

**Complaint Investigation Report**  
**Parents v. AOS #99**

November 4, 2011

Complaint #12.021C

Complaint Investigator: Jonathan Braff, Esq.

**I. Identifying Information**

Complainant: Parents

Address

City, State, Zip

Respondent: Marc Gendron, Superintendent

28 High School Dr.

Fort Fairfield, ME 04742

Special Services Director: Pamella Sayers

Student: Student

DOB: xx/xx/xxxx

**II. Summary of Complaint Investigation Activities**

The Department of Education received this complaint on September 9, 2011. The Complaint Investigator was appointed on September 13, 2011 and issued a draft allegations report and an amended draft allegation report on September 15, 2011. The Complaint Investigator conducted a complaint investigation meeting on October 7, 2011 (rescheduled from the original date of October 3, 2011 at the Complainant's request), resulting in a stipulation. On October 12, 2011, the Complaint Investigator received a 4-page memorandum and 51 pages of documents from the Complainant, and received a 5-page memorandum and 89 pages of documents from AOS #99 (the "District") on October 14, 2011. Interviews were conducted with the following: Pamella Sayers, special education director for the District; Mark Jenkins, principal for the District; Gail Doughty, teacher for the District; Kelly Koziol, teacher for the District; Paul Lamoreau, teacher for the District; Jeff Roberts, teacher for the District; Robyn Daigle, social worker for the District; Chris Morse, LCSW, outside social worker; Silvia Merida-Copeland, M.D., outside psychiatrist; Elena Cyr, in-home support supervisor; Tricia Barnes, outside case manager; and the Student's mother.

**III. Preliminary Statement**

The Student is xx years old and is currently receiving special education under the eligibility criterion Multiple Disabilities (Intellectual Disability and Other Health Impaired). This

complaint was filed by 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 provide special education, related services and supplementary aids and services, including full-time one-on-one supervision and smaller class size, sufficient to enable the Student to be educated and participate in extracurricular and other nonacademic activities with other children with disabilities and with non-disabled children in violation of MUSER §IX.3.A(1)(d);
2. Failure to include within the student's IEP a statement of measurable annual goals with respect to the student's learning to read social cues designed to enable the student to be educated and participate in extracurricular and other nonacademic activities with other children with disabilities and with non-disabled children in violation of MUSER §IX.3.A(1)(b)(i);
3. Failure to provide specially designed instruction, appropriate to the needs of the Student, to enable the Student to achieve the goals in her IEP in violation of MUSER §X.2.A(2);
4. Failure to provide related services in the nature of psychological and counseling services adequate to address the Student's emotional issues and enable her to benefit from her education in violation of MUSER §XI.

#### **V. Stipulations**

1. The Student's special education program presently does not provide services that address reading social cues.

#### **VI. Summary of Findings**

1. The Student lives in Fort Fairfield with the Parents and her sister, and is presently attending xx grade at Fort Fairfield Middle High School (the "School"). She began receiving special education services from Child Development Services under the category Multiple Disabilities prior to entering school.
2. In August 2010, the Student started xx grade at the School. Her IEP at that time, dated June 10, 2010, reported the results of the most recent evaluation (January 2007) as follows: Full Scale IQ of 68 (Extremely Low range), with "relatively poorer performance on measures of attention, concentration and mental speed (Extremely Low), than overall verbal or perceptual abilities (Borderline)." The Student's Spring 2010 NWEA scores were reported as: Math = 196, Reading = 195, and Language Arts = 198. Section 3.D of the IEP ("Needs of the child") contains the following statements: "With accommodations and support in the general education curriculum [the Student] is able to work with peers in science, social studies and language arts classes and in all special classes....[The Student] struggles with making and maintaining friendships and successful relationships with peers. She requires the support of a social skills group to reinforce appropriate and positive social skills in the school setting."

3. The June 10, 2010 IEP contains the following three goals: “Goal ID: 12003 Instructional - Math – [The Student] will increase her math skills by working on her multiplication and division skills. She will be able to find the perimeter and area of a given shape with a formula to follow. She will continue to increase and maintain her current math skills. [The Student] will increase her Math scores on the NWEA to a 216 RIT Score by the Spring of 2011; Goal ID: 12002 Instructional – Language Arts – [The Student] will work in a regular class setting with supports and modified assignments as needed; she will maintain a passing grade. [The Student] will increase her scores in Language Arts on the NWEA from a 198 RIT Score to a 208 RIT Score in the Spring of 2011; Goal ID: 12001 Instructional - Reading – {The Student will increase her reading skills by using graphic organizers and other supports to document what she has read and then retell in sequential order material she has read. She will continue to increase comprehension skills with supports and then gradually reducing organizers and supports to work independently. [The Student] will increase her NWEA Reading RIT score to a 205 by Spring 2011 testing.”

4. The special education and related services provided under the June 10, 2010 IEP (Section 7) consisted of specially designed math instruction (5 times per bi-week for 1 hr. 20 min.), specially designed reading instruction (5 times per bi-week for 1 hr. 20 min.), consultation service/end of day check out by a teacher or educational technician (“ed tech”) (5 times per week for 10 min.), and social work service/daily checkin with social work (5 times per week for 10 min.). Supplementary aids, services, modifications and/or supports (Section 8) included behaviors/natural consequences, behaviors/modeling appropriate behaviors, preferential seating, modified reading and math assignments and homework reduced to what the Student completed at school. Testing accommodations are provided for the NECAP, including small group setting, allowable parts read to student and clarification of directions.

5. At an IEP Team meeting on October 20, 2010, the Student’s IEP Team reviewed a recent psychological evaluation and completed a Learning Disability Evaluation Report and determined that the Student presented with specific learning disabilities. The Team reviewed the Student’s progress to that date and determined that the Student’s current placements were appropriate for her, and that she could use the 21<sup>st</sup> Century program for extra support and to complete assignments. Under Section 5 of the Written Notice for that meeting is written the following: “[The Student] struggles to remain focused in most settings making progress slow and needing extra supports and reminders for tasks to be completed in a timely manner.”

6. The Student’s IEP Team met again on May 25, 2011. The Team reviewed the Student’s progress during the year. It was reported that the Student: was often late for class, and then made no attempt to obtain missing work; was capable of completing most assignments independently, but wanted verification of most answers which slowed her down; struggled to keep up with her peers in health class; continued to need extra time to complete assignments and tests; continued to struggle with staring at peers, and still needed reminders and barriers to prevent distractions; and completed the NWEA quickly without putting much effort into it, failing to meet any of her target growth expectations with her score decreasing in two areas. The Student’s Spring 2011 NWEA scores were as follows: Math = 199; Reading = 193; Language Arts = 195.

7. The IEP Team determined that the Student: would continue to have math and reading in the resource room while attending the other classes in the regular education setting; continued to need extra supports for her inclusion classes; would continue to have a structured study hall; would have health in only the 1<sup>st</sup> half of the school year to allow for extended time in the 2<sup>nd</sup> half to complete her work; would continue to receive reminders from teachers to remain on task and not stare at her peers; and would take tests in small group settings.

