

Complaint Investigation Report
Parents v. Cape Elizabeth

June 28, 2011

Complaint #11.079C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Father & Mother

Address

City

Respondent: Kenneth Murphy, Superintendent

320 Ocean House Rd.

Cape Elizabeth, ME 04107

Special Services Director: Dominic DePatsy

Student: Student

DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on April 20, 2011. The Complaint Investigator was appointed on April 21, 2011 and issued a draft allegations report on April 25, 2011, amended on April 27, 2011. The Complaint Investigator conducted a complaint investigation meeting on May 20, 2011 (rescheduled from the original date of May 9, 2011 at the Respondent's request). On May 26, 2011, the Complaint Investigator received a 9-page memorandum, 233 pages of documents and an audio recording from the Complainant, and received a 14-page memorandum and 694 pages of documents from the Cape Elizabeth School Department (the "District") on May 31, 2011. Interviews were conducted with the following: Dominic DePatsy, director of instructional supports; Troy Henninger, assistant principal for the District; Ben Raymond, teacher for the District; Rob Thompson, instructional strategist for the District; Erin Cavallaro, teacher for the District; the Student's father; and the Student's mother.

III. Preliminary Statement

The Student is xx years old and is currently receiving special education under the eligibility criterion Other Health Impairment. This complaint was filed by the father and mother (the

“Parents”), the Student’s parents, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to identify the Student as a child who may require special education and related services and refer him to an IEP Team to determine his eligibility during the period from April 20, 2009 through December 2009 in violation of MUSER §§IV.2.A and D;
2. Failure to conduct sufficiently comprehensive testing when performing an evaluation by not addressing the Student’s reading speed in violation of MUSER §V.2.C(6);
3. Failure to adequately consider the neuropsychological evaluation provided by the parents of the Student in violation of MUSER §V.3.A(1)(a);
4. Failure to provide special education, related services and supplementary aids and services, including services to address the Student’s deficits in reading speed, as well as organizational and executive functioning skills, sufficient to enable the student to advance appropriately toward attaining his annual goals and to make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d);
5. Failure to appropriately revise the IEP to address a lack of expected progress toward the Student’s annual goals in violation of MUSER §VI.2.J(5);
6. Failure to fully and adequately implement the Student’s IEP with respect to provision of individualized instruction in violation of MUSER §IX.3.B(3);
7. Failure to fully and adequately implement the Student’s IEP with respect to provision of accommodations, including additional time for testing, audio books and Dragon Naturally Speaking training, in violation of MUSER §IX.3.B(3);
8. Failure to fully and adequately implement the Student’s IEP with respect to provision of weekly updates by the Student’s teachers and case manager in violation of MUSER §IX.3.B(3);
9. Failure to develop an adequate transition plan in violation of MUSER §VI.2.C(3)(b)(bb);
10. Failure to fully and adequately implement the Student’s IEP with respect to the transition plan in violation of MUSER §IX.3.B(3);
11. Failure to provide education in the least restrictive environment in violation of MUSER §X.2.B.

V. Summary of Findings

1. The Student lives in Cape Elizabeth with his sibling and the Parents, and graduated this year from Cape Elizabeth High School (“CEHS”). He was first diagnosed with ADHD in xx grade, but only began receiving special education services under the category Other Health Impaired in xx grade.

2. On February 28, 2009, the Parents wrote to the District requesting that the Student be provided with “ability testing,” specifying the WISC-IV, WIAT-2, CMS (memory function) and BRIEF (executive function).
3. In reply, the District sent to the Parents an acknowledgment of the referral to special education/Section 504, and requested that they complete a provided form “to the best of your ability.” The form contained some questions that appeared to be addressed to teaching staff rather than parents (e.g., “Briefly describe the student’s work and behavior in your classroom”). The Parents did not complete the form or reply to the e-mail until May 19, 2009, when they also identified the areas of concern for the Student as organizational skills and time management. The District apologized for any confusion, and arranged to set up an initial IEP meeting.
4. At the June 4, 2009 initial IEP meeting, the Parents expressed concern over whether the Student’s school performance was being affected by motivational issues and his ADD. The only academic area specifically discussed was writing. The IEP Team determined to evaluate the Student using the four instruments the Parents had requested, plus the BASC and classroom observation. Mr. DePatsy offered to have the testing conducted over the summer, in view of the delay caused by confusion over the referral form. The Parents provided their consent to those evaluations on June 11, 2009.
5. Due to the unavailability of one of the evaluators, the evaluations were not completed until September 2009, less than 45 school days after the date of receipt of the Parents’ consent.
6. The Student’s IEP Team was convened on September 30, 2009, and the Team determined that the Student was eligible to receive special education services. The Parents declined to consent to the provision of services, preferring to wait and see whether the 504 plan that had been developed for the Student at the June 2009 meeting would provide the necessary supports to the Student.
7. On December 22, 2009, the Parents consented to the provision to the Student of special education services. The Student’s IEP Team developed an IEP, dated December 22, 2009, which identified as the most significant areas of concern assignment completion, task initiation and long-term planning. The IEP contained one goal: “[The Student] will improve his skills from a novice to advanced level in the area of executive functioning (Managing time, Materials, Organization, Assignment Completion, Homework Completion, Flexibility, Note Taking, and Work Habits), by 12/22/10.” The services provided under the IEP were to be specially designed instruction in special education and regular education settings, 330 minutes per 4-day rotation. Among the supplementary aids and modifications provided were preferential seating, extended time to complete multi-step or long-term assignments, and extended time on assessments.
8. In the transition plan portion of the IEP, the Student’s post-secondary goal was identified as “attending a post secondary college or university with an engineering or music related major.” Among the related services to be provided was “instruction and support on finding post-secondary education options and how to access college academic supports.”

9. During the remainder of the 2009-2010 school year, the Student received his specially designed instruction in a guided study support class and an educational skills class where he worked on executive functioning skills. These classes were delivered in the special education setting.

10. At an IEP Team meeting on April 29, 2010, it was reported that the Student had limited success the previous quarter, that he was currently failing several of his classes, and that he frequently came to class without his homework completed and was not completing assignments. The Team determined to maintain the Student's level of support, but to schedule that time with Mr. Raymond instead of attending the two classes. Mr. Raymond was to set up a schedule for the Student to facilitate meetings with his teachers, be available after school to meet with the Student to help him organize for the evening, send home weekly updates regarding the Student's academic progress, and facilitate additional accommodations for the Student's regular education classes. The Team further determined to reconvene on May 20, 2010 to review the Student's progress.

