

Complaint Investigation Report
Parent v. RSU #20

May 11, 2011

Complaint #11.072C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Parent
Address
City

Respondent: Bruce A. Mailloux, Superintendent
6A Lions Way
Belfast, ME 04915

Special Services Director: Sharon Goguen

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on March 28, 2011. The Complaint Investigator was appointed on March 29, 2011 and issued a draft allegations report on March 31, 2011. The Complaint Investigator conducted a complaint investigation meeting on April 15, 2011, resulting in a set of stipulations. On April 21, 2011, the Complaint Investigator received a 1-page memorandum from the Complainant, followed, on April 21, 2011, by a further 1-page memorandum in response to the submission of RSU #20 (the "District"), and received a 7-page memorandum and 235 pages of documents from the District on April 20, 2011, followed by an additional 3-page memorandum on April 27, 2011 and a further one-page memorandum and 26 pages of documents on May 9, 2011 in response to notice of an ancillary allegation. Interviews were conducted with the following: Sharon Goguen, director of special services for the District; Cynthia Hargraves-Tobin, teacher for the District; Andrew Wisch, Ph.D., psychologist; Leah Poisson, LCSW, social worker; and the Student's mother (the "Parent").

III. Preliminary Statement

The Student is xx years old and is currently receiving special education under the eligibility criterion Other Health Impaired. This complaint was filed by the Parent, alleging violations

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

IV. Allegations

1. Failure to fully and adequately implement the parties' mediation agreement with respect to placement of the Student in Mrs. Hargraves-Tobin's special education class with support from an educational technician, enforceable pursuant to MUSER §§XVI.3.B(9) and XVII.8;
2. Failure to provide educational services from January 11, 2011 to the present so as to enable the Student to continue to participate in the general education curriculum and to progress toward meeting his annual goals in violation of MUSER §§XVII.1.B(2) and XVII.1.D(1)(a);
3. Failure to make a joint, informed decision at the March 23, 2011 IEP team meeting by predetermining the outcome with regard to the Student's placement in violation of MUSER §VI.2(I).

Ancillary Allegation #1. Failure to properly prepare the Written Notice form for the meetings of 6/4/10, 12/14/10 and 1/11/11 so as to clearly identify the actions which the District proposes or refuses to take, and the reasons why it is proposing or refusing to take those actions. MUSER App. 1, 34 CFR §300.503.

V. Stipulations

1. During the time that the Student has been out of school due to a suspension on January 4, 2011, the District, beginning on January 11, 2011, has been providing two hours of tutoring per day to the Student.
2. At an IEP Team meeting on March 23, 2011, the Team determined that the Student, upon his return to school, would not be placed in the classroom referenced in the parties' mediation agreement.

VI. Summary of Findings

1. The Student lives in Searsmont with the Parent and her fiancé, and is presently attending xx grade at Troy Howard Middle School ("THMS"). He began receiving special education services in xx grade.
2. On April 22, 2010, the Parent filed with the Department a request for a complaint investigation concerning the Student. The issues raised in that request included allegations that the Student had been inappropriately placed that year in a regular education classroom with support, rather than in a special education classroom where he would receive small group instruction and one-on-one support.
3. On May 10, 2010, the parties participated in mediation in conjunction with the complaint investigation. The mediation session resulted in a written mediation agreement, pursuant to

which the parties agreed that an IEP Team meeting would be held on June 4, 2010, at which time the Team would “discuss...placement in the Academic Resource Program (Cynthia Hargraves-Tobin).”

4. At the June 4, 2010 meeting, the Team rejected placement in the day treatment program for the following year, choosing instead to place the Student in the Academic Resource Program. The Written Notice of this meeting, in Section 1 (“Describe the action(s)...proposed or refused by the SAU”), states: “The purpose of this meeting is to discuss [the Student’s] IEP and make recommendations for next academic year.” Section 2 (“Explain why the SAU is proposing or refusing to take the above actions”) states that “the purpose of this meeting is to review [the Student]’s plan for next year,” briefly summarizes reports of the Student’s teachers, lists the goals, services and accommodations which the Team agreed should be provided, and under “Recommendations,” states: “The team agreed to make this [the Student]’s annual IEP.” Section 4 (“Describe any other options that the team...considered and the reasons why those options were rejected”) states that the Team “rejected Day Treatment services starting in the fall of ’10 and recommended that he have specially designed instruction in the resource room.” Section 5 (“Describe any other factors that are relevant to the SAU’s proposed or refused action(s) described above”) states: “[The Student] has been in EXCEL day treatment program at the end of this year – the team recommends that [the Student] move to a resource room in the fall.”