8. The Student's IEP dated May 25, 2011 IEP contains four goals. The goals for math, language arts and reading are all essentially identical to those in the previous IEP. The one new goal is as follows: "Goal ID: 12412 Instructional –Structured Study – [The Student] will organize and complete assignments, quizzes, tests, and other assessments with the supports of a reteaching and extra time. She will maintain passing grades in all classes."

9. The special education and related services provided under the May 25, 2011 IEP consisted of specially designed math instruction (5 times per week for 55 min.), specially designed reading instruction (5 times per week for 55 min.), consultation service/end of day check out by a teacher or ed tech (5 times per week for 5 min.), structured study with a special educator (5 times per bi-week for 40 minutes) and social work service/daily checkin with social worker (1 time per week for 10 min.). Supplementary aids, services, modifications and/or supports (Section 8) included behaviors/social skills/natural consequences, behaviors/social skills/modeling appropriate behaviors, preferential seating, modified reading and math assignments and homework reduced to what the Student completed at school or in the after-school program. The previously described testing accommodations are extended to the NWEA.

10. Another IEP Team meeting was held on August 31, 2011. The Student's mother requested that the Student be placed at Opportunities Training Center ("OTC"), a private school for children with disabilities. The District denied the request. The Student's mother also requested that the Student's use of an assignment notebook and a home-school journal be discontinued and, although the District recommended against it, the District agreed to discontinue them.

11. The Student received the following grade averages during xx grade: Reading – 80; Math – 88; Social Studies – 81; Science – 73; Language Arts – 76; Health – 80; Art – 82; Physical Education – 82; Chorus – 87. The Student was absent a total of 4 days.

12. The Student's classes this year are of the following sizes: Reading - 6 students with 1 teacher and 1 ed tech; Math – 7 students with 1 teacher; Language Arts – 10 students with 1 teacher and 1 ed tech; Social Studies – 15 students with 1 teacher; Science – 15 students with 1 teacher and 1 ed tech; Health – 7 students with 1 teacher; Physical education – 15 students with 1 teacher; Chorus – 59 students, 3 teachers and 1 ed tech.

13. The Student's class grades as of October 2, 2011 were as follows: Reading – 87; Math – 96; Social Studies – 70; Science – 61; Language Arts – 26; Health – 58; Chorus – 100.

14. During her xx grade year, in addition to her special education services, the Student also participated in three social skills groups (the "lunch bunch," the "midday mingle" and another

social skills group) run by the school social worker, Ms. Daigle. The Student continues to participate in the lunch bunch and midday mingle in xx grade. During xx grade, the Student also participated in the 21<sup>st</sup> Century after-school program two days a week, which included both a social component and academic support, but did not sign up for that program in xx grade.

15. During an interview conducted by the Complaint Investigator with Robyn Daigle, Ms. Daigle stated the following: She is a licensed master social worker for the District. She has worked with the Student since the Student was in xx grade. Most of that time has been end-of-the-day check-ins with the Student. These took place during the Student's xx and xx grade years, designed to enable her to find out how things were going at the school for the Student and to encourage the Student to write about her day in a home-to-school journal. Most of her other interactions with the Student have been on an unscheduled, informal basis, although this year the Student says she doesn't have to talk with her because she's not going to be staying at the school. The Student has a lot of counseling services outside of school, so that taking more time away from her education to provide counseling in the school can be counter-productive. She understands why the Student's mother wanted the Student to discontinue the end-of-the-day meetings.

During xx and xx grade, the Student also participated in the "lunch bunch" and "midday mingle" programs. The lunch bunch, for girls only, focused on developing social skills – the girls in the program work on how to make friends and how to be a friend. The group also talked about how to be successful in middle school, and about personal hygiene issues. The Student participated fully in this program, contributing to the conversations, and definitely benefitted from the program. The midday mingle had previously been both boys and girls, but last year they held separate boys' and girls' groups. The group did team building and character education, and worked on social relationships. Again, the Student eagerly participated in the group and seemed to enjoy the activities. The Student was also in a separate social skills group in xx grade, and perhaps in xx grade as well. The group is meeting this year too, but the students in the group are well below the Student in terms of social skills. In addition, the fact that the Student is in small group settings all through the day provides opportunities for her to work on reading social cues.

She sees the Student as generally happy in school. She believes that the Student is participating and is working up to her ability. The Student's grades are great and she appears to want to be at school. The Student has friends at school that she waits for in the morning, and she eats lunch with a group of girls. The Student doesn't walk around with her shoulders hunched forward; she has her head up and her hair swinging. It's common for children to show different things at home than at school.

When the Student is challenged academically, her first reaction is to shut down and say "I can't do this," but once the Student gets it, she can really sail through things. The last few weeks, the Student has been refusing to do class work, saying "I don't have to do anything." She has observed the Student in the classroom. The Student is very observant; sometimes she has a dazed look about her, but she's really just taking in everything going on around her. She may be so absorbed in things going on around her that she misses direct instruction from the teacher, but she gets that later in the structured study hall which has recently been added

to the Student's program. The Student most often comes to her classes prepared for class. The Student struggles with her locker, but she gets it done nevertheless. She doesn't believe that the Student needs more one-on-one support, although she will know more after the Student's grades come in. Sometimes the Student just needs a quieter space to work in, and that is one of the reasons they started the structured study hall.

The Student's mother has complained that the Student is being bullied and is not safe at school, but she hasn't been able to get the Student to come to her and tell her about these incidents. She usually hears about them well after the fact, and the information is very vague. The Student is not generally afraid to be out there with the other students. There are times when the Student misreads social cues, but all adolescents do this at times. The Student is pretty well monitored during the school day.

She is somewhat familiar with OTC, and has been to meetings there. She believes that it is an excellent program, combining an education program with a social skills program, but she doesn't believe that the Student needs that program. The Student is flourishing in her present school, and has shown great growth during these last three years.

16. During an interview conducted by the Complaint Investigator with Gail Doughty, Ms. Doughty stated the following: She is a special education teacher at the School, and has had the Student in her class since xx grade, teaching reading and math in the first two years, but math only this year. The Student is very capable and is able to work independently, but will have someone hold her hand if she can get away with it. The Student will sometimes claim that she can't do a problem when really she can.

The Student is reading at a xx grade level or higher, depending on the type of material. The Student struggles with recall and comprehension. The Student can compose simple sentences and organize them into paragraphs, although occasionally the Student's thoughts get jumbled and she needs help getting them straightened out. The Student recently completed a social studies writing assignment and received a "B" grade.

