at this point there is a high level of animosity and distrust between the Parents and the District. The Parents' descriptions of a reduction in the amount of actual discussion at meetings are no doubt accurate, but the fault for this state of affairs does not lie solely with the District. The defensiveness of District staff members in insisting upon Mr. DePatsy's presence during informal meetings with the Parents speaks to a sense of their feeling attacked.

Just as the District must give due consideration to the comments and suggestions of the Parents, the Parents must accept that not all of those comments and suggestions will be embraced by the District. As set forth in the language quoted above, it is the District that makes the decision in the event of lack of consensus, and the Parents are accorded their due process rights to have those decisions reviewed by either the state Department of Education (as they have sought in this complaint investigation) or an independent hearing officer. For the benefit of the Student, whose interests lie at the heart of the process, both parties must learn to accept their differences of opinion and continue to work collaboratively going forward.

Allegation #9: Failure to fully and adequately implement the Student's most recent IEP with respect to job skill placement in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

The Parents' chief complaint in this regard is the alleged failure to have a job placement ready for the Student at the onset of the current school year, on September 1, 2009. However desirable that might have been, and notwithstanding the logistics of establishing that opportunity over the summer months, the Student went to his job interview at AAA only 9 days later. Not only that, but during those 9 days, the Student was involved in activities designed to prepare him for success during that interview.

As it happened, that job placement was aborted immediately after the interview. It is difficult to determine what accounted for the marked change in the Student's feelings about the interview experience between the time of the ride back to school from the interview and his bus ride home. Whatever the reason, Ms. Mylroie's decision to abandon the effort is understandable in view of the quite hostile e-mail she received from the Student's mother and the Student's strong negative feelings the next day. The next weeks were appropriately spent engaging the Student in the process of establishing another job placement opportunity, a process containing many valuable pragmatic skill exercises, until in due course the job at Bull Moose Music was secured. None of these activities are inconsistent with the provisions of the IEP with respect to the Student's post-secondary employment goals.

Allegation #10: Failure to fully and adequately implement the student's most recent IEP with respect to history instruction in violation of MUSER §IX.3.B(3)

VIOLATION FOUND

The Written Notice following the April 15, 2009 IEP team meeting states, under paragraph 4: “The IEP team considered having [the Student] take only the required History courses in order to gain a diploma, however, this was rejected in order to honor the parents request to expose [the Student] to an additional history course, a semester long, independent study in History.” The District listed, among the determinations under paragraph 2: “Provide some heavily modified academic classes in the mainstream, but continue to focus primarily on teaching communication, vocational and independent living skills.” The April 16, 2009 IEP annual goals include the following goal: “Given a modified curriculum with instructional support, [the Student] will complete an individualized course of study in the mainstream setting in History with a pass/fail grading system.” In addition, the IEP’s transition plan, at Section 11.d, reflects an independent study in history as one of the Student’s expected courses of study.

When it came time to develop the Student’s schedule for the current year, it became apparent that there were not enough blocks of time in the schedule for the Student to fulfill all of his goals. The determination that the Student would take a heavily modified academic class in the mainstream was fulfilled via the Student’s physical science course, but the specific annual goal of a history course was not fulfilled. The inability to provide this instruction necessitated that the IEP team meet, reconsider the Student’s program, and either change the program to permit inclusion of the history course or else change the IEP goals. Alternatively, the IEP could have been amended without need of an IEP team meeting by agreement between the District and the Parents, pursuant to MUSER §IX.3.C(4).

Allegation #11: Failure to fully and adequately implement the student’s most recent IEP with respect to speech and language services in violation of MUSER §IX.3.B(3)
VIOLATION FOUND

The service in question is the group session co-treated by Ms. Vandervalk and Ms. Baker Miller. It is undisputed that the Student did not have this service for the first 5 weeks of the current school year, although one of those weeks was due to the Student’s unavailability. While the initial two week delay in commencing this service is understandable, and the nature of the school’s block scheduling may have unavoidably caused two more weeks to pass without the service being delivered, the cumulative effect must be regarded as more than a trivial deprivation of services. Some effort on the part of the District to compensate for this loss is required.

