

Complaint Investigation Report
Parent v. RSU #61

April 27, 2011

Complaint #11.056C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Parent
Address
City

Respondent: Patrick Phillips, Superintendent
900 Portland Rd.
Bridgton, ME 04009

Special Services Director: Lisa Caron

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on February 8, 2011. The Complaint Investigator was appointed on February 9, 2011 and issued a draft allegations report on February 11, 2011. The Complaint Investigator conducted a complaint investigation meeting on March 8, 2011 (rescheduled from the original date of February 25, 2011 at the Respondent's request). On June 9, 2011, the Complaint Investigator received 186 pages of documents from the Complainant, and received a 7-page memorandum and 221 pages of documents from RSU #61 (the "District") on March 25, 2011. Interviews were conducted with the following: Lisa Caron, director of special services; Peter Mortenson, principal of Lakes Region Middle School; J.P. Yorkey, vice-principal of Lake Region Middle School; John Yates, teacher for the District; Dan Irvine, teacher for the District; Jeannine Roy, teacher for the District; Logan Landry, educational technician for the District; Judith Prevost, LCSW, social worker for the District; John Fitzgerald, LCSW, M. Ed., social worker for the District; Harvey Toews, IEP Team coordinator for the District; Kevin Geel, IEP Team coordinator for the District; Tracy Smith, IEP Team coordinator for the District; Barbara Loux, LCSW, social worker; and the Student's mother.

III. Preliminary Statement

The Student is xx years old and, at the time this complaint was filed, was receiving special education under the eligibility criterion Multiple Disabilities (Emotional Disability and Other Health Impairment). This complaint was filed by (the “Parent”), the Student’s mother, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to provide education in the least restrictive environment by placing the Student in a day treatment program and in an alternative education setting in violation of MUSER §X.2.B;
2. Failure to utilize the IEP Team as the vehicle for determining the appropriate placement for the Student when he was placed in an alternative education setting in violation of MUSER §VI.2.I;
3. Failure to provide supplementary aids and services in the nature of one-on-one support during the period from September 2010 to January 2011 to enable the Student to advance appropriately toward attaining his annual goals, to be involved in and make progress in the general education curriculum, and to be educated and participate in those activities with other children with disabilities and with non-disabled children in violation of MUSER §IX.3.A(1)(d);
4. Failure to timely and adequately implement the Student’s IEP with respect to developing a positive behavior support plan in violation of MUSER §IX.3.B(3);
5. Failure to fully and adequately implement the Student’s IEP with respect to following the Student’s positive behavior support plan in violation of MUSER §IX.3.B(3);
6. Failure to fully and adequately implement the Student’s IEP with respect to social work services from September 2009 to the present in violation of MUSER §IX.3.B(3);
7. Failure to include social work goals in the IEP that meet the student’s educational needs in violation of MUSER §IX.3.A(1)(b)(ii);
8. Failure to utilize the IEP Team as the vehicle for determining appropriate social work goals for the Student in violation of MUSER §VI.2.I(1);
9. Failure to provide requested records of social work services within 45 days of the Parent’s request in violation of MUSER §XIV.3;
10. Failure to provide a copy of the Student’s IEP to the Student’s parent within 21 days of the IEP Team meeting at which the IEP was developed in violation of MUSER §IX.3.G.

V. Summary of Findings

1. The Student lives in Naples with the Parent, and is presently attending Poland Springs Academy, having left the District on March 16, 2011. He received early intervention services beginning at age xx and began receiving special education services under the category Other Health Impaired in xx. Prior to the Parent’s having placed the Student in private school, the

Student attended school in Windham, Maine, where he was placed in a self-contained classroom.

2. In September 2009, the Student transferred into the District from Standish Baptist Academy. Although the Student had been in xx grade the year before, the Student had not passed any of his classes, and the Parent enrolled him in xx grade at Lake Region Middle School (“LRMS”) in the District. A transfer IEP Team meeting was held on September 22, 2009, at which time the Team determined to adopt the last IEP developed for the Student, dated March 27, 2008, with revisions, and determined to conduct various assessments as part of the Student’s triennial evaluation.

3. The Student’s IEP dated September 23, 2009 identified the Student as having a disability in the category of Other Health Impairment, contained four behavior goals, provided for 75 minutes per week of specially designed instruction in a special education setting (with the rest of the Student’s school day to be in the general education setting), provided 300 minutes per week of support from an educational technician in the general education setting (along with certain other supplementary aids, services and modifications), and included a Positive Behavior Support Plan (“PBSP”).

4. The PBSP: identified two skill deficit areas (attention/concentration and weak follow through with completion of assignments); stated goals for improvement in those areas; described interventions consisting of: step 1 – visual cue and step 2 – verbal cue; and provided for reinforcement consisting of “preferred tasks/activities agreed upon by the Student and teacher as a behavioral reward system.”

5. At an IEP Team meeting on December 4, 2009, based upon reports of non-compliant and oppositional behavior by the Student, the Team determined to have performed a Functional Behavior Assessment (“FBA”).

6. The FBA was conducted in December 2009 by Judith Prevost, LCSW, with the report of the assessment dated December 21, 2009. The report described the Student’s on-task behavior as limited: “Most of the time when the work is something that he can do, that interests him, and for which he receives teacher reinforcement by their recognition, he will work for a very limited time, until that attention is removed.” Ms. Prevost described behavior that was very disruptive to the classroom and limited the Student’s focus on learning, which behavior Ms. Prevost believed to serve a social function as well as being attention seeking in nature. Ms. Prevost recorded reports of the Student’s teachers that the Student was not completing homework assignments, wasn’t coming to class prepared, was refusing directions, spending time off-task and being disruptive, was being disrespectful, was refusing to comply with directions, refusing to follow classroom rules and refusing to do work. On one occasion, the Student became angry and threw books. Ms. Prevost noted that the Student had been previously diagnosed with Generalized Anxiety Disorder in addition to Attention Deficit Disorder.

7. Among Ms. Prevost’s recommendations were that: the Student “participate in a program that offers him a therapeutic component as well as an academic component;” the Student

receive social work services focusing on stress-management skills, anxiety-reducing strategies and strengthening social skills; and that a PBSP be developed to include “frequent positive reinforcement for work completion, work initiation, asking for help, responding to an adult and coming to class prepared.”

8. Upon review of the FBA at an IEP Team meeting on December 21, 2009, the Team determined to change the Student’s category of disability to Multiple Disabilities (Emotional Disability and Other Health Impairment) and to change the Student’s educational setting to the District’s day treatment program. The Team also added 60 minutes per week social work service (to begin January 4, 2010) to the Student’s IEP. The Parent was in full agreement with those determinations. The Student began attending the day treatment program on January 4, 2010.

9. The IEP Team met again on February 9, 2010 to review the Student’s program. The Written Notice of that meeting states that the Student “has settled into the day program which is still assessing his needs regarding support for his anxiety related behaviors.” Ms. Prevost reported that the Student was demonstrating improvement in the targeted behaviors, and the Team developed new behavioral goals. The Written Notice, under the description of points made by the Parent, states “[The Student] has enjoyed opportunities to tutor other students. Wanted to know what the results of testing that Ms. Diskin did regarding eligibility for GT services.”

10. The Student’s IEP dated February 10, 2010, in addition to the new behavior goals, also included two social work goals as follows: “Given a social skills group session, [the Student] will cooperate with group decisions in which he is not in agreement, as measured by group behavioral checklist; Given a classroom setting [the Student] will rate, how he is feeling (anxious, happy, sad) using 5 point Likert scales in his daily journal.”

11. A psychological evaluation was conducted by Richard Kauffman, in March 2010. Mr. Kauffman, in his report of the evaluation, stated that the Student was “very bright,” and recommended that the District consider whether the gifted/talented (“GT”) program might be beneficial to the Student. As to the Student’s oppositional behavior, Mr. Kauffman recommended a school program that would “provide a great deal of structure and behavior management plans that specifically target problem behaviors and provide him with the opportunity to develop more appropriate behaviors that serve the same needs for him. One of the most obvious of his personal needs is to feel competent and respected for his intellect. That can be addressed through academic work that is challenging and engaging.”

12. In a report of behavioral data collected during the time the Student was attending the day treatment program, marked improvement was noted with regard to the behavioral goal of attending to and completing work. The results with regard to the goals of responding to an adult, beginning work and asking for help, showed limited improvement in some of the Student’s classes, with little or no improvement in others.

13. On March 30, 2010, the Student’s IEP Team met to conduct the annual IEP review and to consider the results of the Student’s tri-annual evaluation. It was reported that the Student

had qualified for inclusion in the GT program, however, the Team determined that the Student's program would continue until the Team could reconvene with representatives from that program.

14. The PBSP attached to the Student's IEP dated March 31, 2010 identifies three skill deficits: complying with teacher requests, beginning a task and changing from one activity to another. The PBSP directs that a staff member may give the Student two prompts for him to initiate the target behavior, after which, if the Student has not initiated the behavior, he is to be removed to "a designated area." If the Student does successfully initiate the behavior, he will be given two punches on his punch card. When the Student has completely filled the punch card, he will earn 15 Laker Bucks to put towards a desired item. If the Student is able to be successful and return to the classroom after leaving, he will receive one punch.

15. On April 15, 2010, the Student's IEP Team met. One of the Student's teachers, John Yates, reported that the Student continued to engage in disruptive, rude and argumentative behaviors, and had a hard time focusing his attention for more than a short time. The Team determined that the Student should continue to receive 60 minutes per week social work services. A representative of the GT program, Kathleen Beecher, spoke about some options for the Student, including allowing the Student to look over a reading and assignment list from one of the classes and auditing that class. Ms. Beecher also suggested the possibility of the Student attending a drafting class at the high school, as well as attending an individualized art program. The Team determined that it needed more time to consider the options regarding the GT program, that the Team would reconvene in May, and that until then the Student required "the support of the day program to address disruptive behavior potential." The Written Notice of that meeting describes the points made by the Parent as follows: "[The Parent] thinks that [the Student] will be able to meet the expectations set in the GT setting. Concerned that school appropriately addresses [the Student]'s learning style and believes that academic frustration causes much of his behavior."

16. The Student's IEP Team met again on June 9, 2010. The Team reviewed the Student's experience in the drafting and special arts classes. The Student was reported to have done well in both those classes, with oppositional behaviors occurring only in the Student's special education classes. The Team determined that the Student would continue with both the drafting and art classes, and would begin attending the GT language arts class on a trial basis at the beginning of the next school year. The Team determined to discontinue the Student's attendance at the day treatment program because the Student was "capable of appropriate behavior when engaged with challenged [sic] curriculum." The Team also determined that the Student's special education services would be reduced to 30 minutes per week of special education consultation to regular education plus 30 minutes per week social work services. The Written Notice of the meeting recorded that the Parent was in support of these determinations.