In math, the Student is at a xx grade level, but works at a xx grade level in certain areas. When she began working with the Student, the Student was not able to multiply numbers; now she can multiply numbers to two places, although she still needs to work on some basic math facts. She is unable to do division, but is able to do some algebra (solving for unknowns) and can solve word problems. Given the formula, the Student can compute the area of a geometric figure, but has trouble with the perimeter. The Student can read graphs, analyze data and answer simple questions about them, but pie charts are more difficult for her.

She believes that the Student's lack of progress on her NWEA math scores is partly due to her being very distracted in a group. It also is partly a matter of how much effort the Student exerts on the test. She believes that if someone sat next to the Student during the test, made her take her time and answer all the questions, her scores would improve. Despite the NWEA scores, she believes that the Student is making slow, steady progress in math. With reading skills, the Student is more stagnant. Her difficulties with comprehension and recall are what are holding her back the most. The Student can tell you details about what she read if it is sitting in front of her, but if she has to rely on her memory, she struggles. Last year, she used

reading programs with the Student that emphasized phonetic decoding, but she doesn't know what programs the Student is using this year.

She thinks that smaller class size is helpful to the Student, but if given other supports (an ed tech in the room with her and structured study halls, for example), the Student can be successful in a bigger class. This year, even though the Student has no ed tech support in social studies (she does in science), the Student is nevertheless passing social studies and demonstrating understanding of the material being covered. At the end of each school day, she reviews with the Student what went on during the day. The Student has 40 minutes in a structured study hall every other day. Also, three times per week there are 30 minute blocks of additional structured time to help students who are struggling.

There is an ed tech who is available to the Student in language arts this year, but the Student is not doing the work assigned to her. The Student says that she doesn't understand it, but she also says that she doesn't have to do the work. The Student gets no homework, and this makes it more difficult for her to finish the work she starts in class. She believes that the Student can handle the material in that class, but that some of the content is reaching the level where the Student struggles and the pace of the class is a little too fast for the Student. The staff was proposing to move the Student into the resource room for language arts, but the Student's mother chose to initiate due process instead.

With regard to social cues, she has seen the Student read social cues without difficulty at times, but other times the Student is not sure how to read them. The larger the group, the more difficulty the Student has with this. This was one of the things that was being addressed in the Student's meetings with Ms. Daigle at the end of the day, until the Student's mother put a stop to those meetings. The Student does meet with her advisory group twice per week, where they work on social skills, character education and team building. She also looks for "teachable moments" during the day, and if the Student has some problem, she will take time out during structured time to process this with the Student. The Student will report what she is feeling or what she saw, but she may not give her the full story of what led up to the troubling event.

The Student's attitude towards school fluctuates. Last year, the Student appeared to be pleased to be in school. This year, the Student says that she is going to OTC and doesn't have to do anything she doesn't want to, and this is keeping the Student from making much progress. Nevertheless, she doesn't see the Student exhibiting any depressive symptoms, and she seems happy and content to be with the students with whom she associates.

With regard to the issue of more supervision of the Student, she doesn't see this as a big problem. The Student can be vulnerable at times, but she doesn't need constant one-on-one supervision, just an adult in close proximity. On the playground, the Student tends to stay near to the adult who is supervising the area, and there are always adults in the hallways between classes. Those adults keep an eye on the Student.

She has observed other students make comments about the Student's odor, and she believes this is due to the Student's poor hygiene. She hasn't heard comments about the Student being

a “retard,” but she acknowledges that this can happen. The Student may sometimes be teased, but she hasn’t observed the Student being tormented. She did witness the Student bullying a younger student this year, although the Student denied it. The Student sometimes says and does things to provoke other students, so that kind of behavior goes both ways. The Student does sometimes do things just to get other students to like her, and she has spoken with the Student about this. She has seen other students try to get the Student to do things she shouldn’t, but she is not aware of there having been any serious consequences to the Student as a result of this, and she has also seen the Student make good choices at such times.

She is familiar with OTC because she has taken classes with many of the instructors there, and she has observed in the building and attended meetings there. OTC has wonderful activities for the students, including working on life skills out in the community, but the Student will be getting life skills work in the District all through high school. Placing the Student at OTC would not allow the Student to make the most of her abilities. OTC’s program wouldn’t challenge the Student as much as her program at the School, where she will develop skills that allow her to have more success in her future. She worries that the lesser expectations at OTC would cause the Student to regress academically. She has high expectations for the Student, and believes that the Student, with more life skills training, will be capable of independent living as an adult. She thinks that the Student has the skills necessary for her to hold a job in a retail store, for example.

17. During an interview conducted by the Complaint Investigator with Pamella Sayers, Ms. Sayers stated the following: She is in her xx year as special education director for the District. She believes that the Student has been making academic progress, although this is not reflected in her NWEA scores. The Student, in general, has been consistently doing what is expected in her classes, has been keeping up with her peers and has been receiving passing grades. The Student was placed in a regular education language arts class because she had done so well in xx grade, and she continued to be successful in xx grade.

She expects that the Student will follow a vocational track in high school (the District sends students to Caribou Vocational School), still take some regular education classes, and graduate with a regular diploma. She believes that the Student has the capacity to go on to a two-year program at Northern Maine Technical College, and could pursue a program in food service or early childhood development. The School has had students with abilities similar to those of the Student who have successfully followed that path.

She doesn’t think that the Student’s IEP Team has discussed life skills instruction for the Student, because they don’t view the Student as having significant life skills deficits. She considers life skills as addressed more appropriately in high school, where there is room in the students’ schedule for electives. She could imagine, for example, the Student taking classes in sewing or cooking. She doesn’t believe the Student needs instruction in such life skills as personal hygiene; she views the Student as within the normal range for students with respect to hygiene issues.

She doesn’t believe that the Student requires smaller class size in order to benefit from her education, although the Student should have support in all of her regular education classes.



At the beginning of the year, there was a personnel issue that resulted in there being no ed tech available to be in the Student's social studies class. Recently, a substitute ed tech was found who will be in that class and, starting on November 5, 2011, there will be a permanent ed tech in the class for the remainder of the year. The Student has told her that she really likes the social studies class.

She doesn't believe that the Student requires one-on-one supervision. There is supervision at all times in the School; there are always adults in the hallways in between classes, and adults on the playground and in the lunchroom. There aren't really any hiding places for the Student at the School. The time that the Student was "missing" for 10 minutes turned out to be the result of the Student going to her locker, going to the bathroom, going to class, realizing that she had forgotten something, and going back to her locker.

She doesn't believe that the Student has particular issues with reading social cues, and this is not what the teachers are reporting to her. There was a recent example of the Student successfully reading social cues. The Student tried to engage a boy in conversation, and the boy twice told her he didn't want to talk with her. After the second time, the Student turned to the teacher and said "I guess he doesn't want to be bothered now."