5. The Team developed an IEP for the Student, dated June 4, 2010, in which the Student’s academic, developmental and functional needs are described (in Section 3) as follows: “[The Student] learns best in small groups. He is easily distracted by peers and often joins in ‘goof-off’ behavior.” The IEP contains three instructional goals: one for math and two for writing, as well as several behavioral goals. Under the IEP, the Student was to receive specially designed instruction in reading five 2-hour sessions per week, specially designed instruction in math five 1.25-hour sessions per week and OT consult services two times per month for 30 minutes. The Student was to be in the regular education environment for science, P.E. and technology education, with the rest of his day spent in the special education environment.

6. The Team met again on December 14, 2010, and determined to make certain changes to the Student’s IEP goals and services, listed in Section 1 of the Written Notice of the meeting. Section 2 offers the following as explanation for the Team’s proposals: “This is [the Student]’s triennial meeting to review evaluations and make recommendations for identification.”

7. During the first few months of the current school year, the Student received two out-of-school suspensions for fighting with other students: on September 28, 2010 (one-day suspension); and November 4, 2010 (five-day suspension). On January 4, 2011, the Student and another student were directed to serve a lunch detention as a result of refusal to do their class work and being disruptive. After the Student declared his intention to ignore the detention, Mr. Kiesman, vice principal of THMS, followed the Student from the cafeteria to ensure that the Student returned to his classroom to serve his detention. As they walked, the Student declared that if Mr. Kiesman “got in his face” he would “probably punch” him. A short time after he delivered the Student to his classroom, Mr. Kiesman was informed that the

Student had been swearing at his teacher and had left the classroom. Mr. Kiesman found the Student in the lobby, and directed him to come to the office to await being picked up by the Parent. The Student swore at Mr. Kiesman and then left the office. The Student went to the gymnasium lobby area, and refused to return to the office. At some point, it was discovered that the Student had a large pair of scissors, which he refused to relinquish. Mr. Kiesman notified the school resource officer, and the Student left the building through a gymnasium exit. The Student was eventually found by the police, and the incident resulted in another out-of-school suspension.

8. On January 11, 2011, the IEP Team conducted a manifestation determination meeting, determined that the incident was not a manifestation of the Student's learning disability and that the scissors constituted a weapon, and directed that the Student undergo a risk assessment. The Team further determined to provide to the Student tutoring for two hours per day until the risk assessment was completed and a further meeting could be held to review the Student's identification, placement and possible IEP amendments. The Written Notice of the January 11, 2011 meeting does not provide an explanation or basis for the determination to provide two hours of tutoring; Section 2 states: "The team met to complete a manifestation determination based on incidences at school...that have led to [the Student]'s suspension."

9. On February 8, 2011, Andrew Wisch, Ph.D., ABPP, conducted a risk assessment of the Student. Dr. Wisch interviewed the Student, the Parent and various school staff members, and reviewed previous evaluations, hospital records and school records. In the report of the risk assessment, Dr. Wisch referenced a statement by the Student from the previous year that "he has difficulty paying attention and learning in the regular, bigger classroom, at the pace at which the regular class information is taught. He is used to having more one-on-one and is also used to having the pace slowed down to meet his needs." Dr. Wisch found that the Student had "struggled with cognitive and mood problems for several years," and that he "currently meets the DSM-IV criteria for Post Traumatic Stress Disorder (PTSD)." Dr. Wisch further found that the Student's "cognitive problems, including his slow processing speed and high reactivity to noise, further compound his PTSD symptoms." Dr. Wisch concluded that "if [the Student] is fearful and feels cornered, he does have the potential to engage in violence," and made various recommendations, including: "Given his hyperactivity to high levels of stimulation, it is difficult to envision [the Student] being successful in mainstream classes in the immediate future. He will need a small classroom with higher levels of staffing in order to help ensure his success....He will often need a period of low stimulation and the opportunity to reduce his anxiety level before he will be able to process information efficiently."