17. The Student's IEP dated September 2, 2010 contains one social work goal as follows: "Given a social work session, [the Student] will identify his frustrations (academic tasks, following directions) and develop coping strategies (going to a pre-determined designated area, deep breathing, talking to an adult) to utilize when he becomes frustrated 3 out of 4

sessions a month by March 2011;” and one behavioral goal as follows: “Given a classroom setting, [the Student] will meet behavior expectations as measured by his need to access his PBSP option of leaving the classroom to go to a designated area no more than once per month by March 2011.” The services identified in the IEP are 30 minutes per week of special education consultation plus 30 minutes per week social work services. The PBSP attached to the IEP identifies one area of skill deficit, described as staying on task, being respectful and compliance. The intervention prescribed by the plan, where the Student “is unable to comply with classroom expectations given direction, redirection and encouragement, the teacher will direct him to leave the classroom and go to a designated space to access additional staff support. [The Student] will process the situation with support staff, identify alternate positive behavioral responses, and return to the regular education setting as soon as possible.”

18. The Student’s IEP Team met again on November 1, 2010. The Team considered reports from the Student’s teachers that the Student was sometimes wandering and not where he was supposed to be, was not completing class work or homework, was leaving his laptop in various areas of the school, was not following directions, was being disruptive and was not passing any of his academic classes, although he was passing his drafting class and physical education. The Parent expressed her belief that there was not enough support in the transition from the day treatment program to the general education program, and that the Student would benefit from support in social studies and science, as well as during class transitions. She also requested that the Student be supported in writing down his assignments, and in making sure he had the right assignments and materials to bring home at the end of the day. The Team determined that the Student would be provided with: an educational technician, 200 minutes per week for social studies, 200 minutes per week for science, and 180 minutes per week for transitions; a supported study hall in a special education setting 200 minutes per week; specially designed instruction in the area of organization (180 minutes per week) and behavior (100 minutes per week); plus a number of classroom and testing accommodations. The Written Notice of this meeting does not contain a reference to a determination regarding social work services.

19. The Student’s IEP dated November 8, 2010 contains two goals, both behavioral, one concerning task completion and the other concerning following directions. Services to be provided include: specially designed instruction in the special education setting (behavior), 100 minutes per week; specially designed instruction in the general education setting (organization), 180 minutes per week; special education consult 30 minutes per week; and social work services 60 minutes per week. A PBSP was attached to the IEP which: referenced two target behaviors (task refusal and “inappropriate response to staff’s directions as manifests as leaving the environment, visually and mentally disengage, and verbal refusal”); described functions of the Student’s behavior, positive supports/interventions consisting of “clear and concrete positive classroom expectations...provide clear communication and verbally disengage student (‘talk and walk’)” and use of an individualized hall pass; and described a replacement behavior plan utilizing a coaching model, verbal cueing, and immediate verbal recognition and praise for appropriate classroom behavior. The IEP indicates that it was mailed to the Parent on November 30, 2010, 16 school days after the meeting at which it was developed.

20. On December 4, 2010, the Parent and the Student met with Peter Mortenson, principal of LRMS. They discussed assigning the Student to work on the individual computer-based instruction program known as PLATO for math (in the high school), science and social studies (in LRMS). Following the meeting, the Student met with a staff member at the high school for testing and to learn more about PLATO. The Student then discontinued attending his math, science and social studies classes, and began using PLATO for math in the high school. PLATO for science and social studies in LRMS was not yet available.

21. The Student's IEP Team met again on December 16, 2010. The Team reviewed the Student's IEP, determining to increase educational technician support from 580 minutes per week to 780 minutes per week. Social work services were to remain at 60 minutes per week. The Student attended the meeting and proposed a schedule which included PLATO for math and language arts. The Student stated that he liked working at his own pace and felt that he would fall behind if he joined the GT language arts class. The Student also expressed a wish for greater social interaction with his peers. The Parent expressed her concern that using PLATO for language arts would be less beneficial to the Student than attending the GT language arts class, as there would be less opportunity for peer interaction and for creativity in his work. The Team determined that the Student would attend the GT language arts class.

22. The Student's IEP Team met again on December 20, 2010. The Team reviewed the Student's schedule, and determined that the Student would receive 310 minutes per week of specially designed instruction (155 minutes for organization and 155 minutes for behavior), 60 minutes per week social work services plus 30 minutes per month social work consult services, and would continue with PLATO math while attending regular science and social studies classes. The Parent questioned whether PLATO math was appropriate, and asked that the Student's math skills be assessed. It was noted that the Student was involved in standardized assessments that week, and that the Team would review the Student's math scores to help determine the appropriate placement. The Parent stated her belief that the Student's social work goals were not appropriate, and the Team determined that the goals would be revised "to represent [the Student's] current social work needs." A written statement from the Student's social worker, Mr. Fitzgerald, was read aloud, in which Mr. Fitzgerald expressed his opinion that the Student's oppositional behavior and perfectionism were more important issues than anxiety. The Parent asked that school staff be made aware of the Student's PBSP, and that the plan contain a specific outline of steps to be taken when the Student began having difficulty in class. The Team determined to revise and update the PBSP to meet the latter request.

23. The District attached to the Written Notice of the December 20 meeting a "Statement of Parent Concerns" submitted by the Parent. In that Statement, the Parent, among many other things, requested that she receive "copies of the service delivery notes and records of all social workers who have worked with [the Student] over the last year," stating that she was concerned that Mr. Fitzgerald said at the meeting that he was delivering only 30 minutes per week of services rather than the 60 minutes identified in the IEP, and that she was "fearful that little or no [social work] service delivery has occurred."

24. The Student's IEP dated January 3, 2011 contains two social work goals as follows: "Given a direct social work session, [the Student] will increase his ability [to] clearly identify his frustrations (academic tasks, following directions) from 0% of the time [to] 50 % of the time by 3/30/11;" and "Given a direct social work session, [the Student] will increase his ability to clearly identify his impeding responses (for example, incomplete academic tasks, refusing to following directions) to situations from 0% of the time [to] 25% of the time by 3/30/11." Social work services are identified in the amount of 60 minutes per week.

25. The PBSP attached to the IEP identifies three skill deficits. For the first (deficit in behavioral regulations), the following series of interventions are provided: subtle (gestural or otherwise) cue from the teacher; verbal prompt from the educational technician; leave the academic setting and go to room 107 to process the incident with his case manager. Reinforcement is to consist of receiving passing grades, positive interactions with adults and minimal makeup time after school, as well as any choice activities developed between staff members and the Student.

For the second skill deficit (executive function skills), the following series of interventions are provided: special education staff will approach and quietly ask the Student if he needs help; the Student will be given the option to go to room 107; the Student will be prompted to go to room 107; special education staff will remove the Student to a neutral setting; the Student will make up missed academics at a mutually agreeable time. Reinforcement is to consist of not having to make up missed academics by staying after school, receiving passing grades, positive interactions with adults, as well as any choice activities developed between staff members and the Student.

For the third skill deficit (difficulty completing and self-correcting academic work), the following series of interventions are provided: Infinite Campus check by the Student; Infinite Campus check with the teacher; Infinite Campus check with special education staff; check with peer (if deemed appropriate by staff); check against appropriate academic materials; if the Student receives a non-passing grade, the Student will remediate the task to a passing grade, using resource room time or after school. Reinforcement is to consist of not having to stay after school, receiving passing grades, positive interactions with adults, as well as any choice activities developed between staff members and the Student.

26. On January 26, 2011, the Parent sent an e-mail to Ms. Caron, in which she stated that she had not yet received an IEP with the Student's current social work goals, and that she had still not received the social work notes and records she had previously requested. On January 31, 2011, Ms. Caron responded via e-mail that the Parent should have received the updated IEP by now and that she had asked Tracy Smith to send it again. As for the requested records, Ms. Caron wrote that the Parent was entitled to receive progress reports on social work goals, but that social worker notes are considered personal memory aids and are not part of the Student's educational record, therefore she was not entitled to them. On that same day, the Parent responded to Ms. Caron's e-mail, asking that she be sent the progress reports on social work goals. The IEP was sent to the Parent on February 3, 2011, 21 school days after the December 20, 2010 IEP Team meeting.

27. The Student's IEP Team met again on February 17, 2011. Several staff members reported improvement in the Student's behaviors and academic performance since the last meeting. The results of the Student's standardized testing were shared, and the Student was found to be performing on grade level or higher. Lora Perry, behavioral consultant, attended the meeting and shared information regarding the purposes served by a person's behavior, and reviewed with the Team the Student's new PBSP and Reactive Crisis Plan. The latter plan is put into place when the former plan is followed without it resulting in cessation of negative behaviors. Ms. Perry stated that there was now only one goal in the PSBP: "[The Student] will demonstrate respectful body language, the absence of disruptive noises and vocalizations, and compliance with instructions from individuals in authority." The Team determined to provide additional educational technician support to the Student during assemblies, field trips and CFA (creative fine arts) classes, and to add additional accommodations to the IEP. Ms. Caron stated at the meeting that the Parent would be provided with the dates that the Student received social work services.

28. The Student's IEP dated February 18, 2011 provides for: specially designed instruction, five 31 minute sessions per week for organization and five 31 minute sessions per week for behavior; 75 minutes per week special education consult services; 60 minutes per week direct social work services; 30 minutes per month social work consult services; 1375 minutes per week educational technician support; and a number of accommodations, including five minute breaks in the regular education classroom to recollect focus, as needed. Attached to the IEP is a PBSP six pages in length, identifying numerous proactive, antecedent measures, precursor behaviors, response to precursor behaviors, and replacement behaviors. Also attached is a Reactive Crisis Plan, identifying indicators, helpful interventions, what does not help and who to involve (Mr. Mortenson is specifically not to be involved), cross referenced with early warning signs, signs of progression and what "crisis stage" looks like.

29. On March 3, 2011, the District delivered to the Parent progress reports for the Student's IEP goals and a list of dates when social work services were provided to the Student between September 22, 2010 and March 2, 2011. On March 22, 2011, the Parent received Medicaid Service Delivery Records for social work services delivered during the period from February 5, 2010 to June 9, 2010. The latter set of records documents that, of the 18 weeks during this period when social work services could have been provided (i.e., the school was in session and the social worker was not required to attend an IEP Team meeting for the Student during the scheduled session), there were four weeks when the specified level of 60 minutes of social work services were provided, seven weeks when 45 minutes were provided, three weeks when 30 minutes were provided, one week when 15 minutes were provided and one week when no services were provided. In total, the records reflect that 300 minutes of services were not provided as specified in the Student's IEP during this period.