She is not aware of bullying issues involving the Student at the School. She thinks the students at the School are generally quite tolerant. The incident during basketball practice reported by Ms. Cyr and Dr. Copeland did not take place at the School. If the other incident mentioned by Dr. Copeland in fact took place (there were no adult witnesses to the incident), it wasn't anything that the Student reported to anyone at the School. The Student has had issues in the past with fabricating stories (she sometimes talks about her baby brother, who does not exist), and her perceptions are not always accurate. Also, what the Student tells people at school is often different than what she tells people at home. This is an issue of long standing, and is one of the reasons the School instituted the use of the home-school notebook. The Student would describe in the notebook at the end of the day how her day went. There were only a small number of negative reports, and they were not to the extent of bullying. She brought the notebook to a meeting with Dr. Copeland, but Dr. Copeland said she didn't have time to read it. She was disappointed that Dr. Copeland didn't seem interested in the successes that the Student was having at school.

It is not true that the Student eats lunch or spends recess alone. She sees the Student at lunch sitting with other students, laughing and joking. The Student was initially disappointed this year because some of her friends from last year had gone on to the high school, but the Student has made some friends in the grades below. The Student recently asked Ms. Daigle if she could join the lunch bunch. The Student is older than the other students in the group, and she took the role of the older, more experienced student in the group. In prior years, the Student had participated in the 21<sup>st</sup> Century after-school program, which meets twice a week for 1½ hours. Half the time was spent on academics, with the students getting help with class work or home work. The other half was spent on activities such as cooking, science, fishing and skiing. The Student seemed to really enjoy that program, but this year the Student's mother didn't sign up the Student.

She is familiar with OTC as she has several students who are placed there. She knows OTC's director and several of the teachers. She doesn't believe that OTC would be an appropriate placement for the Student. Although there are students there who probably have cognitive skills comparable to those of the Student, those students generally have more serious emotional issues. Many of them have been removed from their homes. She believes that being with her non-disabled peers provides an opportunity to the Student to learn from those students and to model appropriate social behavior. The Student would lose that opportunity at OTC. Although the Student's closest friends at the School have disabilities, the Student still interacts with non-disabled students throughout the day, including during science, social studies, chorus and lunch bunch.

With regard to the restraining order, the other student involved was a boy one year ahead of the Student who was also in special education. Every student in the School receives a lap top, and the Student and the boy were sending inappropriate e-mails back and forth to each other (this year the School has turned off everyone's e-mail). The boy's guardian believed that the Student was stalking the boy, and complained that the Student had given candy to the boy on Valentines Day. During the summer, the Student told her mother that the boy had raped her, but she is not aware of any reason to think that was a true statement. Once the School became aware of the restraining order, the two students' schedules were changed so that they were not in classes or on the bus together, but there was one resource room class that was the only class available for the two of them to get the instruction that they needed. The restraining order was eventually revoked.

18. During an interview conducted by the Complaint Investigator with Jeff Roberts, Mr. Roberts stated the following: He is an xx grade social studies teacher, and the Student has been in his class since the start of the year. Academically, the Student is functioning at a very low level. She is also very easily distracted. She will see or hear other students and stop and stare to see what they're up to. She needs a lot of support, but is not getting it due to scheduling issues. In the past, he has had an ed tech or special education teacher present in his classroom to help students such as the Student with taking notes, reading difficult material and staying on task, but he does not have such a person for the Student's class. He can see how the Student would become frustrated under those conditions, and he can see that the Student is sometimes frustrated and confused in his class. He doesn't believe, however, that the Student is stressed by the academic challenges in his classroom, or that she is unhappy. A lot of the problem is her lack of focus. The student is passing (she has an average of about 74), but she is not doing as well as she could. He believes that the Student does not need a smaller class size (there are 17 students in her class), and that she would do fine if she just had a little more one-on-one help. The school recently scheduled a structured study hall for the students like the Student who need that additional support, and that should help, especially as the Student won't do homework at home.

At the beginning of the year, there was a commotion in the part of the room where the Student was sitting. One of the girls in the class told him that the Student was growling and saying inappropriate things to the other girls, so he gave the Student an assigned seat in another part of the room. One of the other girls then moved next to the student and was teasing her, so he had to move the other girl. He has observed that the other students know how to "push the

Student's buttons." Due to scheduling issues, it is difficult for the special education teacher to find time to work with the Student on social skills. He believes that the Student has a few friends; there is only one other special education student in his class, but the Student has friends in other grades. The Student is socially immature, but he has had students in his class even less mature than she, and they were fine with enough support.

19. During an interview conducted by the Complaint Investigator with Paul Lamoreau, Mr. Lamoreau stated the following: He is a xx grade language arts and social studies teacher, and the Student was in both of his classes last year. There were 15 students in the language arts class and 18 – 20 in social studies. An ed tech was available to the Student in both of the classes, and the Student did some of her work with the ed tech. The Student was able to read, comprehend and respond to the materials used in the class. The Student did fairly well with spelling, but struggled with some of the reading and vocabulary. Her writing improved over the course of the year. The Student contributed to class discussion, both volunteering and responding when called on. The Student was not always correct, but no more than the average student. The Student would become distracted at times, perhaps more than the average student, but not to a really unusual extent.

He didn't observe any bullying of the Student. He didn't think the Student had an extraordinary problem reading social cues. Sometimes the Student's perception of what was going on socially wasn't accurate, and she would blow something up out of proportion. He saw this as typical adolescent behavior. The Student was very self-conscious, and this was typical of adolescence too. He didn't consider the Student to be unusually vulnerable such that she needed extra supervision, and he certainly didn't think she needed one-on-one supervision. The Student seemed happy in school, and seemed to have friends.

20. During an interview conducted by the Complaint Investigator with Kelly Koziol, Ms. Koziol stated the following: She is the health teacher at the School, and the Student has been in her class since xx grade. Usually about once per week, the Student checks in with her during structured study hall. She also sees the Student during the summer when she works at the community swimming pool. The health curriculum includes instruction in personal hygiene, social skills, mental/emotional problems (including abstinence), character education and nutrition.

Academically, the Student is an average student, and is passing the class with an honest "C" grade. She believes that the modifications in the Student's IEP are completely adequate to allow the Student to be successful in her class. The Student comes to her class on time and prepared for the most part. The Student has a genuine understanding of what the class is working on; the work is not just book learning, but involves applying that knowledge in context. The Student is able to ask her for help if she needs it. The Student just turned in a project that she was able to successfully complete independently. She believes that the Student's main obstacles are believing in herself and finding motivation to succeed.

She doesn't see the Student as having significant social problems in her class. The class contains 10 students, and she sometimes breaks them into smaller groups. There is no ed tech in the classroom. She sees the Student sometimes wanting to fit in with the more popular

students. They will not invite the Student in, but won't exclude her if she tries to join them. She hasn't heard the Student complain about other students' mistreatment of her, and she hasn't seen any bullying behavior. She has never viewed the Student as a target for harassment. She thinks that the Student reads social cues pretty well, but not as well as other students. The Student sometimes wants more information about what other students are doing, but she's not loud or obnoxious. The other students may have to tell the Student they don't want to talk at that moment, and the Student will generally stop asking. The Student sits directly in front of her in the class, and she has not observed any odor or hygiene issues.