11. The Student's IEP was amended to add one additional goal as follows: "[The Student] will become more knowledgeable about his post secondary options, improve his self advocacy skills, and continue to build his executive functioning skills to improve his ability to access the college prep curriculum at CEHS by completion of the following... 1. Identify 5 strengths and weaknesses 2. Ask at least 1 question during each lecture 3. Identify at least 5 colleges that will fit his needs as a student 4. Completion of a schedule of when teachers are available, set up weekly appointments with teachers as needed (math) 5. Develop and maintain a system for tracking long term assignments 6. Read at least one outside reading book 7. Demonstrate proficiency in [illegible] college 8. Demonstrate note taking strategies/classroom participation strategies that will be needed 9. At the end of each class, at home during his designated study time or during Support classes [the Student] will write a brief summary of his classes for the day (summary sheet) 10. [the Student] will complete and hand in his classwork and homework assignments on a consistent basis (8 out of 10 assignments).

12. The IEP was further amended to add the following supplementary aids, services and modifications: "Case manager will email parent on a weekly basis with update regarding progress for the week; Case manager will be available to meet with [the Student] prior to him leaving school for the day to make sure he has materials for evening work; Case manager will facilitate additional accommodations to support [the Student]'s executive functioning weaknesses."

13. On May 20, 2010, the Student's IEP Team met again, noted the Student's limited progress, and determined to do the following: the Student's teachers would present him with a visual time line for due dates on assignments; Mr. Raymond would be available after school to assist the Student with assimilation of his homework materials; and Mr. Raymond would coordinate times for the Student to meet with his teachers to facilitate assignment completion.

14. Progress on the Student's IEP goals was rated as limited in the 1st quarter and satisfactory in the 2nd quarter.

15. In July and August 2010, Richard Doiron, Ph.D. conducted a neuropsychological evaluation of the Student at the Parents' request. In the report of that evaluation, dated August 23, 2010, Dr. Doiron provided scores obtained by the Student on the Nelson Denny Reading Test (Form G), on which the Student scored well above grade levels on vocabulary and comprehension, as well as on the total score, but in the 6th percentile on reading rate. According to Dr. Doiron, the Student's reading speed "affects his ability to comprehend what it is that he has read, and then secondarily to be able to take what he has learned and to quickly and efficiently answer questions, whether that be on a test that requires very little written output or on a test that requires a written answer, such as a paragraph or essay." Dr. Doiron diagnosed the Student as suffering from ADHD and Adjustment Disorder with depressed mood. Dr. Doiron recommended the following academic accommodations: additional time for tests; the option of taking a test in an individual setting; preferential seating; and assistive technology – calculator and/or laptop with the possibility of voice dictating capabilities and audio textbooks. Dr. Doiron also recommended: the opportunity for the Student to work with a learning coach "with whom he can develop a close working alliance;" academic support at a learning center, where the Student "could be helped to stay on top of his studies to the extent possible at school, rather than ...outside of school;" help in "learning how to best utilize his strong intellectual and conceptual abilities to support his weaker basis skills. For instance, being able to improve his speed of reading and his ability to take thoughts and put them on paper in a effective and efficient way;" exploring software programs such as Dragon Naturally Speaking; and help in exploring possible college and vocational options.

16. The Student's IEP Team met on September 9, 2010 to review Dr. Doiron's report. The Team made determinations, including the following: the new guidance counselor responsible for college planning (Ms. Snell) would meet with the Student and the Parents to review the Student's college plans in order to help him with his transition plan; an accommodation would be added to the IEP for teachers to meet with the Student 5-10 minutes per week to assist with work completion as well as to organize and prioritize his work; an accommodation would be added to the IEP regarding a reduction in the amount of the Student's homework, focusing on quality versus quantity; accommodations would be added to allow the Student the use of an iPad for the Dragon Dictate program and the use of auditory books; the literacy specialist would meet with the Student to discuss reading strategies; the IEP would be changed to have two 30-minute 1:1 coaching sessions to work on executive functioning skills, written expression and strategies. The District refused the Parents' request to provide tutoring services outside of school.

17. In an amended IEP dated September 9, 2010, the following supplementary aids, services and modifications were added: "Teachers will modify homework as needed in both length and content;" and "Teachers will meet with [the Student] 10 minutes per week as a check in."

18. In September 2010, the Parents arranged for the Student to receive services at Aucocisco School to work on reading speed and organizational skills. The Student attended for about two weeks, and then refused to continue.

19. The Parents provided to the District a note dated October 28, 2010 from Steve Young, LCSW, which stated that the Student met criteria for Major Depressive Episode, and that it “appears this depression, which measures at a moderately severe level, is a major factor in [the Student’s] current educational difficulties.” Mr. Young suggested extending deadlines and modifying workloads for the Student.

20. Another IEP Team meeting was held on November 2, 2010 at the Parents’ request. The Student’s teachers reported skipped classes, absences and tardiness. The Student, who attended the meeting, said that things had spiraled downward for him, and he was not going to classes because he was frustrated as a result of his incomplete work. The Student’s math teacher reported that he had set up a schedule for the Student to see him one period a day, but that after a while the Student stopped coming. The Team made determinations, including the following: the Student would meet with Ms. Cavallaro and Mr. Henninger to plan for writing assignments, which assignments would be “chunked” into smaller parts, with the Student getting the next chunk only after completing the first one; the Student’s teachers would give the Student a 1st quarter grade of “Incomplete” for those classes in which the Student was missing assignments; the Student’s teachers would identify the Student’s missing work, and the Student would develop a plan for making up the work; the Team would alert the Student’s teachers to his increased depressive symptoms; “at this point, [the Student]’s sole responsibility is just to attend his classes. [The Student]’s teachers will limit their expectations and not ask him about making up work or require him to take notes;” the Student would meet with Mr. Raymond to make a schedule for executive functioning coaching; the Student would meet with Mr. Henninger one period per day; if the Student missed class for “social reasons” Mr. Henninger would address those absences with the appropriate consequences.

21. A further amendment was made to the Student’s IEP. In Section 3E (Consideration of special factors: behavior) was written: “[The Student] works with the CEHS Assistant Principal on collaborative problem solving skills, which is based on the work of Dr. Ross Greene.” To the list of supplementary aids and services was added: “[The Student] will meet with the assistant principal during A period to work on collaborative problem solving relating to school attendance, avoidance and other such issues.”