Allegation #12: Failure to timely review the Student’s assistive technology evaluation in order to determine the Student’s educational needs in violation of MUSER §§V.3.A(1), (2) and IX.3.C(2)(e)
NO VIOLATION FOUND

When conducting its annual review, the IEP team properly considered, pursuant to MUSER §§V.3.A(1) and (2), whether to seek additional data with regard to any additions or

modifications to the Student's related services that were needed to enable the Student to meet his IEP goals. MUSER §IX.3.C(2)(e) specifically directs IEP teams to consider whether a student needs assistive technology devices and services. The team made a determination to obtain an assistive technology evaluation, and the Student's mother signed a Parental Consent for Evaluation form. Although the consent form is date-stamped received by the District on May 4, 2009, the Student's mother recalled signing it at the April 15, 2009 meeting, the date that appears next to her signature, and this is corroborated by the Written Notice of that meeting ("Assistive Technology evaluation will be completed and parent signed consent.").

Pursuant to MUSER §V.4.B, the District was obligated to require the agency completing the evaluation (Pine Tree Society) to submit the evaluation report no later than 40 school days from the receipt of parental consent. The District received the completed report from Pine Tree Society on August 17, 2009, within 40 school days of the May 4, 2009 date (the date on which the District officially recorded the consent received and presumably the date on or after which Pine Tree Society received it), although not within 40 school days of the April 15, 2009 date. As the regulation is couched in terms of a district's obligation to require of an evaluating entity that its evaluation report be timely submitted, and as Pine Tree delivered its report within 40 school days of when the District recorded that it had received consent, it appears that the District complied with the regulation. It is further noted that 40 school days from April 15, 2009 would have ended just a few days before the District's summer break, so that it was unlikely that further action would have been taken until after school resumed in September in any event.

Although one of the responsibilities of the IEP team is to consider the results of any reevaluation (MUSER §VI.4.J(5)(c)), there is no time frame imposed by the regulations for this other than the requirement that IEPs be reviewed at least annually (MUSER §VI.4.J(5)) and that parents receive a copy of the evaluation report no less than three days before the IEP team meeting at which the evaluation will be discussed (MUSER §VI.4.G). Ordinarily, evaluations are performed in anticipation of and reviewed at an annual IEP review, whereas here, the determination to conduct the evaluation was made at the annual review. 18 days after the District received the report, and three days after the start of the school year, Ms. Mylroie met with the Parents to obtain their input regarding the report. In due course following that meeting, Ms. Mylroie met with Ms. Cahill, a list of equipment to be purchased was drawn up, the list was checked by the District's technology department to ascertain whether any of that equipment was already in the District's possession, and the District placed an order for the equipment on September 10, 2009.

None of this, of course, constituted consideration of the results of the evaluation by the IEP team – although the Parents' input was solicited, the Parents were not present to hear and respond to the input of other team members. In an e-mail dated September 10, 2009, however, Mr. DePatsy asked the Student's mother if she wanted him to schedule an IEP team meeting for this purpose. In response, the Parents sought an informal meeting instead. When Mr. DePatsy indicated that (because of other issues that had arisen) a formal meeting was necessary and offered October 8, 2009 as the first date when all members would be available, the Parents declined to have the meeting because they felt the date was too late. Accordingly, no violation is found in regard to review of the evaluation report.

Allegation #13: Failure to provide education in the least restrictive environment in violation of MUSER §X.2.B
NO VIOLATION FOUND

MUSER §X.2.B provides that children with disabilities shall be educated with children who are not disabled to the maximum extent *appropriate*, and not to the maximum extent possible. The regulation proceeds to outline a continuum of program settings that school districts must make available to students. The setting in which the Student's IEP team placed him is described in section X.2.B(2)(c): special education outside the regular education classroom more than 60 percent of the day, including students who are placed in self-contained special classrooms with part-time instruction in a regular class.