She believes that the Student will be capable of independent living as an adult, with the appropriate supports in place to assist her. The Student will need life skills instruction at some point, but that is not available to District students until high school.

This year, the Student has often expressed that she expects to be attending OTC, and that her mother was pushing very hard for this. When she recently gave the Student a test to complete, the Student said that she didn't have to try because her grade wouldn't matter once she was in OTC. The Student told her that when she was at OTC the work wouldn't be as hard and she would like that, and that her mother wouldn't be as stressed by the school work she had to do.

21. During an interview conducted by the Complaint Investigator with Mark Jenkins, Mr. Jenkins stated the following: He is in his 12<sup>th</sup> year as the principal of the School, and is well acquainted with the Student and her family. When the Student was in xx grade, there were discipline issues involving the Student being accused of lying and stealing. He hasn't seen any of those problems lately. The Student has come a long way socially. He sees the Student as basically happy and well-adjusted. The Student is not walking down the hallways looking at the floor and shuffling her feet. The Student seems comfortable in school, and has a group of peers with whom she socializes.

He has not seen any bullying of the Student, and doesn't see her as vulnerable or a target. The Student acts more as a protector of a group of high needs students. There have been some behavior incidents, but he doesn't see a pattern to them. He thinks that the Student's reports of being unhappy to persons outside of school are due to the Student's mother's influence, and that the Student is probably happier at school than she is at home. The School has done quite a lot to address bullying, forming boys' groups and girls' groups to address social issues. He thinks the School has a good climate in terms of safety.

He believes that the School is allowing the Student to do academic work to the best of her ability, and that OTC would take her backwards. It would remove the real world setting the Student has at the School, and she would lose the opportunity for interaction with non-disabled students. He sees no compelling reason to remove the Student from the School, and thinks that the Student's mother is blowing up the Student's problems out of proportion. He believes that the Student's best chance to be a happy and productive adult is to keep her in the mainstream.

22. During an interview conducted by the Complaint Investigator with Chris Morse, LCSW, Mr. Morse stated the following: He has been a clinician for the Student for approximately 1½ years. He has not observed the Student in the school setting. He currently sees the Student about once every two weeks, but at the beginning he saw her more often due to her depressive symptoms. Over the summer, he saw the Student a little more often due to what were perceived as psychotic episodes (the Student appeared to be experiencing hallucinations). He came to believe that what the Student was describing was merely a function of how she processes information, the result of her Pervasive Developmental Disability diagnosis. This phenomenon is part of the Student's difficulty with social interactions, because she is sometimes perceived as making things up when in fact this is just how she puts information together.

The Student's school experience fluctuates with her frustration level. Sometimes she is doing very well. Sometimes her interactions with peers or teachers cause her depressive symptoms to increase. Other times she speaks positively about one of her teachers or about a friend. There has been a bit more depression recently, but not at every session. He is aware that there has been some bullying behavior by other girls at school, but he is not sure how often it occurs. It seemed to be happening more often when he first started working with the Student, and less often recently. It's difficult for him to assess stress levels for the Student, but the Student's experiencing bullying behavior or being accused of lying is definitely stressful for the Student's mother. The Student's mother is trying to meet the Student's needs, and perceives those needs as not being met by her current programming.

He would like to see more programming for the Student specific to training on social aspects – reading social cues and the social environment. He has spoken with Ms. Daigle about this. He thinks that the lunch bunch and midday mingle are great programs, and the Student says that she participates in those. He believes that more social work time in school would be good for the Student. He believes that the home-school journal was a worthwhile tool. He has told the Student's mother that social work time at school is not the same as his work with the Student. He thinks that to some extent the Student's mother doesn't want to hear that the Student had a good day at school. There is inflexibility around the issue of OTC being the only program that can help the Student. A smaller class setting and lower student/teacher ratio would be wonderful for the Student, but that doesn't mean it's the only thing that will provide for her success. It's really hard for the Parent to accept that there can be positive things for the Student at the School.

23. During an interview conducted by the Complaint Investigator with Tricia Barnes, Ms. Barnes stated the following: She is a case manager for Catholic Charities, and has been working with the Student and her family since August 2011. Mostly, she has been helping the Student's mother with advocacy in the school setting, and making sure that the Student's mother and the Student's providers are all on the same page. She meets with the Student and the Student's mother about once a month, and goes with the Student to her meetings with Mr. Morse and Dr. Copeland. The Student's mother is generally present at those meetings as well, although the Student does most of the talking. She hasn't observed the Student in the school setting.

The Student says that she is picked on by her peers, and that she doesn't like school. The Student wants to have friends at school, and will do whatever her peers ask because she wants them to like her. Last year, other students talked the Student into doing things that got her into trouble. The Student can be very specific about her being picked on, what other students have said to her and what they've asked her to do. Some of these incidents happened last year, but some of them happened this year. She thinks that the Student doesn't report these incidents to school personnel all the time because she doesn't think they will believe her or won't follow through and handle the situation. She started this school year wanting to do well and wanting people to like her. Once school started, the Student found that it was the same as last year – she was still struggling with peers and with her school work – and then she didn't want to go at all.

She believes that the school work being given to the Student is too hard for her; the Student says that she doesn't understand a lot of it. She believes that the Language Arts class this year is particularly difficult for the Student. For example, there was an assignment that the Student kept trying to do and was told that it was not done correctly and she had to do it over again three times. The teacher told the class that they would also be doing research and writing essays. The Student has also been having trouble retaining what she learns in math.

She believes that the Student's programming should focus less on academics and more on activities of daily living. The Student needs to learn how to wash clothes and maintain personal hygiene. The Student needs help with boundaries, her own and other people's, and with understanding friendship. The Student needs to learn how to keep herself safe. The Student also needs more supervision. There should be a watchful eye on the Student during unstructured time. There was an incident when the Student was 10 minutes late for class and nobody knew where she was. School personnel were going to review the situation and get back to the Student's mother about where the Student was, but they never did that. The Student could have been anywhere, and she is very vulnerable. The School knew about the recent restraining order, yet they still had one of the two other children involved in one of the Student's classes.

From what she knows about OTC, it will provide smaller classes with lower student/teacher ratios, more emphasis on activities of daily living and social skills, and more supervision. Compared with her current program, OTC would provide more things that the Student could do to be a productive citizen

24. During an interview conducted by the Complaint Investigator with Elena Cyr, Ms. Cyr stated the following: She is a mental health rehabilitation technician at the community level, and an in-home support supervisor for Care and Comfort. She has been working with the Student and her family since November 2007, supervising Section 28 services. The services to the Student involved work on increasing social interaction skills, decreasing the number of inaccurate and blaming verbalizations, complying with morning and evening routines, and teaching appropriate social/sexual behaviors. The services are delivered one-on-one, at the Student's home and out in the community in places (the library, the recreation center) where the Student can interact with her peers. The Student's social skills have improved somewhat since her agency became involved. The Student can now go into a store or restaurant and

interact appropriately with people, but the Student still has problems with her peers, and her agency is focusing more on that.