22. The Student completed the outstanding assignments he needed in order to graduate, and graduated with his senior class in June 2011.

23. In an essay written by the Student as part of his application to the Bridgton Academy, the Student credited Mr. Henninger for having enabled him to turn things around, feel better about school and get his work done.

24. During an interview conducted by the Complaint Investigator with Rob Thompson, Mr. Thompson stated the following: He is an instructional strategist at CEHS. His first interaction with the Student was at the beginning of the Student’s sophomore year, when he was acting as

an executive functioning coach at the Achievement Center. He taught executive functioning and study skills, and any student was free to come into the Achievement Center during their study hall and ask for his help. In addition, the Achievement Center staff functioned as the student study team, and so students were also referred to them.

The Student was referred because he was having trouble with organization skills, and the team decided that the Student would be assigned to the Achievement Center for one period per day. The Student told him that he was having difficulty organizing his time and completing his homework. He worked with the Student to develop a coaching sheet; he would ask the Student what he had to do for the next day's classes, and they would together map out a plan for the Student to be able to organize his time. Besides helping him with that day's assignments, he was also building the Student's organizational skills so the Student would be able to do this on his own. The Student would work with him diligently, would fill out the sheet and map out his time, and would work on everything that was to be done in the Achievement Center. Anything that was planned to be done at home, however, would most often not get done. It didn't matter what the subject was, the type of assignment or whether it was a long or a short assignment.

He talked with the Student about why he was not doing homework, and the Student described his problems as initiating tasks, staying focused on tasks and task completion. He discussed with the Student his future goals, and used that to reinforce the development of these skills. The Student's goals were to finish all of his assignments, get on honor roll and go to college. The Student's organizational skills were not deficient the way most ADHD students' were – he didn't lose his assignments, or forget to take them. He discussed other strategies with the Student, such as using his cell phone to write down assignments and to remind him to do things, or using his "navigator" assignment book to keep track of assignments. He even gave the Student the faculty version of the navigator, which was a little bigger and had a more linear format. The Student learned those strategies, and was willing to try anything he thought might help him. The issue with the Student was always transference of skills; he learned the skills, but had trouble implementing them. Given the Student's level of intelligence and level of organization, he expected to see more gains from him. Other students with worse organizational skills and lesser aptitude showed more improvement than did the Student.

The following year, he became the instructional strategist for CEHS, and the Student began receiving Section 504 services. He was acting as case manager for 504 students, so the Student was added to his caseload. The Student's 504 plan contained a number of classroom accommodations. After the Student entered special education, he remained as the Student's case manager for a while until that role was shifted to Mr. Raymond. Once the Student started receiving special education, it raised some self esteem issues for the Student, and the Student had difficulty attending his special education class. The Student complained about the class being too crowded and the other students being troublemakers, but these were not objectively valid characterizations. He heard these complaints as the Student struggling with being identified as disabled.

At that point, the Student was doing a little better at getting his work done. He had originally been scheduled for one period of direct instruction on organizational and executive function

skills, and this was increased to two periods. He was providing the services for both of those periods. Soon, however, the Student started missing classes, including his special education periods. One of those periods was A period – the first period of the day. It was not uncommon for seniors to be late or entirely miss that period. He didn't see this as a sign that the Student didn't like him or the class; he asked the Student if this was the case and the Student said it wasn't.

At some point, the Student had knowledge of all the skills that he could have taught him. The issue was transference. The Student was still struggling to pass his classes, however, so there was a certain "triage" mentality – the immediate issue was helping the Student to complete his work so that he would pass his classes. They were still working by first developing a plan, and the Student was still learning how to organize and manage. He and the Student were constantly identifying things that got in the way of the plan, and they did collaborative problem solving to find strategies that would enable the Student to get around those obstacles. One plan involved dividing the services being provided to the Student so that he did one class and Mr. Raymond did the other. He took more of a "carrot" approach, while Mr. Raymond took more of a "stick" approach. Each time a new strategy or a new person was introduced, the Student worked better for a little while, but then reverted to previous levels. The Student was also missing more and more classes, which meant that as the Student was catching up on some assignments, he was missing others.

Once the Student started spending more time with Mr. Henninger, the IEP Team switched A period over to him, and he was no longer working with the Student in a direct way. The Student would still stop by to pass in some work, and he would sometimes seek out the Student just to check up on him.

He administered the achievement portion of the Student's evaluation which included the WIAT-II assessment. Although the WIAT-II doesn't address reading fluency per se, the reading portion of the assessment is timed, and the Student's reading fluency was scored as average. The NWEA is not a timed test, but anyone who takes longer than normal to complete it is "flagged" as potentially having a reading issue. The Student was not one of those students. Even on the SAT, the Student didn't have difficulty with completing the test, and he shouldn't have been able to obtain the high scores he did if he had significant reading fluency problems. Dr. Doiron, in his report, said that he saw some reading fluency issues. Also, the Parents had taken the Student to Aucosisco, where they said that the Student was reading at a 6th grade level. This didn't make any sense given how well the Student was doing on timed measures. He consulted with Dr. Perez-Smith, who reviewed Dr. Doiron's report, and she said that Dr. Doiron found reading fluency to be an area of relative weakness for the Student; that the Student's score was in the average range, but was low compared to his other scores. Also, the Student's lower score on the measure used by Dr. Doiron may have had more to do with attentional issues than with some kind of learning disability.

Nevertheless, if an assignment involved a lot of reading, it would take the Student longer to complete and made him more reluctant. The IEP Team agreed to follow Dr. Doiron's recommendation to provide the Student with audio books. It made sense to try anything that would make getting the work done easier for the Student, even if it wasn't a learning profile issue. He thought that using the audio books would be much easier and more successful if the

Student could listen to them on his iPod. He wanted the Student to be able to take the books out of school and listen at home. His understanding was that audio books applied only to the books required for English class; the District rarely provides audio versions of textbooks, and would only do that for a severely learning disabled student. Even then, many texts would be unavailable in that format. He asked Ms. Cavallaro for a list of the books the Student would be reading, figured out which version of the books the Student needed (he sometimes had to determine whether the version that was available on iTunes was okay), bought an iTunes card and gave it to the Student as each book was assigned so the Student could download the book onto his iPod. The District had never done this before; CEHS didn't own the books that the Student downloaded. The Student confirmed that he had successfully downloaded the books Beowulf and City of Thieves. The Student may have received them some time after they were assigned, because the Student was missing English classes and wasn't always aware when they were assigned, and the Student also missed classes that he had with him. The Student reported that the audio books helped, that he was more apt to listen to the books than read them. When the class read Hamlet, the staff decided that it would be better for the Student to watch the movie version, rather than listen to the book.