The current year's list of dates documents that, of the six weeks during the period from September 22, 2010 to November 8, 2010 when the Student's IEP identified social work services to be provided for 30 minutes per week, there were two weeks when 40 minutes were provided, one week when 30 minutes were provided, one week when 25 minutes were

provided, and two weeks when no services were provided. Of the 180 minutes of service required to be provided, a total of 135 minutes were actually provided, a deficit of 45 minutes.

During the period from November 8, 2010 until January 3, 2011, when the Student's IEP again specified 60 minutes per week of social work services (although the Written Notice for this IEP does not reflect any discussion regarding a change in the amount of service), of the five weeks when services could have been provided, there were four weeks when 30 minutes were provided and one week when 50 minutes was provided.

There were four weeks after January 3, 2011, when the IEP Team again set the amount of social work service at 60 minutes, when services could have been provided (three snow days and a student absence make up the rest). On one occasion, 50 minutes of service were provided. On another, the record reflects no services provided. The record indicates that the Student refused to attend the sessions on the final two occasions.

30. During an interview conducted by the Complaint Investigator with Kevin Geel, Mr. Geel stated the following: He is an IEP Team coordinator for the District, and facilitated the transfer IEP Team meeting of September 22, 2009. The Team was convened again in October for program review, and it was clear that the Student was struggling, having a tough transition. In early December 2009, he received a phone call from the Parent, who said the Student told her about a "secret school" at LRMS, and she wanted a meeting so the Team could talk about it. He said he thought she was referring to the day treatment program, and gave the Parent an overview of the program.

He set up the first December meeting, where the Team gave the Parent an in-depth description of the program – what it does and why, and what the student population was like. The Parent was told that it was primarily a therapeutic milieu for students with emotional issues. He also ordered an FBA to look at the Student's behaviors that were creating issues for him, to be conducted by the social worker from the day treatment program. At the follow-up meeting to review the results of the FBA, the team decided that the Student was a perfect candidate for the program and completed the application for the program. On the application, the Team presented a highly accurate description of the Student's challenging behaviors, and painted a very clear picture of a young man who was struggling and needed help. He believed that the Student's placement in the program was appropriate, given the Student's history and the results of the FBA, and that the program could be helpful to the Student.

He doesn't believe that the Team skipped over any steps on the continuum when they placed the Student in day treatment. Although it may have been a fairly fast track for the Student, this was the result of the Student's rapidly escalating behaviors. The Team had only limited information in September. By October, they knew the Student a little better and had more information, and the Team made adjustments to the IEP to increase service time. By early December, even though the Student's resource room time had been increased as far as possible without the placement becoming full-time resource room, the Student's behaviors were still escalating. Ms. Ludwig, the resource room teacher at the time (who is no longer employed by the District and was not available to be interviewed), told him that the Student was going to her room, although he was giving her a hard time about it and saying that he

didn't like going there. Ms. Ludwig never said that the Student was refusing to go to the resource room; Ms. Ludwig was a very forceful woman, and she had no trouble with students not coming to her room – she would go get them. The special education staff was also keeping an eye on the Student whenever they were out in the regular education environment, so the Student's level of service was quite high by the time the decision was made to transfer him to day treatment.

His involvement with the Student ended when the student was transferred to the day treatment program on December 22, 2009.

31. During an interview conducted by the Complaint Investigator with Harvey Toews, Mr. Toews stated the following: He is an IEP Team Coordinator for the District, and has been involved with the day treatment program since before it was moved on-site. He has known the Student since the Student was referred to the day treatment program. At that time, the Student was really struggling, saying he didn't want to go to school and making lots of negative comments about it.

There were two IEP Team meetings at which the decision was made to move the Student into that program. The Team determined at the first meeting that an FBA should be conducted. At the second meeting, the Team reviewed the results of the FBA and determined that the Student met the entry criteria and was an appropriate candidate for the program. The day treatment program also was consistent with the setting the Student had been in when he was previously in a public school. The Parent was very supportive of the placement, and never expressed any major reservation about the move or said it was the wrong setting for the Student. At the 30 day review meeting, the Parent continued to be completely supportive of the placement.

The day treatment program is clearly designed for children struggling with behavior issues, and all the students in the program are there for that reason. The students in the program had a range of academic aptitudes, and the Student probably stood out in that regard. The Student is very bright; he has some very high achievement scores, although he also has a very low processing speed. The Student also had oppositional behavior issues, however; his profile was unusual. The aptitude and achievement testing happened after the Student began in the day treatment programming, so the Team probably wasn't fully aware of the Student's profile when the decision was made to place him in the program.

For the first few months, the Student's response to the program was generally positive, according to both program staff and the Parent. There was an increasing level of concern over time, with the day treatment staff reporting an increase in oppositional behavior in that setting, and expressing concern that the Student was starting to lead other students in that direction. In the spring, the Team started discussing ways that the Student could be challenged academically, using academic engagement as a way to reduce the Student's oppositional behavior. They discussed having the Student use the PLATO programming or getting him involved in some GT classes. The Student began taking a drafting class in the high school and an art class in the middle school regular education setting.

The Student had a PBSP while in the day treatment program, but there were also positive behavior structures built into the program for all the students. He doesn't recall any major discussions about unmanageable behavior on the Student's part. When the level of oppositional behavior began to increase, the Team saw it as a function of lack of academic engagement.

At the June 2010 IEP Team meeting, the Team determined to change the Student's placement in order to be able to increase the level of academic engagement for the Student. The Student had been very successful in the drafting class without need of educational technician support, and there was no discussion about needing to provide this. His involvement with the Student ended when the Student left the day treatment program.

32. During an interview conducted by the Complaint Investigator with Tracy Smith, Ms. Smith stated the following: She is an IEP Team Coordinator for the District for grades 7 – 12, and was the Coordinator for the Student during the current year. After the November 1, 2010 IEP Team meeting, she prepared the IEP, finalizing it on November 24, 2010. The secretary in the special education office was responsible for mailing it to the Parent, and the secretary's log shows that it was mailed on November 30, 2011. This date is reflected on the cover page of that IEP.

She has done a lot of behavioral work in the past, and she was asked to help develop a new PBSP for the Student after the November 1, 2010 meeting. She worked on the plan with Mr. Irvine, who was a new teacher in the school that year. The plan was attached to the November 8, 2011 IEP, and was quite different from the plan that had been attached to the IEP when the school year began.

At first, the Student seemed to buy into the plan, but then there was a huge switch, and the Student stopped complying. There were a lot of phone calls between administrative staff and her, and the Parent was being called to pick the Student up. The Parent complained that the plan was too confusing. She spoke with some staff members about the plan, and they said it was not in a format they were familiar with. They suggested that she develop a plan in a particular format that she had used several times before with other students, and she thought that was a good suggestion.

To develop the new plan, besides working with Mr. Irvine, she also consulted with Ms. LaRosa and Mr. Fox, two of the Student's teachers at LRMS, to help identify target behaviors in the new plan. This made the development of the plan take a little longer. At the time she was developing this plan, the Parent was very supportive of what she was doing. The new plan was attached to the January 3, 2011 IEP. She believes that the staff understood it, especially as it was in a format with which they were already familiar. It clearly laid out for regular education staff members what their responses should be and who would step in and when. She received no questions from regular education or administrative staff to suggest they had difficulty understanding or implementing it.

Some time in December, 2010, at the insistence of the Parent's advocate, the District brought in Ms. Perry to consult on behavior management issues. Ms. Perry ended up developing her

own PBSP, which was attached to the February 16, 2011 IEP. She thinks that plan was more convoluted than it needed to be (it was eight pages long) and, even after a three hour staff training, the staff still didn't understand it.

With regard to social work services, when she was preparing the November 8, 2010 IEP, she made the mistake of copying over from an earlier IEP so that 60 minutes appeared for duration of services instead of 30. With regard to the social work goals, Mr. Fitzgerald had given her a statement about the goals because he couldn't be present at the December 20, 2010 IEP Team meeting. She read the statement, which spoke about needing to change the goals to address the Student's oppositional behavior and perfectionism, rather than addressing his anxiety. The Parent's only comments about the statement were that the current goals were inappropriate and needed to be changed, from which she understood that the Parent agreed with Mr. Fitzgerald. Therefore, when Mr. Fitzgerald later added his goals to the IEP, she felt that the Parent had been given the opportunity to have input to their development. She never told the Parent that there was nothing she could do to change them.

She recalls there was some discussion at an IEP Team meeting about the Student's refusal to attend social work sessions. The Team decided that it was important to not change the IEP because they didn't want the Student to get a message that if he just refused to do something, the expectation for him to do it will just go away. Instead, the Team agreed that there would be attempts to get the Student to engage with Mr. Fitzgerald. The Student left before there was a chance to make those attempts.

Sometime around the Thanksgiving holiday, she was very worried about the Student and about the amount of negative things she was hearing from staff about the Student. There was an informal meeting of staff to discuss the Student and brainstorm about different approaches that might be tried. The vocational director, Mr. Toews and Ms. Beecher from GT were involved in the meeting. As the Student had multiple intelligences and a need to be validated for his intelligence, but didn't appear to need approval from school staff, the group suggested having the Student work on an individualized computer-based program. She was surprised to learn a little while later that the Student had been removed from most of his classes and was working with the PLATO program, surprised because it had not yet been formally discussed at an IEP Team meeting.

Although she was not directly involved in the decision to transition the Student from day treatment to regular education classes with only some consultation services and social work services, her understanding of the decision is that the Student had been doing very well in the regular education environment at that time with no behavioral incidents in that environment. There was further reason not to program for educational technician support, as the Student was reluctant to work with special education staff. It's difficult to engage a student if the student doesn't want any help. Rather than having helped the transition, she thinks that the addition of a lot of support might have led to the Student demonstrating increased oppositional behavior even earlier in the year.

She doesn't think that the Student would have been able to be successful had he stayed in LRMS, due to the resistance of certain school and administrative staff members. The Student

had the ability to push teachers' and administrators' buttons, so almost no matter where he was, he was in trouble. She believes that the Student legitimately perceived that he was not safe at school.

33. During an interview conducted by the Complaint Investigator with Judith Prevost, LCSW, Ms. Prevost stated the following: She is a special education social worker for the District, assigned to the day treatment program. Her first contact with the Student was when she conducted an FBA, after which the Student was admitted to the program. In the program, she saw the Student every day, as she was in the classroom every day, but she also saw the Student for individual social work sessions as well as group social skills sessions. In January 2010, she had three individual sessions and one social skills group session with the Student.