10. The IEP Team met on March 23, 2011 to review the risk assessment. Ms. Hargraves-Tobin, who had been providing the tutoring to the Student, reported that there had been two explosive episodes during those tutoring sessions. The Team discussed the possibility of the Student attending the Horizons day treatment program at THMS, but the Parent said that that program would provide too much stimulation and that the Student needed a quiet, small group setting. The Team determined that the Student should continue to be provided with two hours of tutoring per day until the end of the school year, and that another meeting would be held in June to discuss transition planning for next year when the Student would begin attending a

self contained program in the high school. The Written Notice of the meeting provides the following explanation for this determination: "Continuation of tutoring is recommended as [the Student] is not yet demonstrating emotional control, coping skills and safe behaviors that would make a return to a typical school environment. Even the self contained Horizons day treatment program is too over-stimulating and would expose him to negative peer relationships and behaviors that have the potential to trigger inappropriate behaviors."

11. Since the March 23, 2011 meeting, the Student has remained out of school, and has been receiving two hours of tutoring per day.

12. During an interview conducted by the Complaint Investigator with Sharon Goguen, Ms. Goguen stated the following: She is in her second year as director of special services for the District. When she first became aware of the Student last year, he had stopped coming to school. The Parent initially said he was ill, but time went on and the Parent continued to keep him out of school. She eventually came to understand that the issue was the serious negative feelings the Student had, to the extent of exhibiting paranoia, towards his teacher in the day treatment program at that time,. At the point that the Student was able to participate in school again, the IEP Team determined to move him from day treatment to the academic resources program, where Ms. Hargaves-Tobin was the teacher. The Team agreed that the Student would initially not be in any regular education classes, but that he would gradually move into some of those classes.

After the January 4, 2011 incident and suspension, when the IEP Team met on March 23, 2011 to discuss the placement for the Student upon his return to school, she did not come to the meeting with a predetermined outcome in mind. The Team reviewed the risk assessment, heard reports from the teacher, the Parent and the Student's social worker, and then the members of the Team expressed what they believed was the appropriate placement for the Student. Most of the Team members believed that the appropriate placement was the Horizons program.

In the period leading up to the January 4 incident, the Student was frequently being defiant, leaving the academic resources classroom and not completing his work. In fact, a refusal to comply with directions from Ms. Hargaves-Tobin precipitated the incident. Since the time of the Student's suspension, a decision had been made (having nothing to do with the Student) to move several of the students from the academic resources classroom elsewhere, and to remove the educational technician from the classroom. Among the students remaining in that program were the students with whom the Student had experienced the most problems. She didn't believe that returning the Student to that program would be appropriate.

As to the Horizons program, when the program had been discussed the previous year, the students making up the program were fairly volatile. The Parent strongly opposed it as the Student's placement then because she believed that the Student needed a "low stimulus" environment. By the time of the March 23 meeting, however, the program contained fewer, less challenging students. It had become perfect for the Student and was the appropriate placement. The Team probably didn't talk about the factors upon which the decision was

based to choose Horizons over the academic resource program as the appropriate placement for the Student in as much depth as it should have.

When the Parent refused to even consider Horizons, the only other alternative suggested was to continue with tutoring until next year. There was discussion about the BASE program in the high school, and although it is very similar to the Horizons program, the Parent was fine with it. More recently, the IEP Team had another meeting, which was attended by the Horizons classroom teacher, and the Horizons program was described in more detail to the Parent. The Parent was invited at the meeting to visit the Horizons classroom, with Ms. Poisson if she wished.

With regard to the decision at the January 11, 2011 meeting to provide two hours of tutoring to the Student, she doesn't recall a specific discussion regarding how much tutoring should be provided. The Parent didn't raise any questions about the amount of tutoring. The Team ordered two hours with the intention that it be two hours or as much as the Student could tolerate. In reality, most students in the Student's position can't tolerate more than two hours of tutoring. At that time, the Student was not in a good space at all, and hadn't been for a while. She was not sure he would even participate in tutoring. Initially, the Student left the home when the tutor arrived. Ms. Hargraves-Tobin has since reported that tutoring was going better and better, however, the Student continues to ask repeatedly "Is that it? Are we done?"