He worked with the Student on the Dragon Naturally Speaking program, along with Mr. Raymond. They were looking for accommodations that would be easy for the Student to use and that might help the Student with his workload. Technology applications can be a motivator for students. When he went to work with the Student using the app, he learned that the Student had not set up his login and password for the school computer system or for his e-mail. Students did that during an English class, but the Student hadn't been present that day. It took approximately one week to get that set up. Then he showed the Student how to use the app, but the Student didn't spend time with anything that he thought he didn't need, and at that point his English assignments were short enough that he could manage without it.

Later, when the Student was getting longer assignments, he was ready to try it. Dragon is an internet app, so there were occasional internet glitches that prevented smooth operation. The Student used the app to get his thoughts down in a brainstorming fashion. He discovered that whenever the program didn't understand a word, it substituted a word that it thought the user wanted. Sometimes it guessed right, and sometimes not. If not, the user could click on the word and would be presented with alternate choices. Sometimes the word the user wanted was on that list, sometimes not. If not, the user had to dictate the passage all over again. Also, the Student's voice is low, so the app didn't pick up his words as well as it did others' voices. He got an external microphone for the Student to try, but that only increased the volume, not the clarity. All together, the experience wasn't as seamless and time-saving as the Student had expected.

The Student was a complex individual. Among the factors that resulted in the Student's difficulty completing assignments were his executive functioning, motivation, depression, and family dynamics. The Parents were very frustrated with the Student's situation, and the Student may have internalized that.

He doesn't believe that classroom accommodations alone would have been enough for the Student to succeed; the Student was already getting those with his 504 plan without being successful. One of the big differences when the Student began receiving special education

services was the case manager follow-up; with the 504 plan, he was not checking in with the Student every week. The biggest difference was with regard to the direct services. After he became instructional strategist, there was no one providing those kind of services in the regular education environment. Once in special education, the Student was receiving that instruction on a regularly scheduled basis; the Student knew those resources were going to be there. The Student definitely received educational benefit from those classes. He believes that the Student would not have graduated this year if not for that instruction. It provided him with an incredible set of tools, and it's just a question of when, as a function of maturity, he will catch up and begin to really use them.

25. During an interview conducted by the Complaint Investigator with Ben Raymond, Mr. Raymond stated the following: He is a teacher of instructional support for the District. He became acquainted with the Student in the winter of the Student's junior year and he became the Student's case manager, but he really began working with him in the spring when the Student was added to his executive skills class. The class is for students with needs in that area, and teaches them skills they need to be successful in the classroom. He uses classroom materials to reinforce those skills. The students work on taking down class assignments, note taking strategies, strategies for work completion, and goal setting strategies. The Student was scheduled to take the class in his senior year also, but after participating in the class at the beginning of the year, the Student started skipping classes. He tried to adapt the program to meet the Student's needs. He tried to track the Student down to work with him individually, to meet the Student on his own terms. He offered to meet with the Student before or after school. He asked the Student what it would take to get him to buy into the program. Mr. Henninger ultimately had great success with the Student, and the Student graduated this year.

With regard to communications with the Parents, last year he conducted regular weekly communication. This year, he no longer was the only one doing the communicating; Mr. Thompson and Mr. Henninger took on that task as his involvement with the Student began to decrease. There was never a time when there was not regular communication from someone at the school, often more than once a week.

He definitely disagrees with the characterization that he was doing work for the Student, rather than teaching the Student the skills he needed so he could do the work for himself. In his class, the Student created task lists and daily goals. The Student estimated the time he thought it would take him to do the tasks, and was supposed to record the time it actually took him to do them. The Student had a particular problem with task initiation, and he helped the Student get started so that the Student could then continue to work at home. He worked with the Student to identify obstacles that interfered with his working at home, and discussed strategies to overcome those obstacles so it wouldn't feel so overwhelming. He never created a plan for the Student; he helped the Student create the plan himself. He recognized that the Student needed to have some investment in things for them to have any chance of success. If the Parents aren't seeing work completion, just seeing the Student come home with work already started and task lists, they might think he had done all that for, rather than with, the Student.

Last year, he saw varied levels of success – some days much and some days none. It's not unusual for students to have ups and downs. The Student definitely demonstrated that he

knew the organizational skills, but for some reason he couldn't use them on a consistent basis. If the Student is depressed, that could be part of the explanation. The staff can make sure that the Student has the skills, but they can't make him use them. He doesn't know why the Student started cutting the class this year. Part of the reason is that in senior year, students have the freedom to come and go. The Student might have seen his class as unnecessary and cutting into his free time. Towards the end of his senior year, when he knew that he needed to complete his work in order to graduate, the Student got everything done. The Student's work was not handed in on time, but it was handed in, accepted and he graduated with the rest of his class.

The Student made progress in his acquisition of organizational skills – he demonstrated that he had them – he just used them on an inconsistent basis. For his senior year, the Student had a transition plan and IEP goal based on his desire to attend a four year college. The plan and transition goal were adequate to enable the Student to achieve that desire. Although the Student skipped the Senior Seminar classes where the college application process was explained, the guidance counselor met with the Student individually to go over this. The Student participated in extra-curricular activities, he learned how to ask for assistance, and he acquired a better understanding of his strengths and weaknesses. He definitely made progress on that goal, to the extent that can be expected given the amount of his participation in the program.

The Student always was given extra time for classroom tests.

Dragon Naturally Speaking is an app for an i-pad. One opens the app, presses a button, talks into the device, and it will write out the spoken words. For the Student, it was a way to speak his ideas to help him get started with a written assignment. The quality of the app is not as high as the Dragon program for a computer. It didn't pick up the Student's voice perfectly, so the Student had to go back and do some editing. This probably seemed like an extra step to the Student. He tried a microphone to see if it would improve the accuracy of the recording, but it didn't really help. He himself tried it, and if he spoke clearly and carefully the program was 85-90% accurate. After editing, one then has to save it and transfer it to a computer that is hooked up to a printer. It was not designed to enable someone to just dictate to the device and obtain a perfect written product in one step. Training of the Student was not the issue; it wasn't very difficult to learn, and after he worked with the Student a couple of times in a quiet space the Student understood how to use it.