Her principle conclusion from the FBA was that the Student's challenging behaviors were anxiety-driven; the Student was acting out in order to avoid coping with what was going on in the classroom. She also found that the Student's ADHD was affecting his ability to engage with his educational program. She felt that the Student needed a more therapeutic setting so he could develop ways to deal with his anxiety and become more successful. The IEP Team decided that the day treatment program was the appropriate placement. The focus in the program is primarily therapeutic, with less emphasis on academics. If a child can't focus, if he is too anxious, then he is not ready to benefit from academic instruction. She felt that the Student was similar to the other students in the program in terms of his needs. She doesn't believe that the Student was higher functioning academically than all the other students in the program; most of the children in the program are of average intelligence.

Before the Student was admitted to the program, she had a long conversation with the Parent about the program, describing it in detail. She explained that the students in the program had various diagnoses, and were at different levels academically. She said that the Student would be able to move at his own pace academically, and at the appropriate academic level. She always has this discussion with parents before their child starts the program, so they won't be surprised later on. The Parent was very excited about the Student's joining the program, and was very happy with the IEP Team's decision.

After the Student first began attending the program, things went very well. The Student was performing well academically, and was participating in class discussions. The Student reported that he was happy; he was making friends and was participating fully in the social skills group. She believes that the Student was responding to the smaller class size, the low-key atmosphere and the increase in one-on-one academic attention. The Student advocated for being put into xx grade and asked for a xx grade laptop. Both requests were granted.

Because of his success in the program, the staff began talking about transitioning the Student into regular education, and he was placed in one regular education class. Again, things went well at first. Around the end of March, the Student began to be disrespectful to day treatment staff, particularly to female staff members. He started leaving class without permission. At the same time, he was also occasionally having very good days. Then the Student's challenging behaviors started to appear in the regular education class. Sometimes the teacher would send him back to the program before class had ended. She would try to process with

the Student what had happened in the class, but the Student got very frustrated with this and wanted to just return to the day treatment classroom. She thinks the Student felt safe in that classroom.

In general, she made more progress with the Student in class than in individual social work sessions. She tried to explore what was bothering the Student, but he wouldn't open up to her. The Student frequently refused to accompany her to an individual social work session – three times in February, three times in March (plus one time when he left after 15 minutes), once in April and four times in May. He seemed to talk more readily with Mr. Yates, his teacher.

From April to June, the Student had more testing done, showing that he was gifted in certain areas. The Team started adding other classes to his schedule (drafting and art), and the Student began spending more time out of the program. Ultimately, the Team decided that it would be in the Student's best interest for him to be transferred out of the program so he could access more regular education classes and GT classes.

She was involved in developing the PBSP for the Student, but the whole program is built on positive behavioral support. The students earn "Laker Bucks" based on receiving positive behavior scores (e.g., being respectful, staying on task, etc.), which they can exchange for preferred activities or items. At one point, the Student was working towards accumulating enough Laker Bucks to purchase a mechanical bug toy. He was able to get enough Bucks, and was very pleased.

34. During an interview conducted by the Complaint Investigator with John Fitzgerald, LCSW, M.Ed., Mr. Fitzgerald stated the following: He is a social worker for the District, working with students in the high school and in xx grade at LRMS. He began working with the Student in September 2010 when the Student entered xx grade. At that point, the Student's IEP provided for one 30-minute social work session per week. A later IEP said 60 minutes per week, but he doesn't believe there was any discussion at an IEP Team about changing the amount of service; he thinks it was a clerical error. The IEP Team subsequently determined to keep it at 60 minutes.

During the fall, the Student was attending his social work sessions regularly. During this time he was getting to know the Student, asking the Student to talk about his family history and his interests. They seemed to be getting along all right. He worked with the Student on a schedule change the Student wanted. The Student was fairly guarded and evasive, and didn't offer a lot of personal information. That was not unusual for the beginning of the process. The Student believed that the school didn't know how to program for him; in the Student's eyes, there was very little wrong with him - the problem was the inappropriate program. He saw the Student starting at 9:00 a.m., by which time the Student had already been at school for at least 1 ½ hours. He doesn't believe that the session was too early in the morning for the Student to be able to use the time productively.

After the winter break, there was a session on January 26, 2011, during which he told the Student that teachers were saying that the Student wasn't participating in their classes. The

Student denied that he was frustrated by school in any way. He asked the Student what he would be doing if he wasn't in school, and the Student responded that he would stay home and sleep. He said that some people would call it depression if a person stayed home and slept all day, and the Student then said he wouldn't sleep all day – he would hang out with his friends. After that the Student refused to talk or answer any more questions, so they spent the rest of the session in silence. He thinks that the Student didn't want anyone asking questions about things like depression. The Student was very well defended, and uses his verbal ability to defend against exploring his feelings. The next time he saw the Student was on February 9, 2011, and the Student was very engaged, talking about some inventions on which he was working. After that session, the Student refused to come see him.

He wasn't able to get to a point where he developed an understanding of what was driving the Student's non-compliant, disengaged behaviors. There was controversy over whether anxiety was the Student's primary issue, and he didn't believe that it was. The Student could sit comfortably in a meeting with 12 adults, speak clearly and directly regarding his needs and wants, and answer the adults' questions. For most children, that would be an anxiety-provoking situation.

He attended the December 16, 2010 meeting where there was a discussion about developing new social work goals. Some time after the meeting, he wrote up two goals, and submitted them to Ms. Smith. The goals that were later put into the IEP were similar to those goals, but not exactly what he had written.

35. During an interview conducted by the Complaint Investigator with Barbara Loux, LCSW, Ms. Loux stated the following: She is a clinical social worker in private practice. She saw the Student on one occasion in March 2011. The Student was accompanied by the Parent during the full session, and the Parent did most of the talking. The reason given for the appointment was that the Student was said to be having a difficult time at school, and was refusing to go. The Student seemed highly anxious, although he did open up a bit after a while.

The Student reported feeling scared a lot at school, and said that he spent much of his time hiding in the library, as if to make himself invisible. The Student felt that he was victimized by the school staff, and that he had no allies there. As an example, he reported that he once bumped into a teacher, and she accused him of hitting her. The Student said that he rarely saw his social worker, and didn't see him as a support. Her impression was that the Student felt unsafe at school because he never knew when the next overwhelming experience was going to happen, and she thought he had the appearance of one suffering a post-traumatic stress disorder.

She did not review any of the student's IEPs or PBSPs, and knew very little about his school program other than that he was in a day treatment program.

36. During an interview conducted by the Complaint Investigator with John Yates, Mr. Yates stated the following: He is currently teaching math at LRMS, but for the prior eight years he was a special education teacher in the day treatment program for the District. The Student was in his classroom from January to June, 2010. The Student should have been in xx grade,

but at the Parent's request was repeating xx grade. It was hoped that the Student would transition into xx grade as quickly as possible.

The Student started off in the program doing really well, and the staff didn't see challenging behavior from the Student at first. It was very hard for him to get to know the Student, as the Student was very reluctant to share his thoughts and ideas. Even when the Student later was feeling more comfortable, he had the impression that the student was holding back. The Student loved to argue, and he had ways of looking at situations oddly and then refusing to move off of his position. When an adult told the Student to do something and the Student didn't think he had to listen, you couldn't change his mind. When other students had a bad day, there was usually something you could point to that explained their behavior; not so with the Student. Once the Student decided he was not going to comply, there was very little you could do to win him back. The Student was one of the most complex children he ever worked with, and the Student had the ability to manipulate situations, other students and staff. The Student could be tremendously stubborn; on one occasion, he held a staring contest with the Student and the Student wouldn't back down for two hours.

He is not sure that the Student ever really understood that there were consequences that followed from his behavior. The Laker Bucks system didn't work for the Student. He didn't comprehend that negative behaviors meant that he would lose the gains he had made. The staff kept trying to change the system, to offer different rewards, but nothing seemed to work. The IEP Team decided to let the Student try the drafting class in the high school, and the Student loved it, yet the Student didn't seem to understand that negative behaviors in the morning would cause him to lose the privilege to go to that class in the afternoon.

One area where the Student made progress was with regard to hockey. The Student liked to play hockey and to play at the goalie position. At first, the Student couldn't handle another player scoring on him, but over time in the program the Student made progress towards understanding that he had to accept this if he wanted to continue to be able to play. The Student still had more work to do on this, but he did make progress.

He was not in agreement with the Team's decision to move the Student out of the program, because he didn't believe that the Student ever really learned the behavioral lessons he needed to learn. The Student still had complete disregard and disrespect for adult authority, and this is what caused most of the Student's problems. The Student never accepted that adults had power to give him what he wanted if he would comply with their requests.

The program staff members always try to get parents on board with the program's goals. They tried to do that with the Parent, but he doesn't believe that there was any follow-through at home. When the Student was disrespectful in school, there were no consequences for him at home. The Student was able to just wait it out with staff, because eventually the Parent would bail him out. The Student started saying that he was embarrassed about being in the program, and this became more of an issue as time went by. The Student became very negative towards the other students in the program, and didn't want to be associated with them. The Student's negative attitude was very readable to the other students. He believes the Parent supported the Student in this attitude. The Parent would refer to the program as

“the secret school.” He thinks that the Parent never explained to the Student that he was in the program because of his own behavior. The Student ultimately got his way, because the Parent succeeded in getting him switched out of the program.

It was clear that the Student had a lot of academic skills that most of the students in the program didn't have, although it was hard to say that there was no one in the class at his level overall. The Student was well below grade level in terms of his writing skills, and there was at least one other student in the class with stronger writing skills than the Student's. When the Student began attending a regular education social studies class, there was another student from the program who attended along with him. The other student was better able to do the work of that class than was the Student. The Student's educational technician reported that the Student often wasn't following directions and wasn't doing the work that the other students in that class were doing.

The Student's classroom academic performance didn't always match up with his test scores. When he was given class work that was more difficult than the work being given to his classmates, the Student would argue that it wasn't fair and would refuse to do his work. It was clear to him that the Student sometimes didn't really try to perform his best on assessments, that he wanted the results to look bad to show that he didn't care. At other times (like on his NWEAs), the Student would show his true academic level.

The Student often refused to go to social work session with Ms. Prevost. There were a few times that he was able to talk to the Student about this, but on other occasions the Student refused to discuss it. Ms Prevost tried numerous ways to engage the Student, but the Student made very little effort. He recalls at least one IEP Team meeting when Ms. Prevost brought up the fact that the Student was refusing to attend the social work sessions.

