

**Complaint Investigation Report**  
**Parent v. Sanford School Department**

August 19, 2016

Complaint #16.088C  
Complaint Investigator: Jonathan Braff, Esq.

**I. Identifying Information**

Complainant: [REDACTED]  
44 West St.  
Biddeford, ME 04005

Respondent: David Theoharides, Superintendent  
917 Main St., Flr. 2  
Sanford, ME 04073

Special Services Director: Stacey Bissell

Student: [REDACTED]  
DOB: [REDACTED]

**II. Summary of Complaint Investigation Activities**

The Department of Education received this complaint on June 24, 2016. The Complaint Investigator was appointed on July 5, 2016 and issued a draft allegations report on July 11, 2016. The Complaint Investigator conducted a complaint investigation meeting on July 20, 2016. After agreeing to extend the date for submission of documentary materials at the request of Sanford School Department (the "District"), on August 1, 2016 the Complaint Investigator received a seven-page memorandum and 172 pages of documents from the Complainant, and received a 13-page memorandum and 87 pages of documents from the District. Interviews were conducted with the following: Katherine Davis, assistant principal for the District; Tammy Delaney, assistant special services director for the District; Beth Currier, special education teacher for the District; Elizabeth Cyr, LCSW, social worker for the District; Barbara Noone, teacher for the District; Lori Coleman, teacher for the District; Jill Fletcher, case manager for Pathways of Maine; Deanna Enis, DHHS case worker; and [REDACTED], the Student's aunt and the Complainant. [REDACTED], the Student's grandmother, did not respond to requests to be interviewed.

**III. Preliminary Statement**

The Student is nine years old and is currently receiving special education under the eligibility criterion Other Health Impairment. This complaint was filed by the Complainant, alleging

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

#### **IV. Allegations**

1. Failure to provide advance written notice to the Student's legal guardian of IEP Team meetings in fall 2015 at least seven days prior to the meeting in violation of MUSER §VI.2.A;
2. Failure to provide written notice within a reasonable time after IEP Team meetings in fall 2015 and at least seven days prior to the date when actions proposed by the District were to be implemented in violation of MUSER App. 1, 34 CFR §300.503 and 34 CFR§ 303.403;
3. Failure to fully and adequately implement the Student's IEP with respect to the Student's placement in a regular education classroom in violation of MUSER §IX.3.B(3);
4. Failure to develop a behavior plan for the Student, using positive behavioral interventions and supports and other strategies, to address the child's behavior issues, in violation of MUSER §IX.3.C(2)(a);
5. Failure to provide requested education records within 45 days of the Legal Guardian's request in violation of MUSER §XIV.3;
6. Failure to provide education in the least restrictive environment by placing the Student in a self-contained behavioral classroom in violation of MUSER §X.2.B.

#### **V. Summary of Findings**

1. The Student currently lives in Sanford with his mother and is in the custody of the Department of Health and Human Services ("DHHS"). At the time this complaint was filed he was living with his grandmother who was then his legal guardian. The Student recently completed his 3<sup>rd</sup> grade year at [REDACTED] School (the "School"). He was identified as eligible to begin receiving special education services on May 5, 2015, at which time he was at Spring Harbor Hospital.

2. The Student's IEP developed on May 5, 2015, effective on that same date, stated that the Student had functional needs due to a short attention span, lagging coping skills, a low level of emotional regulation and sensory needs, but no academic needs as he is performing on grade level in all academic areas. The IEP nevertheless contains three writing goals, one reading goal and one math goal, in addition to three behavioral goals, two social work goals and one OT goal. The IEP contains three supplementary aids, services, modifications and supports as follows: frequent check-ins, motor breaks and a behavior plan. The IEP also provides specially designed instruction in a special education classroom for 310 minutes per week (60 minutes per day), 15 minutes per week of OT consultation services, and 30 minutes per week of social work services. Section 7 of the IEP states that the Student will be participating in the regular education setting with non-disabled peers 85% of the day. The specially designed instruction was to be provided in the District's RISE (Responsible Individuals Striving for Excellence) program.