26. During an interview conducted by the Complaint Investigator with Troy Henninger, Mr. Henninger stated the following: He is assistant principal at CEHS. In the Student's senior year, the Student was struggling with attending classes and being tardy. The Student was also refusing to go to his assisted study halls. He met with the Student with the initial thought that the Student needed some motivation, so he told the Student that if that behavior persisted the Student would lose some of his credits towards graduation. The next day, the Student still cut classes, so it didn't seem to be a motivation issue. He talked with other staff members about the Student's executive function issues, and then called him to his office again. He told the Student that since the Student knows that he could lose credits by cutting school, there must be something else going on, and he asked the Student to tell him what it was. The Student

told him some personal things going on in the Student's life, and they forged a relationship based on empathy.

From that point on, the Student's attendance was not great, but it was better. He worked with special education staff to learn about the strategies that the Student had been taught, and he would remind the Student to use those strategies. The Student had the organizational skills, he could state them. The Student did much of the Student's work in his office, and they worked extensively together. He reminded the Student frequently that the goal was not perfection, but just getting the work done. When the Student would get stuck, he would brainstorm with the Student (one of the strategies the Student had been taught). He would remind the student to map out his thoughts and to use post-its. This was all direct instruction. The Student eventually bought into the idea that the only goal was to get the Student's work completed. He called the Student at home whenever the Student was not present at attendance, telling him that he would go to his house and collect him personally if he had to. If the Student was having a particularly bad day, he would back off. In all of his 21 years in education, he never spent as much time with a student as he did with the Student. There were days when the Student spent the entire day in his office. The Student was still completing his work with him the week before graduation. Without the work he did with the Student, the Student would never have graduated.

He would give the Student work to do at home, and e-mailed the Parents about this work that the Student needed to do. The Student never once completed his work at home. The Student has other, non-school related issues, and when things were not going well for the Student, he spoke with the Student's father almost every day. One of the skills he worked on with the Student was compartmentalizing – when in school, focus on school and put the issues from other parts of your life somewhere else.

With regard to getting extra time on his assignments, the Student's teachers provided him with more than enough time. Any time the Student needed more time, he was given it; the Student was never penalized for turning in an assignment late.

With regard to updates being provided to the Parent, he became the person responsible for this, and he updated the Student's father all the time, by phone and e-mail.

The Student's IEP Team developed a transition plan based on the Student going to a four-year college. The Student worked with the college/career counselor at school. The counselor gave the Student a list of schools that featured a coaching function. In the middle of the Student's work on preparing for college, the Student's father told him that he had changed the plan. The Student was now preparing to go to Bridgton Academy's gap year program. He didn't understand why the Student needed that, as the Student already had the skills he needed to succeed in college. He worked with the Student to prepare him for Bridgton, to get the application completed and write the essay for the application. He was accepted into Bridgton, but a few weeks later, the Student's father told him that the Student was no longer going to Bridgton due to financial constraints. Instead, the Student was going to Southern Maine Community College and was moving in with some of his friends.

27. During an interview conducted by the Complaint Investigator with Erin Cavallaro, Ms. Cavallaro stated the following: She is an English teacher at Cape Elizabeth High School, and the Student was in one of her classes this year. When the Student was present, he was well behaved, he asked questions and appeared interested. When it came to doing work, whether in class or at home, the Student had difficulty with that. He had no problem if it was something like a short grammar worksheet, but more complex assignments that involved reading and writing were a different story. The Student was intellectually capable of doing the work, but other things were getting in the way. Depression may have played a part, and the Student's absences hurt (he missed things he needed, and then felt frustrated when he didn't understand what was going on). It was clear that there were things weighing on him.

She didn't see so much indication of ADD; the Student didn't seem to have much more difficulty maintaining focus than his peers. She didn't see evidence of a problem with reading speed. When the class read things and discussed them, the Student seemed to do it as well as the other students, and his comprehension was high. The Student did have trouble with writing, however.

She kept the special education staff informed about which books she was using in class so they could order an audio version for the Student.

She didn't give very many tests in the senior English class. When the Student was having a problem completing vocabulary quizzes, after a brief conversation with the Student's father, she reduced the length of the quiz for the Student. She also modified written assignments for the Student, and gave him more time to complete them. When the work was done in class, the modifications seemed to help the Student complete the assignment. She is not certain that the modifications made a difference when the Student had to work outside of class. It still took him a long time, and he turned a lot of it in at the end of the semester.

She exchanged a few e-mails with the Student's father in October, and saw the Parents at the parent-teacher conference at the end of that month. A short time later, staff was told that all contact with the Parents was to go through Mr. Henninger.

28. During an interview conducted by the Complaint Investigator with Dominic DePatsy, Mr. DePatsy stated the following: He is the director of instructional supports for the District. When the Parents made the initial referral, he sent the form to them that he sends to all parents, attached to an e-mail that asked them to fill it out to the best of their ability and call him with any questions. He has found that the information supplied by parents on the form helps the District understand the concerns they have for the student. By the time the Parents responded and he set up a meeting, the Parents were already angry about delay. At the meeting, he said he would try to accelerate the evaluation process, but one of the providers was unable to conduct her part of the evaluation until after the summer. At the same meeting, the District developed a 504 plan which went into effect immediately. During fall 2009, after the Team determined that the Student was eligible and the Parents declined to accept special education services, the Student was struggling and he sent e-mails to the Parents restating his belief that the Student should be receiving special education services. Finally, on December 22, 2009, the Parents consented to provision of services.

The Student's reading scores were very high. His PSAT and SAT scores were high, and his NWEA reading scores were way above the mean for District students and for students nationally. The subtest score upon which Dr. Doiron based his conclusion that the Student had a problem with reading speed was actually in the average range, but was lower than the Student's scores on the rest of the assessment. The District responded to the Parents' concerns about this issue by agreeing to provide audio books and to give the Student the Woodcock Johnson III reading assessment, which reflected scores that were definitely in the average range. The District was willing to give the Student anything that might help the Student get his work done faster.

The District agreed to provide audio books only for the Student's English reading assignments, and the District doesn't normally provide audio books even to students with learning disabilities. The District never agreed to provide audio books for other classes, and he doesn't think that there were many books (as opposed to handouts) used in the other classes. The Student didn't use the audio books anyway. The Student was able to read anything that he was assigned.