The Student doesn't really trust her peers and has low self-esteem, and this makes it hard to work on her social skills. She has personally witnessed bullying of the Student by her peers. In 2008, the Student was part of a basketball team, and she was present during one of their practices. During a bathroom break, some of the other girls told the Student that the Student was dirty, that she smelled bad and that she had lice. When they returned to practice, the other girls were not giving the ball to the Student, and told the Student that she played like "a retard." The Student was an athletic child, and she now wants nothing to do with sports. She attended a meeting at the School after this incident, and she described what happened to school personnel. The common response from school personnel to those kinds of reports is to say "We don't see that kind of behavior here."

The School did institute a buddy system for the Student at lunch, and they gave the Student the option of eating her lunch in the school office. They also had a plan in place to try to make sure that the Student wasn't alone during indoor recess. For a student who was struggling with social skills to be alone during lunch or recess was a problem. She believes that the school needs to be working on these social issues because her agency can't provide its services in the school setting. The problem that led to the issuance of a restraining order was one recent example of the Student getting into trouble due to her inability to read social cues.

The District has tried to meet the Student's mother half way. The Student was given extra time with the social worker and a home-school journal was initiated, but nothing seems to have been successful (or the District wasn't allowed to continue it long enough to become successful). She believes that there should be more time scheduled for the Student to meet with the social worker, to allow the social worker to explore how things are really going for the Student. The Student is someone who will keep saying that everything is going well until one day she has a meltdown.

In January 2009, the Student was presenting with symptoms of depression and suicidal ideation. Although she hasn't reported specific incidents of bullying recently, the Student still has nothing positive to say about school. She has observed that the Student has a lot of anxiety about her school work, and thinks that the Student may be magnifying what her teachers are actually expecting of her. In 2007, it was a struggle to get the Student to read, but that is not the case any more. The Student is probably still reading below grade level, but she is doing better. As she's not developmentally caught up to her peers, the Student is probably reading commensurate with her developmental level.

The Student has processing issues related to her diagnosis of Pervasive Developmental Delay. Information gets jumbled and comes out of the Student's mouth the way that the Student processes it. The Student might hear a television in the background, and what she hears gets woven into some other narrative. This has resulted in the Student sometimes being called a liar. This issue is something that should be addressed in the Student's program.

She is familiar with OTC because her agency has several staff members who work there, and she has gone there to observe other clients and to attend meetings. OTC is for children who are struggling in the regular school setting. There are specialized programs for students depending on the severity of their disability. There are students like the Student who need a little more individualized educational program and a lot more social skills training, along with independent life skills training. The staff-to-student ratio is much smaller than at the School (somewhere between 5:1 and 8:1). She believes, however, that the Student could also be successful in the School if the District increased the amount of supervision (they need to know where the Student is at all times), provided more social skills training and more social work services.

25. During an interview conducted by the Complaint Investigator with Silvia Merida-Copeland, M.D., Dr. Merida-Copeland stated the following: She is a psychiatrist and the Student has been her patient since 2006. She currently sees the Student every 4 – 6 weeks, and the Student's last visit was in September 2011. She provides supportive therapy to the Student along with medication management. She is not familiar with the details of the Student's educational program; she last reviewed the Student's IEP in 2006. She knows that the Student has some special education classes and that the School provides other classroom modifications as well.

She occasionally meets with the Student alone, but most often the meetings take place in the presence of the Student's mother. She finds that she sometimes has to guess whether or not what the Student is telling her is true, as the Student's perception of things is sometimes very skewed, and she needs a reality check from the Student's mother. The reports of the Student's mother appear to be accurate, as the concerns that the Student's mother has expressed to her about the Student's school experience have also been expressed by others involved in the Student's care, such as case workers and Section 28 workers.

The Student has been having problems socially all of her life, and will continue to have those problems for the rest of her life, due to her diagnosis of Pervasive Developmental Disorder, as well as diagnoses of ADHD, ODD, Mild Mental Retardation, and Anxiety. The Student doesn't read social cues well. The main complaints of the Student and the Student's mother have centered on the Student being bullied at school. She wrote letters to the School in March 2009 and January 2010 about this issue, involving reports of students telling the Student that she was dirty, smelled bad, had lice, that she threw a ball "like a dummy" and that they had boyfriends while the Student did not. The second letter described an incident where the Student said something to a group of students about hurting herself, and the other students asked her when she was going to do it and told her that if she did they wouldn't care. These incidents resulted in the Student expressing suicidal thoughts. The Student began to wet the bed, and expressed feelings of hopelessness and powerlessness. She wrote the letters to call these matters to the attention of school personnel, but the bullying problems continued. There have been no reports of suicidal ideation by the Student in the last 1½ years.

In March 2011, the main issue concerning the Student involved her separation from her "boyfriend," who was sending her inappropriate e-mails of a sexual nature. More recently, in July 2011, she received reports of the Student evidencing psychotic symptoms (seeing and



hearing things), as well as increased aggressive behavior. She made changes in the Student's medication, and the Student seemed to be doing better. In September 2011, she received reports of ongoing social difficulties revolving around the restraining order issued against the Student.

Initially, she had been working with the Student's mother on having her accept the Student's placement in the public school as the least restrictive environment, but she is now supportive of the Student being removed from the School to a safer environment. A smaller school setting with more supervision will reduce the Student's exposure to bullying behavior. The Student is always going to be a vulnerable child. The gap developmentally between the Student and her non-disabled peers is only going to grow in the coming years. The Student's judgment and impulse control are poor. The Student still says that she has no friends, that she is socially isolated. She might be seen interacting with a group of other students, but that doesn't say anything about the quality of those interactions. The Student still stirs up people inappropriately, as when she stares at people. Some of the behavior problems, such as lying and stealing, have improved, but the Student has been working on these social issues for a long time.

Her biggest concerns with the Student's school placement are not about academics, about which the Student doesn't talk very much (although she occasionally reports that she is doing well). Given the Student's mental retardation, at some point the Student's academic progress will plateau. The Student needs to be learning daily living skills, and needs to be doing them every day so that she will learn from repetition. There is no good reason to put this off for another year. If the Student is going to be capable of independent living as an adult, she will need those skills as well as a great deal of support. The Student will always need supervision as far as making decisions for herself, such as those involving medical care.

26. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: She sees the Student regressing this year; every day, the Student wakes up very emotional, crying and whining. The Student also experienced hallucinations over the summer. She thinks this all has to do with the pressures the Student deals with at the School. The pressures result from the Student having to keep up with school work, and from the Student experiencing bullying and having other students say bad things to her. The Student tells her that other girls say her hair isn't right, she's not wearing the right clothes, or she doesn't have any boyfriends. This has been going on since xx grade, and it happens every day. Some students have the perfect clothes, but the Student gets used clothing donated to the family.