With regard to the PBSP, there were specific situations when staff managed the Student using the plan, but mostly staff was using the plan built into the program. The staff was trying to encourage the Student to accumulate points and move to higher levels.

In the program, the Student had an educational technician with him about 50% of the time, and he always had one in the regular education social studies class. The Student didn't like having a staff member near him, and responded negatively. The Student would refuse to listen to the educational technician about what was happening in the classroom. On one occasion, the Student called the educational technician a liar, because the Student disagreed with him about what the class assignment was. He went to the teacher and confirmed that the educational technician was correct about the assignment, but the Student nevertheless insisted that he was going to do the assignment the way that he thought it should be done. He recalls discussion at an IEP Team meeting about the Student's attitude towards having an educational technician. When the Student began doing the GT classes, the Team decided to try it without educational technician support.

37. During an interview conducted by the Complaint Investigator with Dan Irvine, Mr. Irvine stated the following: He is a special education teacher at LRMS. His class is made up of one group of students who are mainstreamed but who are on the autism spectrum, and another

group of students who present with interfering behaviors. The students in the second group had generally been removed from the regular education setting, had behavior plans and were receiving coaching and other kinds of support. The Student was supposed to begin coming to his classroom in November 2010, but the Student refused to do so. He believes that the Student saw the students in his room, decided he wasn't like them and decided not to go. The Student is very concerned about his being labeled as "special education," and is afraid that other non-disabled children wouldn't want to associate with him if he had that label. The Student was fairly open about that.

He believes that his classroom was the District's best choice of placement for the Student. He is very familiar with the day treatment program because he used to work there. He is certain that the Student would have believed that program was not appropriate for him, and would have refused to engage academically because of his feelings about being labeled.

The IEP Team decided, at the December 16, 2010 meeting, that he would meet with the Student at the beginning and end of every school day to make sure the Student had all the assignments and materials he needed. Most of the time he spent with the Student, however, was when other staff members called him to help the Student process a behavioral incident. The Team also decided at some point that the Student should have someone overseeing his work on PLATO, and he was designated as that person. Initially, when the Student was doing the PLATO work in the high school, the Student was very excited about doing "high school" math. After the Student started doing the work at LRMS, it was only "middle school math" to the Student, and he lost that enthusiasm. Towards the end, the Student wasn't doing it at all, as a result of increased anxiety leaving him unable to engage academically.

He spoke with the Student about the social work session when Mr. Fitzgerald brought up the subject of depression. The Student felt that "depression" was a label that, if applied to the Student, would mean that "special education" was warranted and very real. The Student eventually came to accept that special education could help him with organization, but he never accepted that he needed emotional support. On about four out of five school days, the Student was involved in an incident resulting in his leaving the class. The IEP Team responded by providing more educational technician support, at first in science and social studies classes, then in CFA classes and during transitions. Each step only made the Student feel more frustrated. The Student believed that the staff loathed him.

The Student is very bright and gifted, and picks up on even very subtle social signals. The Student would decide for himself the right and wrong of a given situation, and never questioned his decisions – whatever he thought was right was right. The Student was also out to prove that he was smarter than all the adults in the school. If the Student was given in-school detentions, he just wouldn't serve them. He doesn't believe that all of the Student's behavior issues were anxiety-related. He thinks some of the behaviors resulted from boredom. If a subject bored him, the Student would refuse to engage. The Student also sometimes had a false sense of his abilities. If a task came easily to him, he would be bored, but if it was too difficult, he wouldn't do the work either. He believes that some of the Student's difficulty was the result of having been allowed to avoid these struggles. The Student was never given the opportunity to apply himself and to struggle past an obstacle to

achieve success. The adults would give in to the Student's demands, complaints and protests. The Student would go home after school and complain to the Parent, who would promptly get on the phone to try to get the Student what he wanted. For example, when it was decided that the Student should have support in his classes, he was initially put into classes that already had an educational technician available; after a complaint from the Student and then the Parent, the Student was put into the other class (which was identical in terms of content) and an educational technician hired just for the Student.

The Student initially refused to go to classes where there was educational technician support. The Student eventually accepted that he needed it for science and social studies. The Student began making inappropriate things in art class (pipes, ashtrays, etc.), and the Team decided he needed support there. On one occasion, the Student picked up a fire extinguisher as he was walking in the hall between classes, so the Team decided he needed support at transition times. The effect of all this added support was to increase the Student's anxiety, both about "special education" labeling and the fact that it made the Student more accountable for his actions.

The Student continued to get educational technician support right up until he left the District. The last two or three weeks, the Student was not going to classes. The Student stayed in the library and used his educational technicians to go to his classes and get his work assignments. This setting, chosen by the Student, was the most restrictive of all – the Student was not with any of his peers on a full-time basis. He believes that the Student's anxiety had increased to the point that he wanted to be isolated from everyone.

The increase in anxiety was in part due to the Student's conflicts with staff members, but on the other hand the Student sometimes went out of his way to provoke those staff members with behavior that appeared to be the complete opposite of anxiety. For example, he once saw the Student, sitting with a group of other students in the lunchroom, point to Mr. Mortenson and say something mocking. Another time, Mr. Mortenson was speaking to a student in the hallway as the Student walked past. The Student stopped and interjected himself in the conversation, making a comment about the other student's rights. The Student displayed behaviors as if he was beyond any type of logical consequences. The Student's demeanor was generally very cavalier and tongue in cheek; he didn't seem anxious or stressed out. The Student definitely enjoyed bucking authority and gaining superiority over authority figures. Some staff members were better at ignoring this kind of behavior than others. The Student could be very manipulative, and was constantly gathering data in his mind about people. The Student would say things to him about other people just to see what kind of response he got, as a way of collecting additional information about them.

He regularly used the Student's PBSP, and was identified as the person who was to be contacted when the Student wouldn't comply in the classroom, to act as a liaison between the Student and school authority. There was some confusion about this initially, and staff members were still sending the Student to the office. In the plan developed in December 2010, if the Student was displaying task refusal, the Student was to come to an agreement with the teacher as to how the Student could demonstrate task mastery. He could see that teachers often didn't have the time to engage with the Student in this way, but the rest of the

plan (involving coaching and processing) was happening routinely. After Mr. Landry started working with the Student as an educational technician, Mr. Landry was able to remind the Student and his teachers what the plan was. Mr. Landry would give the Student subtle cues, then the teacher would give cues, and then Mr. Landry would come get him.

38. During an interview conducted by the Complaint Investigator with Logan Landry, Mr. Landry stated the following: He is an educational technician III at LRMS, and was assigned to work with the Student in January 2011. At first, he was the Student's one-on-one educational technician in the science and social studies classes. Later, his assignment was expanded to include the Student's CFA class, and to also supervise the Student whenever the Student was out of his assigned classroom. Towards the end of March, the Student was not attending many of his classes, but he tried to keep the Student academically engaged as much as the Student would allow. He's not sure why the Student was spending so much time out of class; the Student didn't want to talk about it.

He was familiar with the Student's PBSPs, both the one in place in January and the one that replaced it in February. He received training on the latter plan, and was comfortable using them both. Occasionally, other staff members would ask questions about the plans to make sure they were following it correctly, but otherwise they seemed to understand it. Under the plans, when the Student was in class but not academically engaged, he would prompt the Student without giving him an ultimatum. When the Student was wandering in the halls, he would encourage the Student to go to his class, but if the Student was unwilling, the cafeteria and library were places he could go. The Student was also allowed to go to the special education room, but the Student was unwilling to go there. If necessary, he could get support from Mr. Irvine; he had to contact Mr. Irvine a couple of times a day at the beginning, before the Student had come to trust him. The Student also could ask for Mr. Irvine's support, and towards the end the Student was doing this several times a day.

There were times when he thought that Mr. Mortenson was too involved with implementing the Student's plan. The Student didn't like Mr. Mortenson and spoke very negatively about him. If Mr. Mortenson tried to engage with the Student, the Student would argue. He tried to avoid that communication as much as possible.

In most classes, if the Student got frustrated with any one thing, he would leave the room, and it would take a while before he could engage again academically. When the Student left the class, he would wander around the building or else go to the library. If the Student was in the library, he would try to get the Student involved in the material with which the Student was working in the classroom, but most of the time the Student was not ready to do that. Sometimes the frustration the Student felt in one class would keep him from going to any of his classes. Sometimes, too, the Student would argue with the teacher just to get the other students in the class riled up. According to Ms. McKinnon, the Student was thriving in her GT language arts class when he attended, but sometimes he would leave that class after 5 minutes. He doesn't know why the Student did that.

He observed the Student working on the PLATO program. The Student often would just hit "Next" on each screen, to see if he could pass the test without doing the tutorial, and then skip

to something else. If he failed the test, he was supposed to go back and do the tutorial again, but he didn't do that very often. He didn't like working with Ms. Rollins, who was assigned to work with the Student on PLATO, so he didn't ask for her help very often. He thinks the program would have worked well for the Student if the Student had followed the program like he was supposed to.

He believes that it was helpful for the Student to have a one-on-one educational technician. He helped the Student to stay on task. When in a class, the Student would ask him for help with understanding what the assignment was. Most importantly, he helped the Student with organization – keeping track of assignments and materials, and making sure the Student wrote in his agenda book. Often, the Student refused to write in his agenda book – he said he wasn't going to do the assignment, so why should he write it in the book. The goal was to get the Student to always write the assignment in the book. About 70% of the time, if the assignment was written in the book, it got done at home and the Student brought it to school the next day.

39. During an interview conducted by the Complaint Investigator with Jeannine Roy, Ms. Roy stated the following: She is a xx grade reading teacher and team leader at LRMS. The Student was in her class from September 2009 through December 2009. It was a regular education classroom with approximately 18 students. She found the Student to be very bright and an advanced reader. When something piqued his interest, he was 100% invested; when he was not interested, he was completely non-invested in terms of his willingness to pay attention. He would often just sit and illustrate while the class was going on. On other occasions, the Student would pretend to be sleeping. She administered one of the statewide assessments to a group including the Student, and the Student proceeded to randomly fill in the bubbles, finishing in five minutes and then spending the rest of the time reading his book. She tried to focus more on the positive, making more of his engagement than of his disengagement.

She attended the Student's IEP Team meetings, including the meeting of December 20, 2011. It was a long meeting. There were people at that meeting both from special education and from the day treatment program. The Team explored both avenues, and the Parent was clearly intrigued by the day treatment option. The program was described in detail, and the Parent was invited to go look at it. The Team decided that the appropriate placement for the Student would be in day treatment with able students who had behavioral challenges, rather than in a self contained special education class with students who had learning disabilities. The Parent was in agreement with this placement, pleased that the Student would be getting more structured support, and wanted it to start right after the winter break.