There is no District policy or practice to give only two hours of tutoring to students. There have been students who received more than two hours per day, and others who received less. Two is typically the starting point, and if that is too much, it will be scaled back. The Parent hasn't requested that tutoring be increased beyond two hours for the Student.

When her job duties expanded to include THMS, she was not satisfied with the way that Written Notices were being prepared for those students. The staff was not always placing information in the proper sections. As she was new, she wanted to go slowly before asking for changes, but she has been working with staff on improving this practice. She has been meeting with IEP Team coordinators on this topic, and has explained how she wants them to prepare the Notices. She also asked Eric Herlan, Esq. to give a presentation to all District staff on how to develop an IEP, and specifically asked him to address how to prepare the Written Notice.

13. During an interview conducted by the Complaint Investigator with Cynthia Hargraves-Tobin, Ms. Hargraves-Tobin stated the following: She is a special education teacher in the District, and is the teacher for the Landmark program. This program is for students with severe learning disabilities, and offers direct instruction in reading, writing and math, along with study hall support. It is a small class with a maximum of eight students, one of whom, at the beginning of the year, was the Student. At that time, there were also another eight students for whom her classroom was their home room, and there was also an educational technician assigned to her program.

At the beginning of the year, the Student challenged her authority somewhat, but she found that he responded well to very clear-cut directions and instructions. The Student is very

concerned about fairness; he weighs everything said to him, and if he feels it is fair he will give it a try. The Student is very afraid of not succeeding, and it is very important to have the right support structure for him; if not, he can become very stubborn. As the Student got to know the rules of her class, she gradually earned his trust. He had some obvious successes – he is an excellent reader, with very strong comprehension skills. The Student also has lightening-fast processing ability for some kinds of information, and can be a lot of fun to engage in conversation. The Student was exhibiting some challenging behaviors in other classrooms, however, although some of that behavior was simply of the typical adolescent variety. Overall, she thought that the Student's behavior was improving, along with his self-confidence. The Student's behavior on January 4, 2011, however, was very unsettling, and she didn't feel that he could stay in her room at that point.

At the meeting on January 11, 2011, she asked to be the person to provide tutoring to the Student because she had already established a relationship with the Student and thought that she would be able to get through to him. The two hours of tutoring were offered without any discussion as to whether that was the right amount, although there was discussion about where and when the tutoring should occur. She doesn't recall anyone asking how much tutoring the Student needed. Her initial reaction was that two hours sounded like a lot for the Student, especially given his frame of mind at the time. She has been involved with other students in the District who have received tutoring, and the amount has varied in length. She does not recall any student receiving more than two hours per day, however.

Two hours of tutoring is a lot for the Student; he's very active and gets restless. She would like to see him get more, but realistically she doesn't think the Student could handle it. Sometimes he gets very tired, although he will continue to work. She would rather see the Student have two hours where he really works than three or four where he spends less time working. The Student is not an easy child to work with at this point; he doesn't see any point to doing school work, and he doesn't have any interest in going to school. Initially, the Student was very angry and was unwilling to participate in the tutoring, but he is doing much better now, although he still will ask "When will this be over?" She had to really plan and map out how she was going to work with the Student at the beginning because he was so reticent, but now he is much more interested. There have been some very positive moments, too – the Student is a very bright child with interesting thoughts, especially regarding history and science.

The Student has made gains in his writing skills as a result of the tutoring. The Student is a very reluctant writer, as it is not a comfortable activity for him. His handwriting has gotten better, however, and the Student has enjoyed working on penmanship because he can see his improvement. The Student has also become more confident about getting his thoughts on paper. He continues to be too self-conscious to use the MAC-dictate program which is on his computer.

The Student has also made progress with his math skills. He has made great strides with his ability to look at a problem, read it, think about it and then come up with a strategy to solve it. The Student really didn't have that ability before tutoring began. When he solves a problem incorrectly, he is now able to ask what he did wrong, and can accept instruction. Despite

these gains, he will still comment that math work is stupid and boring, and that he'll never use it.

In addition to math and writing, she has also worked with the Student on Spanish (the Student has a real aptitude for language), history and science.