The Student has a hard time with processing information and she distorts things. The Student doesn't have a good understanding of what is happening to her and around her. Other students will dare the Student to go into the bathroom and do something, and then the other students run away and the Student gets blamed for it. One time someone had stuffed up a toilet, and when an adult discovered it the Student was the only one in the bathroom. She's not sure what consequences the Student has faced because of these incidents. These things happen when there are no teachers around, like when a teacher has to step outside the

classroom for a moment. At OTC, there is a bathroom in the classroom, and a teacher accompanies students when they go to the bathroom.

The incident that led up to the restraining order allegedly happened during the 21<sup>st</sup> Century after-school program. She believes something happened between the Student and the other boy, but she doesn't know what exactly. It would only take a moment for the Student to be sexually assaulted, and she doesn't think the Student is safe at the School. The school staff was unaware of the sexualized e-mails between the two students until she told staff members about them.

The Student does not know how to read social cues. The Student goes on Facebook, tries to chat with another child and, even though the other child tells her to stop, she keeps on trying. The Student waves to complete strangers; they were at a park recently when the Student started to follow a stranger. People get angry at the Student and she doesn't know it. The Student will intrude upon a group of peers and just keeps standing there even though the others don't talk to her.

Just a few days ago, the Student came home with a note from the School nurse that said the nurse had spoken to the Student about cleanliness, good hygiene and the need to wear clean clothes. She believes this kind of thing hurts the Student's self-esteem. Children with PDD have a hard time with things like personal hygiene, and the School isn't very willing to work with the Student on this. She brought some sanitary napkins to the School one day and asked them to give them to the Student. They never did, and the Student came home soiled. It is difficult for the Student to prepare herself for things, like getting ready to go to school.

The Student cannot focus well, and she says that her classes are too hard. The Student wants to please, and she tries to do her school work, but her work just isn't good enough. So far this year, the Student is not passing language arts, health or science. She doesn't know how the Student passed any of her classes last year. The Student says that she asks her teachers for help, but they just tell her "You already know how to do that." She agrees that the Student has a tendency to say she can't do something when really she can. She agrees that the Student learned some things last year in school, but sometimes the Student is not there mentally. The Student's emotional state is way behind her peers, and she's very different from them. She doesn't know specifically about the amount of progress the Student has been making in reading or math; she doesn't have good channels of communication with the School. The only staff member she trusts and can talk to is Ms. Daigle.

The School says that it is important for the Student to get a high school diploma, but she doesn't believe that this is realistically going to happen. The Student is intellectually disabled and is functioning academically way behind her grade level. The Student needs life skills, like learning to manage finances, housekeeping, how to read signs and safety skills. The Student gets some of this from her home health care workers, but that is only for 3-4 hours three times a week.

All of the Student's classes are too big, including reading where there are 6 students and 2 teachers. At OTC, there is 1 teacher for every 2 students. She thinks that the Student loses

focus and becomes distracted in a bigger class, and then the Student doesn't retain any information.

It's very hard to get the Student to go to the School; the Student doesn't want to be there, but she insists that the Student go. She believes that if the School would send the Student to OTC, things would turn around for the Student. The Student's sister goes to OTC with no resistance. School staff members say that the Student has friends at school, but she doesn't think the Student feels close to any of those girls. The only real friend the Student has is now being home schooled.

At OTC, they will have staff members that know how to work with the Student on emotional issues. At OTC, when a child needs an emotional boost or a hug, they give it to her. She once asked someone at the School if they could help do this for the Student by giving her stickers or M & Ms for doing a good job, but they said no because "this isn't kindergarten." She does this for the Student at home, giving her stickers for such things as cleaning up her room, not swearing, brushing her hair and getting ready on time, and then when she has enough stickers the Student can choose something like going to the movies or getting ice cream. The Student's behavior has gotten a little better on these types of issues, but it's still a struggle. Just recently, she told the Student in the morning that she was going to pick her up at school later to take her to an appointment with Dr. Copeland, and the Student cried and cried because it meant that the Student would miss lunch at school. She's not sure if it was a lunch bunch day.

## **VII. Conclusions**

The Student's mother, in filing this complaint, asserts that the Student requires a more restrictive educational setting, that of OTC, and that the Student's placement at the School is not appropriate for her. The Student's mother believes the Student's current program to be not appropriate both as to its academic components (that it demands too much of the Student, takes place in classroom settings that are too distracting and lacking sufficient support, and emphasizes academics at the expense of life skills) and its social components (that it fails to protect the Student from bullying and otherwise fails to keep the Student safe, and that it fails to provide sufficient social skills training). The picture painted by the Student's mother and those who work with the Student outside of school is that of a student who is unhappy, confused and distressed by what happens at school.

The picture painted by staff members at the School, on the other hand, is quite different. They see the Student as appearing happy to be there, having a group of friends and taking a leadership role with younger students. The Student passed all of her classes in xx grade, and had only a few absences. Her language arts teacher, Mr. Lamoreau, said that the Student was able to read, comprehend and respond to the materials used in the class and that her writing improved over the course of the year. The Student also contributed to class discussion. Ms. Doughty reported that the Student made slow but steady gains in math as well, increasing her multiplication skills and learning to do simple word problems. The Student recently completed a social studies assignment for which she received a "B" grade, and successfully

completed a health class assignment which she worked on independently. Ms. Cyr agreed that the Student no longer struggled with reading as she did four years ago, although it is clear that the Student is still reading well below grade level.

All those interviewed seemed to agree that the Student's behavior with respect to lying and stealing had greatly improved, that the Student's depressive symptoms had significantly improved with no recent reports of suicidal ideation, and there were no reports of recent behavior towards the Student that could fairly be characterized as bullying (although there were undoubtedly instances of meanness or insensitivity on the part of the Student's peers).

It is important to keep in mind that the issue for resolution is not whether the program at OTC would be better for the Student, or whether the Student would be happier or more socially successful there. Rather, the standard by which a student's educational program is to be measured is that it must offer a program "reasonably calculated" to deliver "educational benefits." *Hendrick Hudson Bd. Of Educ. V. Rowley*, 458 U.S. 176, 207, 102 S. Ct. 3034, 73 L.Ed. 2d 690 (1982). As explained by the Court in *C.G. and B.S. v. Five Town Community Sch. Dist.*, 513 F. 3d 279, 284 (1<sup>st</sup> Cir. 2008), this obliges a school district to "provide an adequate and appropriate education. The IDEA does not place school systems under a compulsion to afford a disabled child an ideal or an optimal education."