3. The Student began attending the School on September 2, 2015. He had several incidents of being disruptive, and assaulted other students on September 17, 18, 22, 25 and October 7, 19 and 23. At the request of the Student's grandmother, the Student's IEP Team met on September 22, 2015. The Advance Written Notice for the meeting was mailed on September 18, 2015. There was no signed waiver from the Student's grandmother of the seven-day notice requirement. The District was unable to provide a Written Notice for this meeting, but asserts that the Team agreed to increase the Student's time in the RISE classroom to 90 minutes per day, and increase the social work services to 60 minutes per week.

4. On October 23<sup>rd</sup>, the Student stepped on a student's face, used offensive language in class and to a passerby while on the playground, and stabbed a classmate in the head with a pencil, resulting in the Student being suspended for two days. When the Student's grandmother came to the School to take the Student home, she was asked to meet with school administrators, and the Student's special education teacher and case manager. As the meeting was unplanned, no Advance Written Notice had been issued. The Team determined to have the Student receive all academic instruction in the RISE classroom. The Written Notice for that meeting states that the Student's grandmother agreed that the Student "needs a higher level of support and programming in order to be successful," and indicates that the Written Notice and amended IEP was sent to the Student's grandmother on November 5, 2015. The Student's IEP submitted by the District dated May 5, 2015 indicates amendments on September 22 and October 26, 2015, and reflects increases to specially designed instruction to 310 minutes per day and to social work services to two 30 minute sessions per week.

5. As a result of assaultive behavior outside the School, the Student was again hospitalized from March 3 to March 28, 2016. The Student's IEP Team met on March 26, 2016 to discuss his reintegration to the School. The District provided the first two pages of a Written Notice of that meeting which suggest that the Student's grandmother participated and indicate that the Written Notice was mailed to her. The Written Notice states that the Student's IEP would remain "as is" except for the addition of testing accommodations and a safety protocol.

6. Although the Student's IEP expired on May 4, 2016, the Student's IEP did not conduct an annual review until May 31, 2016. The Student's grandmother participated along with the Complainant. They expressed surprise to learn that the Student was spending his academic day in the RISE classroom as per amendments to the May 5, 2015 IEP, and asked to see the amended IEP. The amended IEP was not available at that meeting, the Student's grandmother and the Complainant disagreed that the Student should be placed in the RISE classroom rather than in a regular education classroom, and the Team determined to reconvene to complete the annual review.

7. On June 1, 2016, the Student's grandmother requested a copy of the Student's special education file, and was advised that the records would be available for pick up on June 6, 2016. On June 3, 2016, the Complainant appeared in the office and demanded that the records be given to her. Ms. Bissell told her that the copying of the file had not been completed, but gave her what was available. The records provided did not include Written Notices of the September 22 and October 23, 2015 meetings. When the IEP Team reconvened on June 7,

2016, the Student's grandmother and the Complainant again requested these Written Notices but were told they were not available.

8. At the June 7<sup>th</sup> meeting, the Student's IEP Team determined that the Student would receive reading instruction in a regular education classroom with adult support, but that he would receive the remainder of his academic instruction in the RISE classroom. The Student's performance would be monitored, and his time in the regular education setting would be increased as he demonstrated safe and appropriate behavior. The Student would continue to attend special classes, lunch and recess in the regular education setting. The Student's behavior plan, crisis plan and safety protocol would continue to be followed, and social work services increased by an additional 30 minutes per week. The Student's grandmother and Complainant continued to advocate for the Student to be placed full time in the regular education classroom with adult support.

9. During an interview conducted by the Complaint Investigator with Beth Currier, Ms. Currier stated the following: She is a special education teacher at the School, and had the Student in her class during the 2015-16 school year. She had known the Student informally before that year, as she previously had the Student's sibling in her class and the Student's classrooms had been near hers.