40. During an interview conducted by the Complaint Investigator with J.P. Yorkey, Mr. Yorkey stated the following: He is vice-principal of LRMS, and has known the Student since the Student started at the school in September 2009. Last year he had only limited interaction with the Student because the Student was in special education and the day treatment program. This year he has had much more involvement with the Student, on a day-to-day basis (seeing him in the hallway, having conversations with him). The Student is very bright and articulate, and is a very logical thinker. The Student can justify just about anything and in his mind make a very strong case for it. The Student can also be very oppositional.

He doesn't see the Student as a good fit for the day treatment program; it's not the peer group he would place the Student in. The Student is very bright, is in the GT program, but on the other hand his behavior this year has been beyond the scope of the regular education faculty. Last year, the only issue he was aware of was when the Student was tardy. It's a difficult decision, but he thinks on balance the day treatment program was not appropriate for the Student.

He received a copy of the PBSP when it was developed, and the special education staff helped him understand his part in it. He was clear about what he was supposed to do, and believes that he followed the plan. The plan changed over the year, and he was kept up to date with the changes. He felt the plan was useful for his purposes, and helped him improve his relationship with the Student. On at least one occasion, he had become very frustrated with the Student, and he thinks the plan helped improve that. The special education teachers and educational technicians seemed to have success with it, but it was very time consuming for them. The special education staff members were extremely patient with the Student.

His direct involvement with the Student decreased over time, both as a result of the plan and the staff's ability to resolve issues. Mr. Irvine devoted a lot of time to the Student. One issue for the Student was wandering, not being where he was assigned to be. On a number of occasions, he had to go looking for the Student. Under the plan, the Student had basically constant educational technician supervision, although towards the end even the educational technicians were losing touch with the Student from time to time.

He thinks that the Student identified him as a person or place he could go to. He gets along very well with the students in general, and got along with the Student as well or better than most of the staff members in the school. There was one event in the cafeteria, when the Student was holding a plastic knife in a troubling way (there had been some history of problems with a plastic knife outside the cafeteria), and he told the Student to put it down or throw it away. He did become frustrated with the Student, but that was the only incident like that.

He was surprised to learn that the Student was attending Poland Spring Academy. It is his understanding that the student population there is made up of students with disabilities more extreme than those of the Student, and he wouldn't expect that school to be able to engage the Student academically.

41. During an interview conducted by the Complaint Investigator with Peter Mortenson, Mr. Mortenson stated the following: He is principal of LRMS, and first became aware of the Student when the Student enrolled in his school in September 2009. During that school year, he had minimal involvement with the Student. The Student came to the school as a special education student, in the regular education setting with some resource room support. The Student was having issues with functioning in the regular education setting, and his IEP Team determined to place him in the District's day treatment program. Around that time, he had a conversation with the Parent where he told her that he thought that was a somewhat extreme move on the Team's part, and the Parent disagreed. He was flabbergasted that the Student

went directly from part-time resource room to day treatment; Ms. Caron has always been adamant that students move step by step along the continuum.

In that same grade, there was a group of students who were not in special education and who all had behavioral difficulties. The District was taking a lot of steps with those students to try and have them be successful. The following year, the school attempted to set up an alternative education program for the group, but that turned out not to be successful. Eventually, three of the students were referred to special education and found eligible.

As the current school year began, the Student's ability to function and be successful decreased rapidly. The Student was particularly struggling in algebra. On parent-teacher night, in November 2010, he had a lengthy conversation with the Parent, who said she wanted the Student switched into a different team so he could be in pre-algebra instead. They talked about the difficulty involved in this switch, as the other class had a special education teacher in the classroom and the Student has always had difficulty accessing special education. He agreed to make the switch, but it didn't seem to help the Student very much. Shortly after that, he got a phone call from the Parent asking about other alternatives. At first, he said that it was a special education issue and that she needed to go through the special education office, but then he spoke with Mr. Toews, who said the problems were more in the nature of regular education issues. He called the Parent and he told her about PLATO, suggesting that they meet the next Saturday to discuss the Student's situation.

At the meeting, the Parent and the Student said they wanted the Student to continue taking a drafting class at the high school. This is always a huge problem in terms of scheduling, as the high school and middle school schedules do not line up. He agreed to make this happen. They also discussed the PLATO program. He talked about the possibility of the Student getting credits toward a diploma for his PLATO work through a high school in New Hampshire, and that the Student could move more quickly towards that goal. It was always the Student's goal to finish high school and get into a college. By the end of the meeting, the Parent was on board with PLATO – the Student was struggling to be a member of the school community and this was a way for him to be able to do that – but he didn't dictate the result. He and the Parent decided that the Student would go to the high school for PLATO math, and would do PLATO science and social studies at LRMS. The Student would remain in the GT language arts class.

After the meeting, he looked into the school in New Hampshire (it turned out not to be an option) and the Parent looked into doing the same thing through a different school in New Hampshire. The Student went to the high school for Accuplacer testing (to determine at which grade level the Student should be working if he went ahead with PLATO), and he had a good interaction with the PLATO person there. His staff struggled with getting the PLATO technology for science and social studies in place there, so in the mean time the Student worked on math at the high school.

At the next meeting with the Parent and the Student in his office, the Parent complained that, because the Student was spending so much of his time at the high school, he was not getting the support he was supposed to receive and she wanted him back in LRMS. He doesn't

remember whether he opposed the Student's getting out of PLATO science and social studies. He may have said that the school needed time to get PLATO science and social studies up and running, and said that they should give it more time. The Student said that he wanted to take PLATO language arts as well, but the Parent insisted that he remain in the GT language arts class, and he supported the Parent's position.

After the next IEP Team meeting, the Student stopped going to the high school for PLATO math, and went back into the regular education science and social studies classes with educational technician support. The Student couldn't return to the classes he had been in earlier, because of an interaction with one of the other students. The Team and the Student came to an agreement on his schedule.

The Student always struggled with accessing special education services. The Student would not enter the resource room; the teacher had to come out into the hall to talk to the Student. The Student sees himself as a smart, perfect young man, and wasn't willing to be seen associating with the other special education students. The Student also struggled with accepting educational technician support.

He had some good interactions with the Student and some poor ones. Occasionally, the Student would decide he wanted to take off and would wander around the building (the custodian's room had to be locked because they found the Student in there going through the custodian's desk drawers). He and Mr. Yorkey decided that they would only go looking for the Student with another person present, so that there would be no doubt about what transpired when they found the Student. There was a rule in the school about taking off hats. The Student had a favorite hat, and at some point the Student started refusing to take it off. He decided that he had to be careful in choosing his battles with the Student, and so left the matter of the hat (and many other issues) for Mr. Irvine to deal with. He limited himself to more serious issues with the Student. He doesn't believe that the Student was afraid of him, however. Shortly after the February 16, 2011 IEP Team meeting, the Student was in the cafeteria and the Student pointed at him with a big smile, turned to his friends and laughed. The Student knew that he was not allowed to implement the new PBSP. He told Mr. Irvine to talk to the Student, and the Student admitted that he had been inappropriate.

Before February 16, 2011, he was familiar with the Student's PBSP and was involved this year in implementing it. He agrees, however, that it took a long time for the District to develop the plan, and that the plan at first was not sufficient. It was well laid out, but confusing. He would have set up the plan differently, so that it was sufficiently clear and everyone understood their roles and understood the process. A good plan needs to have both a "stick" and a "carrot;" the Student's plan had no stick and not much carrot.

In the last couple of months, he became very concerned about the Student's increasing anxiety level. The Student was not doing well, and he mentioned to the Parent that the Student might end up back in the day treatment program due to his inability to function.

In his opinion, the Student has too much say in things he doesn't understand. The Parent is constantly asking the Student what he thinks and his decision is what gets put into effect. The

Student was integrally involved in IEP Team decisions. About the only time the Parent stood up to the Student was in regard to the Student's getting out of GT language arts class. He believes that the Student is at a fork in the road of his life – he can choose to be a hero and leader, or a villain. The Student has confused ideas about himself. The Student is a young man in tremendous need, and he doesn't believe that the Parent is providing those needs. He thinks that the District allowed too much flexibility and agreed to make too many changes. The Student was never held in any one program long enough to truly give it a chance to work.

42. During an interview conducted by the Complaint Investigator with Lisa Caron, Ms. Caron stated the following: She is the director of special services for the District. The District received the Parent's Statement of Parental Concerns on December 21, 2010, and she noted that it contained the request for social work notes and records. Due to an oversight, she neglected to note that it requested records from the prior year. She asked Mr. Fitzgerald to provide her with information about sessions held or not held, and the length of those sessions. She then compiled that information, and sent it to the Parent on March 3, 2011. She only became aware that the Parent wanted information from the prior year after this complaint was filed, and she e-mailed Ms. Prevost's service delivery records to the Parent on March 22, 2011.

43. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: She was originally enthusiastic about placing the Student in the day treatment program. When she first enrolled the Student, she decided to have him repeat xx grade because his grades at the private school he attended had been very poor. She quickly realized that had been a mistake. She believes that the Student was challenging teachers and pushing the limits because he was bored. At the private school, he had not done his school work, but he had withdrawn instead of being challenging. She had been considering taking the Student out of the District and enrolling him in Poland Spring Academy. She spoke with Mr. Geel, who was the Student's case manager at the time, and asked what he knew about that school. Mr. Geel said that the District had a program (the day treatment program) similar to what they had at Poland Spring Academy, and he thought the IEP Team should consider it. He said that the Student would get a lot of one-on-one attention, and a comprehensive behavior program. It sounded like what she wanted.

When they discussed it at the IEP Team meeting, everyone exaggerated the Student's problems, because they said they needed to do so for the Student to be accepted into the program. There wasn't much discussion about what the program was really like. After the Student started in the program, she soon realized that the Student's peers in the program were more seriously emotionally disturbed than was the Student – they were prone to acting out violently and exhibited more extreme behavior. In retrospect, she believes that the District should have first tried less restrictive alternatives before deciding to place the Student in day treatment. He went from regular education placement with some support to the most restrictive placement within the public school. The District should have first allowed the Student to move up to xx grade, as she requested. They also could have provided one-on-one educational technician support throughout his day.

When the Student started in the District in September 2009, he was given the option to see an educational technician (Ms. Ludwig) in a special education room. The student chose not to meet with her, so in effect he was not getting any support at all. The following year, although she was told at the IEP Team meeting that the Student would get educational technician support, it wasn't put into the IEP. After provision for this support was added to the IEP, the Student had mixed experience with educational technicians, but once Mr. Irvine became involved, it became a consistently positive experience.