With regard to the March 23, 2011 meeting, the meeting was very tense, almost adversarial. She thinks that the Parent may have been overwhelmed by everything that was happening, as well as by the fact that there were roughly 15 people present. The Parent told her later that she was surprised at the number of people that were there. The Parent said very little, but she doesn't think that anyone intentionally intimidated her. The meeting was very cut and dried – there was not a lot of discussion. She gave a report on how tutoring was going, and the Team reviewed the risk assessment. She didn't know what the outcome was going to be. Having the Student return to her class was not really talked about – it was never considered as a viable option. The Parent said something like “When the Student returns to Ms. Hargraves-Tobin's class...” and someone else said “That's not going to happen.”

She herself didn't have an opinion as to whether return to her class would be an appropriate placement for the Student; she didn't know how it would work out if he did. The Student had had two or three meltdowns during tutoring, and those were troublesome and unpleasant experiences for her. The Student didn't have a lot of self-control at those times. The incidents were loud, with the Student slamming things. She didn't know what would have happened if the Student had been in the classroom at those times. Her classroom had changed since January, unrelated to anything having to do with the Student - the educational technician, as well as the home room students not part of the Landmark program, had been reassigned. She didn't think this affected whether the student could return to her class, although the lack of an educational technician raised a safety issue. The same boys with whom the Student had been getting into trouble previously were still in her class, and they had received several suspensions since January 4.

The District gave reasons for the decision in favor of Horizons at the meeting, and there was some discussion about it. There wasn't very much description of the program, just that it was a behavior program, and that there was a teacher and an educational technician, with a small student-teacher ratio. She doesn't think that the Parent was really offered the opportunity to state the reasons for her opposition to the Horizons placement. She was familiar with the program generally and knew that there was more structure in the Horizons program, but she wondered whether it would be too stimulating for the Student. When students in that program become upset, they tend to get very upset.

14. During an interview conducted by the Complaint Investigator with Andrew Wisch, Ph.D., Dr. Wisch stated the following: He is a psychologist, and his involvement with the Student was limited to the risk assessment he performed in February 2011. He did not make any specific recommendations to the District with regard to what program would be appropriate for the Student. His practice is to lay out what the Student needs, and to leave to school officials the decision as to which program would best meet those needs. He was not present

at the March 23, 2011 IEP Team meeting, and provided no opinions to the district beyond those contained in his report of the risk assessment.

15. During an interview conducted by the Complaint Investigator with Leah Poisson, LCSW, Ms. Poisson stated the following: She is a licensed clinical social worker, and has been working privately with the Student for approximately 2-1/2 years. She attended the January 11, 2011 IEP Team meeting after the Student's suspension. She recalls that the District told the Parent that tutoring would be for 2 hours per day. There was no discussion about the amount, or whether it could be more than that.

She also attended the meeting on March 23, 2011. There were many people from the District at the meeting, and even though she knew everyone there, she felt the group to be intimidating and hostile. They addressed her in a way that she felt was accusatory and inappropriate. They discussed placement for the Student, and the only program offered was the Horizons program. She didn't believe that Horizons was an appropriate program for the Student. She believed it was too restrictive and, based upon her familiarity with some of the other students in the program, had the potential to elevate the Student's anxiety and stress levels. The Team didn't ask her what she thought the Student's needs were. She was very surprised by this offer of placement – she expected that they would offer to return the Student to Ms. Hargraves-Tobin's class. There was no discussion as to why it was not being offered.

Although she was surprised that return to Ms. Hargraves-Tobin's class wasn't offered, she would have advised against it. She agreed that the Student was a safety risk, and that he shouldn't return to THMS. The Student told her that if he returned to THMS, he might kill someone. The Student is suffering from post-traumatic stress, and there is a direct link between the Student's experiences at school and the trauma that he suffered. During the time when the Student was still visiting with his father, when a note went to his parents about a problem at school, his father punished him severely. Now, whenever he feels threatened by an incident at school, it triggers a fight-or-flight response in him and he becomes completely irrational. He has very negative feelings towards administrative staff at THMS.