In the first weeks of the school year, the Student was in her room both for social skills work and as positive reinforcement. He had a behavior sheet based on his IEP goals, and if he was successful it gave him privileges in her classroom. If he was not successful the classroom staff would talk with him about what had gone on that day to make him unable to be successful. The Student had about an equal number of good and bad days, and while he enjoyed coming to her classroom on the good days, on the bad days he sometimes refused to come to her classroom because he didn't want to talk about it. The bad days often involved physical aggression – hitting and kicking other students. On good days, the Student is amazing, but on bad days it's hard to get him back on track.

She remembers attending the IEP Team meeting on September 22<sup>nd</sup>, and remembers the Student's grandmother being there. There was no disagreement about increasing the Student's time in her room, and the Student's grandmother was never in disagreement about it until May 2016. She also attended the meeting on October 23<sup>rd</sup>, along with the Student's grandmother. The meeting was informal as it was unplanned and took place in the School office, but it was clear that the Student's IEP was amended at the meeting. The Student's grandmother was in agreement with having the Student receive all his academic instruction in her classroom.

There was a behavior plan for the Student starting on the first day of school, and behavioral data was being collected. The Student had target areas he had to hit, receiving either a 0, 1 or 2+ on each area based on how many prompts were needed for the Student to perform. If the Student received 0s or 1s, he had a better level of activity in her room. There was some confusion about how to implement this scoring system and the data was inconsistent, so they transitioned to a yes/no format on September 15<sup>th</sup>. The plan was amended several times after that, but kept the same basic format. The Student was scored on following directions, using

respectful words, being on task and maintaining the environment. In March, they added a crisis plan and safety protocol.

Dr. Bruce Chimielski was involved in behavioral programming beginning in October, as was school psychologist Jess Marrass, who helped implement plans, developed lesson plans for social skills and helped identify reinforcing activities. Together with Ms. Delaney, they determined that the Student needed to focus more on social skills, along with the other students in the class. They needed to go back to the basics, like how to be a good citizen and how to take turns. As the year progressed, the Student continued to be inconsistent with some great days and some bad days, and was not making strides even with added supports. There was less physical aggression, but he was still verbally aggressive. The Student's mother had a new baby in March and this made the Student angry and jealous.

Academically, the Student was at a higher level than the other students in the class, and she gave him work that was at that higher level. In math, she used the "Number World" program, which stresses conceptual skills which were a weakness for the Student. His conceptual knowledge did not increase over the year. In March, the Student started going to Ms. Noone's 5<sup>th</sup> grade math class. She gave him math work to do in that class and Ms. Noone gave him some work, but he wasn't doing the same math work as the other students in the class. The Student wasn't consistently completing his work in Ms. Noone's class. When he started the day in a bad place he didn't go to Ms. Noone's classroom, sometimes because he said he didn't want to and sometimes because she told him he had to show that he was calm before he could go. Ms. Noone didn't put up with negative behavior in her class; she told her that the Student tried a few times to get other students going but they wouldn't react. Sometimes the Student slept through her class and this was concerning to her.

She doesn't believe that the Student's behaviors were the result of his not being academically challenged in her class. She sometimes gave him more challenging work and the Student refused to even try it. It's hard to challenge him if he's not willing to accept the challenge. In her class, the Student tries to get the more vulnerable students to react, and she has seen the Student do the same thing in regular education settings. He wasn't successful in the lunchroom or the playground, and eventually they developed an alternative lunch and recess program for him. He has stolen things from younger students' lockers; when he steals things he doesn't keep them, but gives them away.

The Student belonged in her classroom. He's very controlled, and this can be scary; he knows how far to push things. He says he knows coping skills but refuses to use them, and he doesn't care if he is upsetting other students. He's verbally assaultive and can be physically assaultive as well. She is trained to recognize warning signs and knows how to intervene before things get out of hand. Working with the Student is a full team effort – not just her but all the classroom staff. They know when to take the Student out of the classroom, to take a walk or go into the community. They let the Student make a phone call to his grandfather or to his ACT worker. These are things that wouldn't happen in the regular education setting. If the Student is in a good mood he will do more challenging work, but if not he will refuse. Toward the end of the year there was an episode when the Student began swearing at a group of seven and eight year-olds and refused to stop. She can remove students from her classroom when the Student becomes assaultive, but this is harder to do in a regular education classroom. She

never saw a consistent pattern from him that showed he was ready to go into a regular education classroom.