In considering whether the Student's educational program is being delivered in the least restrictive appropriate setting, reference must first be had to the nature of the educational program developed by the Student's IEP team. Review of the Student's IEP team's determinations, in turn, focuses in the first instance on the procedures followed in arriving at those determinations. There are no allegations with respect to the any of the requisite team members not being present. There are no allegations with respect to the IEP team not considering necessary evaluation data. The Parents' allegation that their concerns were not considered, discussed above, was not credited, nor was the allegation that they were not provided with sufficient information to enable them to meaningfully participate in the team's decision making, discussed below. Having the appropriate information before it and with the participation of the appropriate persons, the team proceeded to duly deliberate and develop an educational program for the Student.

It was the considered opinion of the educators present at the IEP annual review meetings that the Student required heavily programmed, guided instruction in both English and math. The Student was functioning at a fourth grade level in reading and a third grade level in math. In addition, the IEP team heard from several members (Mr. Bell among them) who believed that vocational skill training, including outside job experience, should be a high priority for the Student. Likewise, many of those present at the meeting emphasized the need of the Student, who is 18 and is expected to begin independent living in the near future, to develop better independent living skills.

The Parents resisted the latter on the basis that the Student was receiving this training after school through his home services, and that the student already knew how to do many of the things being taught in the life skills program. Several of those interviewed in this investigation, however, contradicted this latter assertion, describing the Student as strongly deficient in the life skills area. Ms. Mylroie reported that the Student's abilities in the area of life skills were well behind those of many of his classmates. These reports were corroborated by the Student's performance on the Adaptive Behavior Assessment System II rating scale, a tool to measure a student's ability to complete daily living skills and function in the community, where the Student received extremely low scores in the areas of skills for

independence and self-care, daily living activities at home and at school and ability to abide by health and safety rules.

The team's determinations to include the vocational skills and life skills components in the Student's program, then, were considered and well-informed, although contrary to the wishes of the Parents. The Parents sought to have the Student attend more regular education classes: specifically, a history class, a science class and remedial English. They stressed the academic benefits of this as well as the social benefits to the Student from being among his non-disabled peers. The Parents also pointed to the Student's past success when attending heavily modified regular education classes with support. In the opinion of several of those who were interviewed (Ms. Labrie, Dr. Sortwell, Ms. Baker Miller, Ms. Mylroie, Dr. Perez-Smith and Ms. White), however, the ability of the Student to benefit academically from instruction in a regular education class is questionable. As to the social benefits, while they no doubt are real, the Student receives those type of benefits by taking the science class, having lunch in the regular education environment, and being out in the community two blocks per week when he goes to his job. Furthermore, the life skills program carries with it the opportunity for staff members to provide continual social prompting and cueing to reinforce pragmatic social skills the Student is working on elsewhere. This same opportunity would not be available to the same extent in a regular education classroom. Still further, many of the therapy modalities the Student receives are currently delivered during the life skills block (indeed, occupational therapy is woven directly into the life skills instruction).

There are, ultimately, only six blocks in a school day, and the block designated for his science class was the only time available for the Student to be in a regular education environment. In order to increase the Student's time in the regular education environment, therefore, some other aspect of the Student's program would have to be curtailed. The Parents would accomplish this by eliminating or reducing the Student's participation in life skills instruction and vocational skills training. As previously stated, however, the IEP team made a well-founded decision that those components of the Student's program deserved a higher priority. Having concluded that the Student's IEP team followed proper procedures and made reasonable determinations in developing the Student's educational program, a program which provides the Student with an appropriate education, it follows from the nature of that program that more than 60% of it will occur outside the regular education classroom.