The Student has been making progress in dealing with his traumatic past, and can now talk about it with her. At this point, he probably is no longer a safety risk, but he still isn't capable of attending classes in the regular education environment. Due to his processing delay, the Student can't keep up in those classes, and he will get frustrated and act out. She believes that the Student would be better off remaining at home with tutoring until next year, when he can get a fresh start, with careful programming, at the high school. The Student isn't getting enough tutoring, but he is learning something. He is probably learning more than he would in a school setting, because the Student finds other children very distracting. To the Student, anything a peer says is way more important than what a teacher says.

16. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: At the January 11, 2011 IEP team meeting, Ms. Goguen said that the District would recommend tutoring for the Student while they were waiting for the risk assessment, and that the maximum amount of tutoring available was two hours. The Student has slow processing speed, so for the Student two hours is more like one hour of actual

instruction, but she didn't question the statement or ask for more tutoring. Ms. Hargraves-Tobin said that she would like to be the person doing the tutoring, but otherwise no one else said anything about the tutoring, either.

During the first few weeks, the Student was quite annoyed about having to do the tutoring work, and was giving Ms. Hargraves-Tobin a bit of a hard time about it. The Student has difficulty with reading, writing and math work, and anything he has difficulty with he is resistant to doing. She told the Student that she would start taking things away from him if he was not cooperative, and his efforts improved. The Student still occasionally resists, but he is much better than he was. The Student regularly takes two or three walks a day, and sometimes when Ms. Hargraves-Tobin arrives he is out walking and she has to go outside and bring him home. The Student is not running away from tutoring, though.

Ms. Hargraves-Tobin has always stayed the full two hours, and a few times more than that when the Student was working really well and was doing something he was interested in. She believes that the Student would have benefitted from receiving more than the two hours per day – maybe three or three and one half hours. The beginning of each session is always harder for the Student, but he gets better after a time. He is sometimes resistant, but that would happen if he was in school, too. She hasn't asked the District to increase the amount of time, because she was told that the policy was no more than two hours, and she has not had much success asking for things when the District says it's not going to do them.

She thinks that the Student has done a great job with the tutoring, and that he has learned some things from it. She is certain that the Student's writing has improved, but she's not sure about reading or math. Ms. Hargraves-Tobin changed the math from working with a computer-based program to working from a book; she's not sure what the difference is. There's really no plan for what Ms. Hargraves-Tobin is doing; she just kind of wings it. If the Student is having a hard time with something, Ms. Hargraves-Tobin will think of something else to get him to be a little more cooperative.

With regard to the March 23, 2011 meeting, it was rather cut-and-dried. She asked what options were available, and she was told the Student could come back to the Horizons program. That was it. When she declined that program, she was told that the Student could continue with two hours of tutoring. The risk assessment had concluded that the Student needed low stimulation and a lot of supervision and individual attention. She knew the Student needed those things, and that was why she filed her original request for a complaint investigation and got him into the academic resource program. The Student at the time had been in mainstream classes with support, and he was struggling. Now, the District claimed that the only program that could provide what the Student needed was Horizons, but she believed the Student should return to Ms. Hargraves-Tobin's academic resource class with support from an educational technician.

The Student had been doing a lot better in school before the January 4 incident. Compared to previous years, he was not acting out as much, and when he did act out, it was with a group of boys and was not in the classroom. The January 4 incident was the first time since an incident at the beginning of the school year that the Student got in trouble for not paying attention and

doing his work in the classroom. His academic work in the classroom was going well, and he liked his teacher (Ms. Hargraves-Tobin), which was very unusual for the Student. Her only concern with the academic resources program on March 23 was that there were a couple of boys in that program with whom the Student tended to goof off. Also, there had previously been an educational technician in the classroom who provided plenty of individual attention to the Student, but that educational technician had been removed. She didn't ask at the meeting for the Student to be returned to Ms. Hargraves-Tobin's class with an educational technician to be provided because she was told that Horizons was the only option – unless she agreed, then the District didn't want the Student back in school.

The reason she opposed having the Student placed in the Horizons program at the meeting was that, at least as of January 2011, there were too many students in the program, and it was a high stimulation environment. Also, many of the children in that program were potentially violent. There were two or three boys, specifically, with whom the Student said he had problems, both inside and outside of school. One of the boys lived near the Student's father, and the Student got together with that boy when he was having weekend visits with his father. On one occasion, the boy became violent, physically and verbally, and the Student said he didn't want to ever be with that boy again. The Student was recently diagnosed with post-traumatic stress disorder, and she believes that the Student would be subjected to more trauma in the Horizons program.