She doesn't understand how the Student's grandmother could claim that she didn't know the Student was in her classroom. The Student's grandmother attended meetings in her classroom, her home care workers came to her classroom, and all communication came from her and not other teachers.

10. During an interview conducted by the Complaint Investigator with Katherine Davis, Ms. Davis stated the following: She is assistant principal at the School, and so she has known the Student for three years. Before the most recent school year, the Student's classrooms were very near to her office, so she had a lot of contact with him. Some interactions were really positive, and some involved imposition of discipline. During the 2015-16 school year, the Student often ate his lunch with friends in her room, as the cafeteria was hard for him. There have been periods when the Student was successful in school, but then things would take a turn for the worse. Outside factors had a lot to do with the Student's ability to be successful, such as having visits with his mother or one of his siblings being in crisis. During the first several weeks of the most recent school year, School staff had to make a determination of the Student's degree of stability on a daily basis. He never had a stretch of time where he was stable enough to be in the regular education classroom all day.

She attended the meeting on October 23, 2015. She believes that the Student's grandmother attended that meeting. The Student had been suspended that day for two days, and the Student's grandmother came to the School to get him. The School had never had a problem with getting the Student's grandmother to come to meetings at the School, and she was always supportive of the School's recommendations. The Student's grandmother was at the School often, both for the Student and his siblings, and she would stop in Ms. Currier's classroom to greet the Student and to speak with Ms. Currier. It is not possible that she was unaware that the Student was in Ms. Currier's classroom for most of the day.

The decision to have the Student receive his instruction in the special education classroom was the right decision given the circumstances, which included the fact that the third grade teacher was out on medical leave and her replacement was not very experienced. The Student was able to get a great deal of support in Ms. Currier's classroom, and Ms. Currier is a good teacher of academics; she has observed her teaching on multiple occasions. Plus, the Student was able to go to the fifth grade math class, where he did independent work, to have some time in the regular education setting.

11. During an interview conducted by the Complaint Investigator with Elizabeth Cyr, LCSW, Ms. Cyr stated the following: She is a social worker for the District, and provided social work services to the Student throughout the 2015-16 school year. Initially she was providing 30 minutes of service per week, but it was soon increased to 60 minutes, although she often ended up providing more than that because the Student was so dysregulated in class. The social work services were sometimes delivered in individual sessions and sometimes in group sessions, depending on the Student's needs. She worked with the Student on empathy and reciprocal relations. Empathy is difficult for the Student, and he can be very manipulative. He wasn't interested in connecting with other students unless he could get something he wanted

from them. He has significant trauma history and reactive attachment disorder. As soon as he started to open up about his home life and his feelings, she began to see an increase in his dysregulation and aggressive behaviors. If he started to make a connection with another student, he would then sabotage the relationship.

The Student always wants to take the lead in a group and which tends to make groups not want to include him. He would ask her to invite someone he met to a group session and then make inappropriate and negative comments to the person. She and other School staff worked very hard with the Student, both in and outside of the classroom, to help him make those connections. She would meet with the Student before group to discuss how he might behave in the session. One-on-one with an adult he could be fine, but then when he had to reintegrate into the classroom he would start to misbehave. He was able to articulate what behaviors would lead to success for him, but then wouldn't carry them out. The Student would indicate that he knew that he was misbehaving, and was in control of his behavior. He would look her in the eye as he kicked the door, for example, or would smile as he was acting out.

The Student has very low self-esteem. If you pointed out a positive to the Student, he would then later misbehave. There were times when he looked like he was getting better, but he had a couple of hospitalizations that interfered with his making progress. There were times during the year when he expressed suicidal ideation. At one point, he attacked one of his home care workers, and shortly after he said that he wanted to be in the hospital because he felt he was unsafe.