Once the decision was made to transfer the Student out of day treatment, she attended many IEP Team meetings to make sure that everything would be in place for the year. When the year began, however, nothing was right. The Student was on the wrong team, had the wrong schedule, and had no support. She was told there was a problem matching up the Student's schedule with the schedule at the high school, but she believes this should have been resolved before the school year began. He was switched to the other team, and now was in the right classes, but still without support. When educational technician support was added to the Student's program, he was switched to classes where there was an educational technician already present in the class. Throughout this time, she kept asking about the Student's PBSP, and she was told repeatedly that the staff was working on it. Even after the plan was developed, staff members weren't implementing it - the Student kept getting written up for not being prepared and for not doing work, and he kept getting detention.

She went to talk with Mr. Mortenson, and at first he told her it was a special education problem with which he couldn't help her. In the next couple of days, she got a phone call from Mr. Mortenson, who said he had spoken with Mr. Toews, and now he no longer thought that it was exclusively a special education problem. He said that there was a new program for the Student to try, and suggested he try it for a week. Mr. Mortenson asked her to come to school on Saturday so they could discuss it. She called Mr. Toews, who said he couldn't meet on Saturday.

When she went to meet Mr. Mortenson, there was no one else in the building. Mr. Mortenson sat the Student and her in his office and said "This is what we're going to do. The Student will work on a computer, and he'll be finished with school in 1 ½ years." She responded that she didn't want the Student to finish school in 1 ½ years, and asked about other options. Mr. Mortenson said that if the Student didn't do this, he would end up dead or in an institution. She thought this was very inappropriate when the Student was present.

The next Monday, the Student was given a new schedule that had him on the computer using the PLATO program for every class but language arts. The only work they actually had for the Student on PLATO, however, was in math. She contacted Mr. Toews and Ms. Smith, who said that there needed to be an IEP Team meeting before they could do anything with the Student's schedule. Before that could happen, there was another meeting in Mr. Mortenson's office, and when she told him that the Student needed to go back into science and social studies classes, Mr. Mortenson said "No, that's not going to happen." Then they had the IEP Team meeting, and everyone agreed that the Student needed to return to his science and social studies classes while continuing with PLATO for math. She thought that made sense, because the Student had some deficits in his basic math skills. She requested, however, that a teacher

be assigned to help the Student with his math, because no one was responsible for giving the Student a math grade – he received no 2nd quarter math grade. The Team agreed, the Student was put back in the classes he should have started the year with (with educational technician support), and Mr. Irvine was assigned to monitor the Student's math work.

With regard to the PBSP, one of the purposes of the Student's behaviors was avoidance, so having a teacher send the Student out of class for not doing his work was not helpful. The PBSP had to establish different consequences to ensure that the Student couldn't avoid doing his work. The plan developed in January 2011, although it did set up a different structure, was confusing to the staff, and the Student was still being sent to the office when he refused to do his work. Both the Student's teachers and Mr. Yorkey told her that they weren't sure how to use that plan. It didn't tell the staff what to do, step by step. A workable, appropriate plan was finally put into place at the February 17, 2011 meeting, with the help of Ms. Perry. The staff was trained on this plan three days before the meeting; she believes the superintendent got involved and directed that this training take place. She saw definite improvement in the Student's task completion once this plan was in effect. At around the same time, the Student was finally getting help at the end of each day making sure he had all his assignments and the materials to do them.

With regard to social work services, she does not recall being told that the Student was refusing to see Ms. Prevost. The impression she got from Ms. Prevost was that the Student didn't really belong in the day treatment program because he needed to be academically challenged. Ms. Prevost told her that she wasn't used to dealing with students like the Student. The following year, the Student was scheduled for social work first thing in the morning, when the Student's teenage body was not yet fully awake. In one session with Mr. Fitzgerald, the Student said that, rather than going to school, he wished he could stay in bed and sleep. Mr. Fitzgerald commented to the Student that it sounded like he was depressed, which upset the Student. The Student told her that after Mr. Fitzgerald made that comment, he just continued to stare at the Student. The Student said that he didn't believe that Mr. Fitzgerald knew who the Student was. After that, the Student refused to have social work sessions with Mr. Fitzgerald.

At the December 16, 2010 IEP Team meeting, Mr. Fitzgerald said the Team was still working from day treatment social work goals, that new goals were needed, but that he didn't have new goals ready at that meeting. After the meeting, Ms. Smith called and told her that they (she assumed Mr. Fitzgerald was involved) had developed a new social work goal, which she read to her. She told Ms. Smith that she wanted an opportunity to have input to the goals, and that a single goal targeting the Student's frustration was inadequate, but Ms. Smith said there was nothing she could do about it. She believed that there needed to be a goal addressing the Student's increasing anxiety. At that point, the Student was hiding when at school in order to avoid conflict with staff members. She took the Student to see Ms. Loux, and in only one session, Ms. Loux gave the Student some breathing exercises to do when he started to feel anxious. The school social worker should have been doing this kind of work with the Student.

At the December 20, 2010 IEP Team meeting, she submitted a list of her concerns, one of which was a request for social work records. She was thinking about looking for outside services for the Student and she didn't know how much he needed. She wanted to see what services the Student was actually getting at school – the dates and times when the Student attended social work sessions. After numerous follow-up requests, she finally got records for the current school year on March 3, 2011, and for last year on March 27, 2011.

She didn't receive the IEP developed at the November 1, 2010 meeting until the December 16, 2010 meeting.

VII. Conclusions

Allegation #1: Failure to provide education in the least restrictive environment by placing the Student in a day treatment program and in an alternative education setting in violation of MUSER §X.2.B

NO VIOLATION FOUND

Allegation #2: Failure to utilize the IEP Team as the vehicle for determining the appropriate placement for the Student when he was placed in an alternative education setting in violation of MUSER §VI.2.I

VIOLATION FOUND

At the point that the IEP Team determined to place the Student in the District's day treatment program, his IEP provided 675 minutes per week (equivalent to 2 hours and 15 minutes per day) of specially designed instruction with a special education teacher, with the remainder of his time spent in the regular education setting. The Student's IEP also contained a PBSP. There is a discrepancy as to the extent to which the Student was accessing his special education services - the Parent stated that the Student refused to do so, Mr. Geel recounted Ms. Ludwig's reports that the Student was doing so. Regardless, it is clear that the Student was unhappy about being in the special education classroom.

The Parent asserts that the District, before removing the Student from the regular education setting for the entire day, should have first advanced the Student into xx grade (the Student was repeating xx grade at the Parent's request) and provided educational technician support in the regular education classroom. This was not the Parent's position at the time; by all accounts, she was unreservedly enthusiastic about the day treatment option. Indeed, according to the Parent, she was at the time contemplating removing the Student from public education entirely and placing him in a private school for children with severe disabilities. As the Student had only been in the district for a few months, it appears reasonable that the District would defer to the Parent's judgment in this regard to a considerable extent.

The Parent's assertion also ignores the resistance the Student had shown to receiving special education assistance. Whether or not the Student went to Ms. Ludwig's class as he was supposed to, Ms. Ludwig reported that the Student was giving her a hard time and told her he didn't like being in that class. The Student reported to Ms. Prevost that he would not work

with Ms. Ludwig on maintaining a behavior tracker. Ms. Prevost also reported the Student's anxiety over whether he would be successful if transitioned into xx grade. Among Ms. Prevost's recommendations following the FBA, she recommended that the Student "participate in a program that offers him a therapeutic component as well as an academic component in which he can work in small groups and at his appropriate level." The day treatment program provided those elements.

Given the information with which the Team was presented, including the results of the FBA and the input provided by the Parent, the Team's determination that the day treatment program was the least restrictive appropriate placement was not unreasonable.

With regard to the "alternative education setting," this is intended to reference the decision to remove the Student from his regular education math, science and social studies classes and have him work independently on a computer using the PLATO program. As this decision was not made by the IEP Team, the better analysis is under Allegation #2, focusing on how the decision was made rather than the substance of the decision.

As stated in MUSER §VI.2.I, the IEP team is the mandatory vehicle for making decisions regarding, among other things, a student's placement and the extent to which a student will participate in the regular education environment. The primacy of the IEP Team in the special education process is one of the cornerstones of IDEA. When Mr. Mortenson called the Parent and Student to his office and held a discussion (no matter how dictatorial or collaborative it was) about the Student's leaving his math, science and social studies regular education classes and replacing them with independent work on a computer outside of a classroom environment, he was bypassing the Team as the appropriate decision-making entity. Members of the Team were, in fact, already considering the merits of such a proposal, but the decision in the Principal's office denied Team members the opportunity to be heard on the issue. As it turned out, when given that opportunity, the Team determined to put the Student back into his science and social studies classes. The violation, then, was one of procedure rather than substance.

Allegation #3: Failure to provide supplementary aids and services in the nature of one-on-one support during the period from September 2010 to January 2011 to enable the Student to advance appropriately toward attaining his annual goals, to be involved in and make progress in the general education curriculum, and to be educated and participate in those activities with other children with disabilities and with non-disabled children in violation of MUSER §IX.3.A(1)(d)

NO VIOLATION FOUND

When the IEP Team made the determination to transition the Student from the day treatment program to the regular education environment, they did so largely based on the Student's having been successful in that environment. The Parent, at the April 15, 2010 meeting, stated her belief that academic frustration caused much of the Student's disruptive behavior. At the June 9, 2010 meeting, the Team heard reports of the Student's success in his regular education drafting and art classes, and was told that oppositional behaviors were occurring only in the

Student's special education classes. The Team determination at that meeting to discontinue the Student's attendance at the day treatment program was based on a conclusion that the Student was "capable of appropriate behavior when engaged with [challenging] curriculum."

Furthermore, there was ample evidence that the Student resisted and resented any special education assistance, such that the provision of educational technician support in the regular education setting could be counterproductive. It is crucial that allegations such as this one not be judged with the hindsight provided by the Student's lack of success after the program was implemented. The question is whether the IEP Team's decision in the spring of 2010 to transition the Student into the regular education setting without one-on-one educational support was reasonable in light of what was then known about the Student. Viewed from that perspective, the Team's determination to allow the Student to return to the regular education setting, in his proper grade and with certain GT components added to the program, was reasonable. It certainly appeared so to the Parent at the time.