At a recent IEP Team meeting, she was told that many of the children who had started the year in the Horizons program were no longer there. She doesn't know if the boys she was most concerned about were still there, or if they were there on March 23. She doesn't know if, given the change in the makeup of the class, it would still be too stimulating and threatening to the Student. At that recent meeting, she was invited, along with Ms. Poisson, to visit the Horizons classroom. Until that meeting, she didn't know that she would be allowed to visit, and she plans to do that.

VII. Conclusions

Allegation #1: Failure to fully and adequately implement the parties' mediation agreement with respect to placement of the Student in Mrs. Hargraves-Tobin's special education class with support from an educational technician, enforceable pursuant to MUSER §§XVI.3.B(9) and XVII.8;

NO VIOLATION FOUND

MUSER §§XVI.3.B(9) and XVII.8 make the state complaint investigation procedure available to a party seeking to enforce a written agreement reached as a result of mediation.¹ The Parent was such a party, and as such she appropriately invoked this procedure. The problem, however, is that the Parent misunderstood or forgot the terms of the agreement in question. The Parent believed that the agreement required that the Student attend Ms. Hargraves-Tobin's class, whereas in reality the agreement required only that the IEP Team

¹ The availability of this enforcement mechanism is also referenced in the Department's Mediation Handbook.

meet and discuss this possibility. The Team did just that on June 4, 2010, and determined that the Student be placed in that class. The Team's decision on whether this placement was appropriate for the Student changed, however, after the Student's suspension. Just as it did not mandate the placement in the first instance, the mediation agreement did not preclude the Team from later reconsidering its determination.

Allegation #3: Failure to make a joint, informed decision at the March 23, 2011 IEP team meeting by predetermining the outcome with regard to the Student's placement in violation of MUSER §VI.2(I)

NO VIOLATION FOUND

MUSER §VI.2(I) states that the IEP Team meeting "serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions." The Parent alleges that she was deprived of that opportunity to participate as an equal in making the decision as to the appropriate placement for the Student upon his return from suspension because the District had already decided where the Student should go before the meeting began. The information obtained through this investigation does not support that assertion. Rather, the Team members heard reports at the meeting from Ms. Hargraves-Tobin, as the Student's tutor, and from Ms. Poisson, as the Student's social worker, both of which lent support to the conclusion of Dr. Wisch, also reviewed at the meeting, that the Student has "the potential to engage in violence." After considering the input from these sources, Team members from the District expressed their opinion that the Student required the structure, supervision, emphasis on behavioral programming and degree of restriction provided by the Horizons day treatment program.

The Parent did not agree with those opinions – she believed that the Student should return to the academic resource program he had been attending at the time of the suspension. She was, however, the only person at the meeting who held that opinion, including Ms. Hargraves-Tobin, who wasn't certain whether the Student could be successful in either of the options being considered, and Ms. Poisson, who didn't believe the Student was ready to return to school at all. Ultimately, the District and the Parent agreed to have the Student continue with tutoring at home. This does not amount to a predetermination of outcome so as to deny the Parent a meaningful role in determining the outcome.

That being said, it also appears that the meeting was not well designed to encourage a full exploration of the alternatives. Whether or not the Parent felt intimidated by the sheer size of the group, it appears that there was not much exploration of the reasons for her opposition to the placement preferred by the District. At the more recent meeting, the teacher in charge of Horizons was invited to describe the program in more detail, including discussion of the students that are presently attending that class. The Parent was also invited to observe the class, an option she didn't know was available to her. Had those things been presented on March 23, or the Parent's specific objections elicited and responded to ("Those particular students are no longer in the program."), the outcome might have been different.