In the RISE classroom, she saw Ms. Currier give the Student more challenging work and the Student refused to do it, as he did often. His behavior was interfering with his being able to display his academic talents. The Student was on a point system that was similar to those of the other students in that classroom. He liked having an incentive to earn points; some days he earned points and some days he didn't. The Student's medications were one thing that affected his success in the classroom; he was often tired and slept during class.

In addition to observing the Student in Ms. Currier's class, she also observed him on two occasions in the regular education setting. In Ms. McCallister's class, the Student was very disruptive. He was tapping his pencil, and then began loudly playing with toys he had in his pocket. When a neighboring student told him to stop, he loudly argued back. In the lunchroom, the Student argued a lot with other students, and engaged in regressive behavior (playing with his food, crawling on the floor, stealing food from others' plates). He eventually told her he didn't want to eat in the lunchroom or go to the playground anymore. He sometimes said he didn't want to go to Ms. Noone's classroom for math. He felt safer in Ms. Currier's class. In her social skills group she often included students without disability and they had a very hard time with the Student; they would tell her they would rather not participate because of the Student's behaviors.

She attended most of the Student's IEP Team meetings. She recalls there were conversations about the Student's inability to behave appropriately in the regular education setting. They were trying to figure out what was getting in the way of the Student being able to be in that setting, and it always came back to the Student's emotionality. The Student's grandmother

was very much aware that the Team had increased the amount of time that the Student was in the RISE classroom. The Student's grandmother had parent/teacher conferences and other meetings about the Student in that room, and Ms. Currier sent home progress notes and had many phone conversations with the Student's grandmother. She recalls being at meetings when the Student's grandmother was supportive of the Student being in Ms. Currier's class. She recalls hearing Ms. Currier describe to the Student's grandmother the daily schedule in her class and giving her a pamphlet regarding the RISE program. The Student's grandmother did express concern that the Student was learning behaviors from the other students in the class, but she believes the Student came into the class already having those behaviors.

12. During an interview conducted by the Complaint Investigator with Tammy Delaney, Ms. Delaney stated the following: She is the assistant director of special services for the District. She became aware of the Student in fall 2015 when she participated in a meeting (not an IEP Team meeting) with the Student's grandmother; the Student was coming back to live with her, and she was feeling upset and worried that she wouldn't be able to take care of him. The Student's grandmother said that family meetings hadn't been going very well. She told the Student's grandmother that the School would do its best to meet the Student's needs and to communicate with her. After that, she wasn't involved with the Student until she attended the IEP Team meeting on June 7, 2016. This was a continuation of the annual review meeting which started on May 31, 2016.

Ms. Currier brought the Student's progress reports to the meeting, as well as the daily notes and her behavioral data on the Student. The Student's grandmother said that she recognized the progress reports and daily notes. The Student's grandmother and the Complainant asked to see the amended IEP and Written Notices from September and October. Those documents weren't in the file maintained at the special education office (they were still at the School) so she wasn't able to share them at that time. She told them that she would be able to get the documents within a few days and would be happy to meet again to review them, but the Complainant was very upset and wouldn't let it go. The next day Ms. Currier sent her the documents and she sent them out to the Student's grandmother.

The Team determined to provide most of the Student's academic instruction and homeroom in the special education class, with the Student participating in one regular education reading class per day with behavioral support, as well as lunch recess and special classes in the regular education setting. The Student wants friends, but he lacks the skills to be in an environment that is less structured without falling apart. At the end of the year, he participated in "Step-up Day" in the regular education setting. After 20 minutes, he was asked to leave because he was being too disruptive. He is not being given academics below his level in Ms. Currier's class, he's just being given them in a different way. The Student has a very complicated home life, and there are issues with the management of his medication. There is much more to worry about with the Student than just the academics. In terms of the Student's safety and emotional needs, and what the Student has said himself about feeling safer in Ms. Currier's class, it was an appropriate placement.