Allegation #14: Failure to provide a free appropriate public education by virtue of inclusion within the Student's current schedule of periods of time providing no educational benefit in violation of MUSER §II.11 and 34 CFR §300.101(a)

NO VIOLATION FOUND

The standard by which a student's educational program is to be measured is that it must offer a program "reasonably calculated" to deliver "educational benefits." *Hendrick Hudson Bd. Of Educ. V. Rowley*, 458 U.S. 176, 207, 102 S. Ct. 3034, 73 L.Ed. 2d 690 (1982). As explained by the Court in *C.G. and B.S. v. Five Town Community Sch. Dist.*, 513 F. 3d 279, 284 (1st Cir. 2008), this obliges a school district to "provide an adequate and appropriate education. The

IDEA does not place school systems under a compulsion to afford a disabled child an ideal or an optimal education.”

The Parents’ complaint in regard to lack of educational benefit focuses on: the period of time between the AAA job placement and the Bull Moose Music job placement; the block used for job placement on days when the Student does not go to the job; and the life skills block. The latter is dealt with sufficiently in the context of the immediately preceding allegation. Suffice it to say that the life skills class, even to the extent that it overlaps with home services, is reasonably calculated to provide educational benefits. As to the events surrounding the AAA job placement, that too is treated elsewhere in this report. The activities in which the Student was engaged as he worked to develop the next job placement after AAA (*e.g.*, searching want ads, researching potential job sites, setting up interviews, etc.) were also reasonably calculated to provide educational benefits, even if the Parents think that job-finding skills are somewhat premature. Finally, the activities that the Student engages in on those days when he does not go to his job (*e.g.*, keeping a job journal, processing his experiences on the job, building workplace social skills, etc.) are likewise reasonably calculated to provide educational benefits, as well as to enhance the likelihood of success for the Student at the job placement.

Allegation #15: Failure to provide information to the Student’s parents sufficient to enable them to fully participate in the decision-making process regarding the Student’s needs and appropriate goals in violation of MUSER §VI.2(I)(1)

NO VIOLATION FOUND

Mr. DePatsy, Ms. Baker Miller, Ms. Means and Ms. Mylroie all spoke of the great extent to which the District shares information with the Parents. The District submitted to the complaint investigator nearly 200 pages of e-mails between the Parents and the District over the period September 2, 2008 through October 15, 2009. It was evident that the Parents were actively and extensively engaged in monitoring the Student’s program and advocating for modifications and (to the Parents, at least) improvements. The Student’s mother visited the Student’s classroom on multiple occasions, and had the opportunity to examine various educational materials. The District shared with the Parents test data, behavioral monitoring data, and reading and math progress data. While there may have been more information that the Parents wanted (*e.g.*, lesson plans, skill levels of other students grouped with the Student, etc.), the information supplied was sufficient to enable the Parents to meaningfully participate in educational decision-making.

VIII. Corrective Action Plan

The District shall promptly arrange to conduct professional training for its special education staff on the subject of developing measurable annual goals, including but not limited to literacy goals and math goals. Documentation of the training shall include: the names and qualifications of presenters; the agenda for the training; all hand-outs for the training; names and job titles of those who attended the training; and anonymous evaluations of the training.

The District will submit this documentation to the Due Process Office, the Parents and the Parents' attorney.

As soon as practicable after the completion of the training, the District shall convene the Student's IEP team to discuss and determine the following: 1) revisions to the IEP annual goals; 2) revisions to the statements of the location of services; 3) revisions to the goal of completing an individualized course of study in the mainstream setting in History, or to the Student's program if the goal is to remain; and 4) the impact on the Student's progress towards his speech and language and social work goals due to missed group sessions, and any compensatory services that are required in order to redress any negative impact. The District will submit a copy of the advance written notice, written notice and the revised IEP which results from that meeting to the Due Process Office, the Parents and the Parents' attorney.