With respect to providing instruction, the Student was receiving coaching all the time. It was ongoing and in-the-moment teaching. Skill building was done in combination with task completion. Mr. Henninger really connected with the Student, and taught him how to shift to the next topic, how to develop a time line, how to break down long-term projects and "chunk" assignments. In Mr. Henninger's notes he describes explaining "compartmentalization" to the Student – focusing on schoolwork when in school, and putting issues from other areas of his life aside until later. The Student did no work at home; everything had to get done in 6.5 hours. One of the instructors would help the Student map out the week, and the Student would agree that he would do just one task, maybe just one paragraph, that evening, but 80% of the time it wouldn't get done.

The District had the Student in special education for only 1 ½ years, and kept changing and adding things throughout that time. Audio books and Dragon Naturally Speaking was added. Accommodations were added to the IEP. Teachers modified homework and extended due dates on assignments. The Student's work with Mr. Henninger was added. The Student was allowed to continue to play hockey despite District policy that would have precluded it based on the Student's "Incomplete" grades.

With regard to weekly updates, once Mr. Henninger became involved with the Student's education, Mr. Raymond felt that communication should be coming through him. It was Mr. Henninger who was talking with the Student's teachers and collecting information. Mr. Henninger had numerous conversations and e-mails with the Student's father. Mr. Henninger also became the person who worked with the Student on transition, along with the guidance counselor and Mr. Thompson. The guidance counselor met with the Student and the Parents in August and mapped out his courses and what the Student would need in order to graduate. The Student knew that he wanted to go to college after high school. There was a transition class (the Senior Seminar) that the Student told Mr. Henninger he wouldn't attend, so the staff

provided that assistance to the Student individually. Mr. Henninger worked with the Student on college applications and essays for the applications.

The Student didn't like his special education classes, and he didn't like being with special education students. The District tried giving the Student one-on-one instruction with Mr. Thompson, and the Student stopped coming to that. They tried the same thing with Mr. Raymond, and the Student wouldn't really work with him either. Working with Mr. Henninger worked up to a point, but the Student was still missing classes. The District was willing to do whatever it took to help the Student.

29. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: The Parents didn't know that the Student had a problem with reading speed until they had him tested by Dr. Doiron and at Aucosisco, but they kept saying there was something wrong with the Student's reading. In the Student's sophomore year, the Student started falling behind in math. She asked to see the Student's tests, and saw that the Student hadn't done the written problems. She believes that there is a connection between the Student's difficulty with writing and his reading speed. It is hard for her to say whether the Student's slow reading speed was a significant factor in the Student's problem with completing his work; it was more the writing that was the issue.

The District would commit to things at IEP Team meetings, but then wouldn't implement them, or would take too long to implement them, so the Student lost more ground and became depressed. The Student entered a downward spiral. The Student never got audio books. It took the Student so much longer to read than the average student that he got frustrated and wouldn't do it.

The study skills class that the District wanted the Student to go to was filled with students who had behavior problems in addition to learning problems. The Student has never had behavior problems. He learned a new skill set from those other students, but not a beneficial one. The Student started getting sent to the principal's office. The Student told her that he wasn't learning any study skills in that class.

The Student told the Parents that he wasn't getting additional time for testing in his classes. His teachers would say that he didn't really need the extra time, or they would look at his IEP and then agree to provide it. The Student was doing less well on some of his tests because he wasn't given enough time to work on them. Every year, the Parents would tell the District that the Student did better with teachers who didn't have a superior/subordinate relationship with him.

With the Dragon Naturally Speaking program, the District didn't give the Student an i-pad – he had to use it in school. The Student told her that staff only worked with him on it once or twice, and that only after the Student's father reminded them that they were supposed to do it.

The Student's self esteem played an important role in his difficulties with completing his work. The Parents knew that the Student wasn't living up to his potential. They tried to help the District help the Student to live up to his potential, but the Student felt frustrated because

he knew that he couldn't do it. The Student was overwhelmed, and probably feeling insecure because he knew that he was intellectually superior to most of the other students. She believed that the Student required specialized instruction in order to overcome his disability and succeed, but the Student felt stigmatized from being placed in a study hall with out-of-control, crazy students. The Student was embarrassed by that, and very self-conscious, because he had been in a gifted and talented program before high school.

The Parents never got a weekly update from the Student's case manager. The Student's father was the one who was directly involved, because the struggles with the District ruined her relationship with the Student. It put so much stress on the relationship to have to constantly remind the Student and stay on top of him. At home, the Parents bought the Student a computer, he had his own room, they provided a quiet environment, and the Parents constantly reminded the Student to do things. There were times that the Student did school work at home, and times when he didn't.

She believes that the District let the Student graduate because they just didn't want to see him back there again. She knows that Mr. Henninger worked hard with the Student to get the work done, but she doesn't believe that he got all the work done that he needed, and she can't even imagine what the quality of the work must have been.

30. During an interview conducted by the Complaint Investigator with the Student's father, the Student's father stated the following: If the referral process had started earlier, if the District had completed the evaluation when it should have, then the 504 plan would have gone into effect earlier and the Parents would have eventually agreed to have the Student receive special education services earlier.

When he observed the Student work on writing assignments, he saw that it took the Student a really long time. Writing issues can be related to reading issues. That's why the Parents arranged for Dr. Doiron to evaluate the Student. The Parents felt that there was something else going on; the Student was a bright guy who had ADD and lacked organizational and executive functioning skills, but there was something else.

The Student does not like to read, and the Parents asked that the District provide audio books. He met with Mr. DePatsy at the end of August, just after they had received the report from Dr. Doiron, and Mr. DePatsy agreed that the Student could stay out of the special education setting and would be given audio books. Nothing was said that the Student would only be given audio books for his English assignments; the goal was to get the Student any of his school books that were available in audio form. The Student didn't get an audio book until mid-October, by which time the rest of the English class had finished reading it. He believes that was the only audio book the Student ever got. At a meeting in February 2011, the District agreed that the Student would get everything that was available for the rest of the year in audio form, but the Student got nothing.

If the Student had a problem with reading speed, he would have wanted the Student to receive specialized instruction, but not in a special education setting. There are programs outside of school that could have helped him, or he could have been given strategies that would have

helped him, like the help that students received in the Achievement Center in the Student's sophomore year. The District didn't provide any help because the staff didn't believe that there was a reading problem.