Allegation #4: Failure to timely and adequately implement the Student's IEP with respect to developing a positive behavior support plan in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

Allegation #5: Failure to fully and adequately implement the Student's IEP with respect to following the Student's positive behavior support plan in violation of MUSER §IX.3.B(3)

VIOLATION FOUND

Each of the Student's IEPs over the last two years has included a PBSP. During the current school year, the plan was modified, gaining in complexity, with each new IEP. Thus, there was a new PBSP for the Student on September 2, 2010, November 8, 2010, January 3, 2011 and February 18, 2011. As the Team needed an opportunity to put each plan into action before being able to assess its efficacy and decide whether it required further revision, it can't fairly be said that the development of the series of plans was not timely. As to the adequacy of the plans, the fact that so many different versions appeared throughout the course of the year speaks, of course, to the lack of success in their helping the Student to be successful. It also speaks, however, to the District's commitment to continue to revise and improve the program in order to try and find an approach that would lead to that success.

As with the overall decision to transition the Student to the regular education setting with minimal support, the initial, fairly simple plan was premised on the Team's hope and belief that the placement of the Student in his age-appropriate grade with commensurate academic challenge would result in a marked decrease in oppositional and non-compliant behaviors. As the year progressed, it became increasingly apparent that this was not going to be the case, and the plans changed in recognition of that development. Although there was some degree of confusion on the staff's part to at least some of the plans, this appeared to be highly subjective. For instance, Ms. Smith found the February 18th plan too confusing, but Mr. Mortenson preferred it to the January 3rd plan. Again, judging the merits of the plans not with hindsight but from the perspective of the moment when each plan was developed, none of the

plans was so obviously deficient and unlikely to produce improvement that it amounted to a violation of law.

With regard to implementation of the plans, however, there were a sufficient number of indications that the plans were not being followed by staff members to amount to a material failure to implement. Ms. Smith spoke of the resistance of staff and administration members to following the plans. Mr. Irvine described teachers not being willing to take the time required by the plans to properly interact with the Student. Mr. Landry spoke of the detrimental effect of Mr. Mortenson's efforts to implement the plan (indeed, in the final plan Mr. Mortenson was designated as a person not to be involved). According to the Parent, the Student continued to be sent to the office and given detentions by his teachers until the final, February 18th plan was put into place.

How much of the above failure to implement was the result of plans being too difficult to implement or too confusing rather than intentional or neglectful failure to follow them is unclear, but the net result was the Student's withdrawal to the library in order to avoid any further disturbing interactions with staff.

Allegation #6: Failure to fully and adequately implement the Student's IEP with respect to social work services from September 2009 to the present in violation of MUSER §IX.3.B(3)

VIOLATION FOUND

During the period from January 4, 2010 until September 9, 2010, the Student's IEP provided for social work services in the amount of 60 minutes per week. The amount of service was reduced to 30 minutes per week on September 9, 2010, but returned to 60 minutes per week in the IEP of November 8, 2010. Ms. Smith describes the recording of that figure as clerical error, and given that there is no indication that the Student's IEP Team determined to change the amount of service, that appears to be an accurate account. The Team subsequently endorsed the change to 60 minutes beginning on January 3, 2011.

Ms. Prevost's records with regard to the delivery of social work services during the January 4 – September 9, 2010 period reflect a shortfall of 300 minutes of service. While Ms. Prevost stated that the Student at times refused to attend sessions, and this was corroborated by Mr. Yates, no records were provided that document the dates on which this occurred. The District does not fail to provide a service when the service is made available to a student and a student refuses to access that service, however, the records in this case only document the dates on which services were provided, not the reasons why services were not provided on other dates. Furthermore, looking at the record for the month of February 2010, one session was held during each of the four weeks, however, none of them for the requisite 60 minutes - two were for 45 minutes and two for 30 minutes. Of the four sessions held in March, only one was for 60 minutes. The records of May 2010 reflect services provided in three of the four weeks, but each session was only 45 minutes long. Although it may not be possible to accurately calculate the total shortfall in services for which the District is accountable, it clearly appears to be more than a trivial amount.

The records of Mr. Fitzgerald's delivery of services in the current year document a 45 minute shortfall in services during the first seven weeks. During the next seven weeks, the IEP provided for services in the amount of 60 minutes per week as the result, according to Ms. Smith, of a clerical error on her part. The Parent does not claim that the IEP Team in fact authorized this change, and there is no other evidence to suggest it. There may be a situation where a district claims that a provision in an IEP was written in error and should not be given effect, but where there is a real dispute as to what the IEP Team decided, such that the provision will be given effect regardless of the claim of error. That is not this case. Mr. Fitzgerald continued to provide the 30 minutes determined by the IEP Team (20 minutes more, in fact) during those weeks.

The final eight weeks documented in the record reflects one session of 50 minutes, a 10 minute shortfall. On February 9, 2011, whereas the record compiled by the District for purposes of this investigation reflects the Student was not seen, Mr. Fitzgerald stated that his own records reflect that the Student attended a full session. Following that date, the Student refused to attend any more sessions with Mr. Fitzgerald.

Although the records provided, in light of the statements given by those who were interviewed for this investigation, do not permit precise calculation of the extent to which the District failed to deliver the required social work services, they are sufficient to support a finding of violation.

Allegation #7: Failure to include social work goals in the IEP that meet the student's educational needs in violation of MUSER §IX.3.A(1)(b)(ii)

NO VIOLATION FOUND

Allegation #8: Failure to utilize the IEP Team as the vehicle for determining appropriate social work goals for the Student in violation of MUSER §VI.2.I(1)

VIOLATION FOUND

MUSER §VI.2.I(1) dictates that the IEP Team meeting is to be used as the vehicle for determining appropriate goals for a student. At the IEP Team meeting of December 20, 2010, Ms. Smith read aloud a statement submitted by Mr. Fitzgerald that spoke generally of the need to shift the focus of the Student's social work goals from anxiety to oppositional behavior and perfectionism. Ms. Smith took the Parent's subsequent statement that the Student's social work goals needed to be changed to indicate the Parent's agreement with Mr. Fitzgerald's statement, and therefore considered that the Team had developed the goals later added to the IEP by Mr. Fitzgerald. Those goals addressed the Student's ability to identify his frustrations and his impeding responses.

While oppositional behavior and perfectionism can certainly be seen as impeding responses, there is less than full correspondence between those goals and Mr. Fitzgerald's statement. Even if the Parent had agreed with the targeted issues, she might still disagree with how much progress was to be expected, or how it would be measured. Other Team members might also have wanted to express their views on the matter. The District could have properly offered

the proposed goals to the Parent, before entering them into the IEP, to see if agreement could be reached outside of a meeting (MUSER §IX.3.C(4)). Absent such agreement, however, proper procedure required that another Team meeting was called to review the proposed goals.

As to whether the goals as placed in the IEP met the Student's educational needs, the Parent bases this allegation on the failure to provide a goal for the Student's anxiety. Of the many staff members that were interviewed for this investigation, there were a considerable number that felt, as did Mr. Fitzgerald, that anxiety was not the principal obstacle to the Student's success. This is not to deny that there were many others who agreed with the Parent that the Student, particularly in the last months before he left the District, was anxious and fearful, essentially hiding out in the library to escape further distress. While this divergence of views fails to provide sufficient support for the Parent's allegation of regulatory violation, it serves to underscore the importance of having the goals reviewed by the whole Team. It seems likely that, had this discussion taken place, the Team members would have gained a broader perspective on the Student's behavior, and an additional goal addressing anxiety might perhaps have been added.

Allegation #9: Failure to provide requested records of social work services within 45 days of the Parent's request in violation of MUSER §XIV.3

VIOLATION FOUND

MUSER §XIV.3 provides to parents the right to inspect and review "any education records relating to their child which are collected, maintained, or used" by their district. The district is obligated to comply with such a request for records within 45 days after the request is made. In this case, the Parent's initial request was made on December 21, 2010 as part of the Parent's statement of parental concerns to be attached to the Written Notice of that meeting. The request was for "copies of the service delivery notes and records of all social workers who have worked with [the Student] over the last year." If, as the Parent stated to this investigator, the Parent was seeking documentation of the dates and lengths of social work sessions provided to the Student, this formulation did not make that clear. Ms. Caron's response on January 31, 2011, within 45 days from the initial request, that the social worker's treatment notes were not part of the Student's educational record and were not, therefore, available to the Parent, was appropriate. It was not until January 31, then, when the Parent agreed to accept the records offered by Ms. Caron to be provided, that the 45 day clock began to run.

The records for the current year were delivered on March 3, 2011, 31 days from that date, but the previous year's records (included by the phrase "over the last year") were not delivered until March 22, 2011, 50 days afterwards.

Allegation #10: Failure to provide a copy of the Student's IEP to the Student's parent within 21 days of the IEP Team meeting at which the IEP was developed in violation of MUSER §IX.3.G

NO VIOLATION FOUND

The Parent identified the IEP developed at the November 1, 2010 meeting in connection with this allegation, asserting she did not receive it until the December 16, 2010 meeting. The Parent referenced an e-mail to Ms. Smith dated December 8, 2010 in which she inquired after the IEP. The records of the District, on the other hand, document mailing of the IEP to the Parent on November 30, 2010, within the regulatory time frame. The U.S. Supreme Court has held that, in the context of a due process hearing, the party seeking relief bears the burden of proof. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed. 2d 387 (2005). The reasoning of that case applies equally well to the complaint investigation process, placing the burden of proof on the Parent. The information provided by the Parent on this issue does not suffice to sustain that burden.

VIII. Corrective Action Plan

The District shall issue a memorandum to all special education staff regarding: the necessity for providing to parents the opportunity to inspect and review requested educational records within 45 days from the request; and the necessity for utilizing the IEP Team as the vehicle for developing goals and determining educational programming. The District will submit a copy of the written memorandum, together with a list of the names and job titles of all those to whom the memorandum is issued, to the Due Process Office and the Parent.

The District shall also hire an appropriately qualified mental health or behavioral science professional to present a program to all regular education and administrative staff of the Lakes Region Middle School regarding the nature and purpose of positive behavior support plans for behaviorally challenged students, and the importance of proper and faithful implementation of those plans to the students' chances for success in school. The District will submit a copy of the syllabus for this training, the qualifications of the presenter, and a list of the names and job titles of all those who attended the training, to the Due Process Office and the Parent.

Finally, with regard to the finding of violation respecting the failure to deliver the requisite hours of social work service, there was considerable uncertainty as to the extent to which the Student was harmed by this deprivation of services (the Student chose not to fully engage with the social workers and sometimes refused to attend the session at all). Therefore, upon the Student's re-enrollment in the District, the Student's IEP Team shall convene to determine the compensatory social work services to be provided to the Student, to a maximum of 5 hours, based upon consideration of the extent to which such compensatory services are likely to benefit the Student. The District will submit the Written Notice of the IEP Team meeting at which such determination was made, together with documentation of the delivery of those compensatory services determined to be provided, to the Due Process Office and the Parent.