Allegation #2: Failure to provide educational services from January 11, 2011 to the present so as to enable the Student to continue to participate in the general education curriculum and to progress toward meeting his annual goals in violation of MUSER §§XVII.1.B(2) and XVII.1.D(1)(a)
NO VIOLATION FOUND

The Parent's claim in regard to this allegation was that the District implemented a uniform policy to provide two hours of tutoring to a student in the Student's situation, regardless of whether that amount of service was sufficient to enable the Student to "participate in the general education curriculum...and to progress toward meeting the goals set out in [the Student's] IEP." MUSER §XVII.1.D(1)(a). Whether or not the District has such a policy, or perhaps uses two hours as a "default setting" (both Ms. Goguen and Ms. Hargraves-Tobin reported instances where amounts other than two hours was provided), there was sufficient evidence that the Student in this case has been able to participate in the general education curriculum and has made progress towards both his writing and math goals as a result of the tutoring services he has received. Moreover, Ms. Hargraves-Tobin stated her belief that the Student was not capable of benefitting from more than the two hours currently being provided.

Nevertheless, care should be taken in future cases to individually consider and discuss each student's needs with regard to tutoring, and to render a decision that provides the amount of tutoring services that meets those needs and the regulatory requirements.

Ancillary Allegation #1: Failure to properly prepare the Written Notice form for the meetings of 6/4/10, 12/14/10 and 1/11/11 so as to clearly identify the actions which the District proposes or refuses to take, and the reasons why it is proposing or refusing to take those actions. MUSER App. 1, 34 CFR §300.503
VIOLATION FOUND

MUSER App. 1, 34 CFR §300.503, which requires that a school district give written notice to parents at least seven days before the district proposes to initiate or change, or refuses to initiate or change, the identification, evaluation or educational placement of a student, specifically requires, at section (2), that the district explain why it is proposing or refusing to take the action. MUSER App. 1, 34 CFR §300.503(7) further requires that the written notice describe any other choices considered by the Team and the reasons why those choices were rejected. The Department has developed a state-mandated Written Notice form for the school districts' use, and section 2 of that form is titled: "Explain why the SAU is proposing or refusing to take the above action(s)." Section 4 is titled: "Describe any other options that the team, which includes the parent, considered and the reasons why those options were rejected."

The Written Notice for the June 4, 2010 meeting of the Student's IEP Team, at which the Team determined to place the Student in the Academic Resources class, describes, under Section 1, the actions proposed by the District as: "The purpose of this meeting is to discuss [the Student]'s IEP and make recommendations for next academic year." Under Section 2 appear a summary of the reports provided by the staff members in attendance, the

determinations with respect to the Student's IEP goals (for example, "Math- keep same goal"), and the determinations with respect to services and accommodations to be provided. Section 4 reads as follows: "The team rejected Day Treatment services starting in the fall of '10 and recommended that he have specially designed instruction in the resource room." Section 5 ("describe any other factors that are relevant to the SAU's proposed or refused action(s) described above") reads as follows: "[The Student] has been in the EXCEL day treatment program at the end of this year – the team recommends that [the Student] move to a resource room in the fall."

In addition to the fact that the information provided does not correspond to the section headings under which it appears, none of the above language provides any explanation for the Team's placement determination. The importance of the Written Notice is that it documents the determinations and reasons for them in advance so that a parent is provided the opportunity to object, including the pursuit of due process remedies, before the determinations are implemented. Without a clear statement of determinations and reasons, that opportunity is compromised.

The Written Notices for the two subsequent meetings likewise provided information under section headings that did not match their contents, and failed to provide reasons for some or all of the Team's determinations.

Ms. Goguen, in her interview for this investigation, readily acknowledged the foregoing problems, and represented that she had taken steps to address them with her staff. Following the interview, she submitted to the complaint investigator memoranda documenting her speaking to these issues in meetings with her IEP coordinators on September 10, 2010 and December 3, 2010. She also submitted a handout distributed by Mr. Herlan at his presentation to all District special education staff on December 8, 2010. One subject heading in the handout was "Written Notice requirement for decisions by IEP Team," which includes the following: "The Written Notice must include detailed information about the actions proposed or rejected, [and] the reasons for those decisions." Ms. Goguen represented that she asked Mr. Herlan to stress that topic, and that he did so.

Given Ms. Goguen's awareness of the problems and her demonstrated efforts to improve the District's practice even prior to the filing of this complaint, no corrective action is deemed necessary.

VIII. Corrective Action Plan

As no violations were found other than the Ancillary Allegation, and as that violation was already being addressed as set out above, none is required.