He never saw any documentation or other evidence that the Student received instruction in organizational and executive functioning skills. He never heard that from the people working with the Student. He doesn't believe that the Student has any organizational skills. The Student graduated despite the fact that he still couldn't organize his work. The Student was still completing assignments in the days just before graduation. The staff said that they didn't have time to work on skill building because they had to get the Student's work completed. The staff members organized the work, not the Student. They weren't helping the Student to develop the skills internally.

With regard to failure to provide extra time on tests, the only incidence of this was at the beginning of this year in the English class. It had to happen several times before the Student told him about it, and then he dealt with it. The Student's case manager should have been on top of it.

Under the Student's IEP, Mr. Raymond should have been providing weekly updates. The Parents only received one from him. Mr. Henninger told him that it wasn't Mr. Henninger's role to communicate with parents; that was the case manager's job. The Parents were confused as to who was in charge. Mr. Henninger didn't tell the Parents that the Student had stopped going to classes with Mr. Thompson and Mr. Raymond. The Parents heard too many things after the fact. He believes that Mr. Thompson, Mr. Raymond and Mr. Henninger tried a lot of things, and put in a lot of effort. They just didn't do it well, and they didn't do what they said that they would at IEP Team meetings.

With regard to the Student's transition plan, the District didn't help the Student enough. The District shouldn't have relied completely on the Senior Seminar. Early in the year, someone should have discussed post-graduate options with the Student; they shouldn't have waited until December. The District should have been proactive and done some hand holding. The District was waiting for the Student to come and ask for help, but for someone with the Student's issues, the plan was too loose.

With regard to least restrictive environment, he wanted the District to replicate the environment the Student had in the Achievement Center – that seemed to work the best – but there was no longer an Achievement Center for budgetary reasons. Alternatively, he would have wanted the Student to be given instruction one-on-one, outside of special education. As soon as the Student went into the special education environment, it triggered self esteem issues and started the downward spiral. In the end, it didn't work, and the District took him out of those classes. At this point, the Student needs some one-on-one instruction in organizational and executive functioning skills to get him back on track.

VI. Conclusions

The First Circuit, in *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir, 1993), described the obligation of a school district to provide special education to a student with a disability as follows:

The IDEA does not promise perfect solutions to the vexing problems posed by the existence of learning disabilities in children and adolescents. The Act sets more modest goals; it emphasizes an appropriate, rather than an ideal, education; it requires an adequate, rather than an optimal, IEP. Appropriateness and adequacy are terms of moderation. It follows that, although an IEP must afford some educational benefit to the handicapped child, the benefit conferred need not reach the highest attainable level or even the level needed to maximize the child's potential.

In the most important respects, the program developed by the Student's IEP Team (with the Parents' vigorous participation) and delivered by the District to the Student provided, at a minimum, "some educational benefit," the "basic floor of opportunity" comprehended by the free, appropriate public education to which he was legally entitled. *Hendrick Hudson Bd. Of Educ. V. Rowley*, 458 U.S. 176, 200-01, 102 S. Ct. 3034, 73 L.Ed.2d 690 (1982).

Allegation #1: Failure to identify the Student as a child who may require special education and related services and refer him to an IEP Team to determine his eligibility during the period from April 20, 2009 through December 2009 in violation of MUSER §§IV.2.A and D
NO VIOLATION FOUND

The Parents assert that the District was at fault for mailing to them an incorrect form, thus leading to a delay in their response so as to delay the eventual evaluation of the Student. While the form may have indeed been confusing, nothing prevented the Parents from promptly contacting the District and resolving the confusion. It took the Parents more than two months to do this.

Furthermore, the fact remains that the Parents, when requested to provide their consent on September 30, 2009 to having the District provide special education services to the Student, declined to do so. The Parents continued to refuse consent, despite communications from District staff restating their belief that the Student required those services, until December 22, 2009. As stated by the Parents: "Our perspective as his parents was that going into the special education program at any level would not only be restrictive, but have the potential to seriously affect his self esteem and could create some psychological consequences." Without parental consent, the District was, by law, precluded from providing services. The Parents are well within their rights to make that decision for their son, but they cannot at the same time fault the District for not doing what they chose to reject.

Allegation #2: Failure to conduct sufficiently comprehensive testing when performing an evaluation by not addressing the Student's reading speed in violation of MUSER §V.2.C(6)

Allegation #3: Failure to adequately consider the neuropsychological evaluation provided by the parents of the Student in violation of MUSER §V.3.A(1)(a)

NO VIOLATION FOUND

MUSER §V.2.C(6) requires that a school district, in evaluating a student, administer an evaluation sufficiently comprehensive to identify all of the student's special education and related service needs. Just as importantly, MUSER §V.2.C(4) dictates that the student be assessed in all areas of suspected disability. Accordingly, the issue presented by this allegation is whether the District used evaluation measures which were sufficiently comprehensive to identify all of the Student's needs in all areas of suspected disability. More specifically, the issue presented is whether reading ability was an area of suspected disability for the Student, such that the District should have used measures comprehensive enough to identify the Student's slow reading speed purportedly identified by Dr. Doiron in August 2010.

The initial referral from the Parents requested evaluation of memory and executive function. In the e-mail from the Parents dated May 19, 2009, the Student's father identified as the areas of concern "organizational skills and time management." The Student had recently taken the PSAT and scored in the 95th percentile in reading, and his NWEA scores in reading were in the 99th percentile. At the IEP Team meeting on June 11, 2009, the Parents expressed concern for the Student's motivational issues and the impact of his ADD. The only academic activity specifically discussed was writing. Reading was not identified as an area of suspected disability. The academic testing that was conducted as part of the evaluation reflected high average to very superior scores in word reading, reading comprehension and pseudo word decoding. The Student's overall reading score was in the superior range.

When the Parents submitted Dr. Doiron's report, even though the District disagreed with the conclusion reached by Dr. Doiron based on the data he obtained, the District agreed to administer an additional reading assessment (the Woodcock Johnson III), on which the Student's scores were in the average range. The District also agreed to offer two of the recommendations made by Dr. Doiron (audio books and the Dragon program), and was already providing other recommendations (e.g., additional time for tests and preferential seating).