Perhaps more importantly, the IDEA has stated an unambiguous preference for having students be educated with their non-disabled peers to the "maximum extent appropriate." (MUSER §X.2.B). See *Hampton School District v. Dobrowolski*, 976 F. 2d 48, 50 (1<sup>st</sup> Cir. 1992); *Ciresoli v. M.S.A.D. #22*, 901 F. Supp. 378 (D. Me. 1995). The central question in this case, therefore, is whether the educational program provided to the Student was reasonably calculated to enable her to receive some educational benefit in the least restrictive environment. *Ciresoli v. M.S.A.D. #22*, *supra*.

As indicated above, there was sufficient indication from the information obtained during this investigation to support the conclusion that the Student was receiving some educational benefit from her program, therefore precluding a finding that the Student required placement in a more restrictive setting in order to receive FAPE. Nevertheless, there were several respects in which the Student's program at the School failed to adequately meet the educational needs of the Student, and those are addressed below. Tellingly, this result is supported by statements of Mr. Morse and Ms. Cyr, both of whom, while they supported the Parents' positions in various ways and advocated for certain changes to the Student's program, felt that the Student did not require the more restrictive setting of OTC in order to benefit from her education.

**Allegation #1:** Failure to provide special education, related services and supplementary aids and services, including full-time one-on-one supervision and smaller class size, sufficient to enable the Student to be educated and participate in extracurricular and other nonacademic activities with other children with disabilities and with non-disabled children in violation of MUSER §IX.3.A(1)(d)

**Allegation #3:** Failure to provide specially designed instruction, appropriate to the needs of the Student, to enable the Student to achieve the goals in her IEP in violation of MUSER §X.2.A(2)

**VIOLATION FOUND**

In the Written Notice of the Student's IEP Team meeting on October 20, 2010, the District reported that the Student "struggles to remain focused in most settings...and need[s] extra supports and reminders for tasks to be completed in a timely manner." The Written Notice of the Team's May 25, 2011 meeting records the Team's determination that the Student continued to need extra supports for her inclusion classes and would continue to receive reminders from teachers to remain on task and not stare at her peers. Despite this, the Student's IEP does not reflect those determinations and, when the current school year began, the Student did not have an ed tech in her regular education social studies class to provide that extra support and those reminders. Mr. Roberts reported that the Student sometimes appears confused and frustrated, and was himself frustrated that the Student was not getting the support she needed in his class. According to Ms. Sayers, that problem has now been remedied, and there will shortly be an ed tech in that class to provide the needed support, if it is not already in place. The corrective action, therefore, will include confirmation that the deficiency has been remedied.

As to smaller class size and increased supervision, there was insufficient evidence that the size of the Student's classes (from 6 to 15 students) prevented the Student from receiving a meaningful benefit from them, provided she received additional support. Likewise with respect to increased supervision, the references to "bullying" or to other students getting the Student in trouble were insufficiently specific (particularly as to incidents occurring in school and within the period under review (September 2010 to the present)) to establish the existence of a pattern or a problem serious enough to warrant having the Student under direct, personal supervision at all times. Certainly, the District should remain sensitive to this issue, and documented incidents of this kind should be responded to appropriately.

With respect to the provision of specialized instruction, the District has acknowledged the fact that the Student's NWEA scores, upon which the Student's academic goals are based in part, have not improved, and the District has revised the IEP to provide accommodations to the Student in connection with that assessment which hopefully will result in obtaining more accurate data as to the extent of the Student's progress. In the meantime, while there is sufficient evidence that the Student is making progress towards her math goals, the same cannot be said for her reading goals. The District did not provide information as to the nature of the Student's xx grade reading program so as to support a finding that the previous lack of progress described by Ms. Doughty has been addressed. The District will be asked to provide such information along with any record of progress having been made so far this year.

As to language arts, while Mr. Lamoreau provides strong indication that the Student made good progress in that subject last year, the Student appears to be struggling greatly in this year's regular education class. The District is clearly aware of this, but was constrained by this complaint investigation proceeding from taking action to address the situation. Although

there is no finding of violation, therefore, associated with this issue, the corrective action for this complaint will reference it as one of the items to be addressed going forward.

**Allegation #2:** Failure to include within the student's IEP a statement of measurable annual goals with respect to the student's learning to read social cues designed to enable the student to be educated and participate in extracurricular and other nonacademic activities with other children with disabilities and with non-disabled children in violation of MUSER §IX.3.A(1)(b)(i)

**Allegation #4:** Failure to provide related services in the nature of psychological and counseling services adequate to address the Student's emotional issues and enable her to benefit from her education in violation of MUSER §XI

#### **VIOLATION FOUND**

The Student's June 10, 2010 and May 25, 2011 IEPs, at Section 3.D, contain the following statement: "[The Student] struggles with making and maintaining friendships and successful relationships with peers. She requires the support of a social skills group to reinforce appropriate and positive social skills in the school setting." Despite this, there are no IEP goals addressing this need, no services other than the one time per week check-in with the social worker for 10 minutes that is clearly not adequate (and presumably not intended) to develop those social skills, and the only supplementary aids and services in the IEP regarding social behaviors reference the facts that the Student will be able to observe other students and model her behavior on their examples, and that she will suffer the natural consequences of her own behaviors.

While it is true that the Student actually has been receiving some training in social skills through her participation in the lunch bunch and midday mingle programs, those programs are voluntary for the Student (she only recently requested to join the lunch bunch this year). The District, having properly identified this need of the Student, must develop, as part of the Student's IEP, a program that adequately addresses the need to strengthen the Student's social skills. Although the IEP Team must consider the position of the Student's mother to the extent that she believes that the behavioral services the Student receives outside of school makes social work services in school unnecessary, it is ultimately the District's responsibility to ensure that the Student receives the services that she needs.

#### **VIII. Corrective Action Plan**

Within 30 calendar days from the date of this report, the District shall convene the Student's IEP Team to address, at a minimum, the following issues: 1) revising the IEP to reference the provision of ed tech support in all regular education classes; 2) determining whether the Student should continue to receive language arts instruction in the regular education setting; 3) developing goals with regard to the Student's social skills; and 4) determining the services to be provided in connection with those social skills goals. In addition, the IEP Team will review the Student's progress to date in her reading program, and consider whether her current reading program appears to be reasonably calculated to enable the Student to make

adequate progress towards her reading goals. The District shall submit a copy of the Written Notice of that meeting, along with the amended IEP, to the Due Process Office and the Parents, along with written confirmation that the Student is and will continue to be receiving ed tech support in her social studies class.

The District shall promptly arrange to conduct professional training for its special education staff on the subjects of: 1) the necessity for developing IEP goals to address each of the student's needs identified in Section 3 of the IEP; 2) the necessity for including within Sections 7 and 8 of the IEP all those services, aids and modifications required to enable the student to make adequate progress towards each of the IEP goals; and 3) the necessity for incorporating into the appropriate sections of the IEP all determinations made by the IEP Team. Documentation of the training shall include: the names and qualifications of presenters; the agenda for the training; all hand-outs for the training; names and job titles of those who attended the training; and anonymous evaluations of the training. The District will submit this documentation to the Due Process Office and the Parents.