In short, there was nothing of which the District was aware in September 2009 that made reading an area of suspected disability such that it required comprehensive assessment to determine the cause and nature of such a disability. The District appropriately administered a further assessment when the issue of reading speed was raised in Dr. Doiron's report. That the District duly considered that report is further evidenced by its agreement to follow some of the recommendations it contained.

Allegation #4: Failure to provide special education, related services and supplementary aids and services, including services to address the Student's deficits in reading speed, as well as organizational and executive functioning skills, sufficient to enable the student to advance appropriately toward attaining his annual goals and to make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d)

Allegation #5: Failure to appropriately revise the IEP to address a lack of expected progress toward the Student's annual goals in violation of MUSER §VI.2.J(5)

NO VIOLATION FOUND

The issue with regard to reading speed is addressed above. Essentially, the District found insufficient evidence that reading speed per se was a disabling condition for the Student. As to an alleged failure to provide services to address organizational and executive functioning skills, the Parents base this allegation on what they saw as a failure of the Student to demonstrate that he learned any such skills. The report of his instructors, on the other hand, describe in some detail the skills that were taught to the Student: creating time lines, mapping out plans for task completion, use of assignment books to keep track of assignments, identifying obstacles to task completion, problem-solving strategies, note-taking strategies, use of task lists and daily goals, improving estimates of time to complete tasks, brainstorming, idea mapping and compartmentalization.

Those instructors recognized that the Student was not consistently utilizing those strategies, although he knew how to do so. Progress was not always adequate towards the Student's goals, but the Student's program was changed in response to the slow rate of progress. New accommodations were added. Additional classes were added, and then converted to individual instruction periods. A goal was added. Personnel were shifted into different roles. The District waived policy restrictions so that the Student could continue to play sports.

Despite all the District's efforts, the Student remained unwilling or unable to become independent with the skills that he had learned. There appears to have been other obstacles in the way of progress, however, including motivational issues and depression. Special education does not require that school districts solve all of a student's problems, only that they identify them and provide appropriate services in an effort to address them.

Allegation #6: Failure to fully and adequately implement the Student's IEP with respect to provision of individualized instruction in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

The Parents mistake the term "individualized" to mean that the Student was entitled to receive all his instruction in a setting where he was the only student, with reference to the organizational and executive functioning classes which the Student was scheduled to attend. Rather, "individualized" refers to the development of a program that is specifically suited to a student's unique needs. It is difficult to imagine a program that was more individualized than the program developed by the District for the Student. Many of the services and

accommodations that were provided were not routinely provided to special education students in the District, and were developed with the Student's specific needs in mind.

Allegation #7: Failure to fully and adequately implement the Student's IEP with respect to provision of accommodations, including additional time for testing, audio books and Dragon Naturally Speaking training, in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

By the Student's father's admission, the only failure to implement the accommodation with regard to additional time for testing occurred in Ms. Cavallaro's classroom, on only a few occasions, and was quickly remedied when brought to her attention. This falls plainly in the category of a "minor discrepancy" that does not rise to the level of a regulatory violation. See *Van Duyn v. Baker School Dist.*, 502 F. 3d 811 (9th Cir. 2007). See also *Mr. and Mrs. C v. Maine S.A.D. No. 6*, 49 IDELR 36 (D.Me. 2007).

With respect to the audio books, although the Parents seem to have acquired a different understanding, the Written Notice of the February 17, 2011 IEP Team meeting clearly states that the Student is to "continue to receive audio books for his assigned reading in English." Of the three books assigned, the Student received two of them, a decision having been made as to the third one that the Student would view a film version rather than the audio book. The fact that the Student received the books sometime after they were assigned appears to have been a function of delay in the Student finding out they had been assigned and then getting that information to Mr. Thompson.

As to the Dragon program, both Mr. Raymond and Mr. Thompson described the operation of the app and its imperfections. The app was provided with sufficient instruction to enable the Student to use it if he felt that it was helpful. Apparently that was not the case.

Allegation #8: Failure to fully and adequately implement the Student's IEP with respect to provision of weekly updates by the Student's teachers and case manager in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

While technically the Student's case manager, Mr. Raymond, did not continue to provide weekly updates to the Parents as described in the IEP, this was due to the fact that Mr. Heninger had stepped into that role. It was apparent, in any event, from both the documents and interviews obtained during this investigation, that there was frequent communication between the Parents and various staff members, substantially (if not perfectly) complying with the intent of the IEP accommodation to keep the Parents informed as to the Student's progress. There was little indication that a better result for the Student would have been obtained had the Parents received this information sooner and more often.

Allegation #9: Failure to develop an adequate transition plan in violation of MUSER §VI.2.C(3)(b)(bb)

Allegation #10: Failure to fully and adequately implement the Student's IEP with respect to the transition plan in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

The Parents' complaint in this regard is that the Student wasn't given any real help in regard to the college planning and application process until December 2010. There was a program in place, the Senior Seminar, that provided this type of assistance earlier, but the Student chose to not attend. The Parents contend that the District should have begun working with the Student individually on this area prior to when the Senior Seminar program commenced, but this was not an academic class with written assignments such that the District should have anticipated that the Student needed to receive the help individually. When it became clear that the Student would not attend, the District proceeded to give him that individual attention. Furthermore, the District did begin the transition process in August 2010 with a meeting between the Parents, the Student and the guidance counselor. In addition, Mr. Raymond was supervising the Student's work on his transition IEP goal from the outset of the school year, and the Student was making progress in regard to such areas as learning how to ask for assistance and acquiring a better understanding of his strengths and weaknesses

Allegation #11: Failure to provide education in the least restrictive environment in violation of MUSER §X.2.B

NO VIOLATION FOUND

When the District was developing the Student's IEP, it determined that the Student needed specialized instruction in organizational and executive functioning skills. Those services were not available in the regular education environment, but the District had special education classes set up to provide those services. In order for the Student to receive the services he needed, it was entirely appropriate to have the Student attend those classes. As it turned out, the Student was unwilling to attend those classes, not as a function of his disability, but because he felt stigmatized by being associated with special education students. At that point, the District began to provide those services to the Student in one-on-one settings.

If anything, removing the Student from a setting where he was with other students to a setting where he was alone was putting him in an even more restrictive environment. Regardless, nothing in the foregoing series of events violated the obligation to deliver services to the Student in the least restrictive appropriate environment. Special education law does not require that a school district design a program in the regular education environment that does not already exist so that a special education student will not feel stigmatized.

VII. Corrective Action Plan

As no violations were found, none is needed.