At the beginning of the year, in the regular education setting, the teachers weren't keeping the kind of behavioral data that Ms. Currier started doing later. In that setting, school staff members don't want to call so much attention to a student having issues. There was a record



of the Student's incidents of aggression during this time. The concern wasn't that the number of incidents became so much greater, but that the intensity of the Student's behaviors became greater and more concerning. Ms. Currier wanted to give the Student the benefit of the doubt and keep him in the regular education setting as much as possible, but when the intensity of his behavior became greater and he began to share with her what was going on with him, the self-contained classroom gave the Student a place where he could express himself and be kept safe.

She doesn't believe that the Student's grandmother didn't know that the Student was spending most of the day in Ms. Currier's classroom. The Student's grandmother was in the School many times talking with Ms. Currier about the Student and also for reasons relating to the Student's siblings. She had to have known which classroom the Student was in.

When the Student returned to the School from Spring Harbor and from Sweetser, there was a lot of data and reporting that told them about the Student's behaviors and motivation and that informed the development of the Student's behavior plan. The Team didn't feel like they needed a functional behavior assessment.

With respect to the Advance Written Notice for the September 22, 2015 IEP Team meeting not having been sent seven days prior to the meeting, the meeting was at the Student's grandmother's request, as indicated on the Notice. Although it is clear that the Student's grandmother attended the meeting, the IEP coordinator should have gotten the Student's grandmother to sign a waiver, but she wasn't very good with paperwork details. She is no longer acting as an IEP coordinator. This may also be why there isn't a signed consent for initial provision of services to the Student, although it is clear that the Student's grandmother wanted the services, or a Written Notice for the September 22<sup>nd</sup> meeting. The IEP coordinator put all of her documents on a zip drive, and the Written Notice could have been one of those documents, but the zip drive didn't work. Likewise, there does not seem to be an excusal form for the non-attendance of a regular education teacher at the October 23, 2015 meeting.

There is no Advance Written Notice for the October 23<sup>rd</sup> meeting because it was not a planned meeting. The Student had been violent that day and had been suspended for two days. When the Student's grandmother came to the School to pick up the Student, a meeting was convened and the Student's grandmother attended. A Written Notice was prepared for that meeting. The protocol for a Written Notice is that it is mailed to the parent or guardian on the same day it is prepared. The Written Notice indicates on its face that it was mailed to the Student's grandmother on November 5<sup>th</sup>, along with a copy of the amended IEP. Those dates wouldn't have been entered without the documents having been mailed.

The annual review meeting was held beyond the expiration date of the IEP because the case manager hadn't realized the IEP had expired. The new IEP has the May 31, 2016 date, even though the meeting was continued to June 7, 2016, because the case manager thought it should be dated for the date the annual review began.

She doesn't know why the Student's 3<sup>rd</sup> grade report card has no academic grades on it.

13. During an interview conducted by the Complaint Investigator with Barbara Noone, Ms. Noone stated the following: She is a fifth grade teacher at the School. She made a connection with the Student when he was in second grade, and the Student would come to her classroom for a few minutes when he needed to regroup emotionally. Starting in fall 2015, coming to her room was used as a reward for the Student. The intention was to give him the idea that he could be successful in a regular education classroom, and his behavior was generally appropriate. He raised his hand and participated in class discussions. He was given a seat at her desk, and didn't really socialize with the other students. They were two years older and a few inches taller than he was, so he tended not to try to antagonize them as he admitted that he did with other children. He's so smart that he can get anyone going within 30 seconds.

She initially gave him fifth grade math work, but it was beyond his capability so she looked for other things he could work on. He sometimes fell asleep in her classroom. Some days he would say something like "I'm not having a good morning" and choose not to come to her room. She believes that he belongs in the behavior classroom, but would like him to have the chance to attend one regular education class with behavioral support. His issues are around getting along with his peers.

14. During an interview conducted by the Complaint Investigator with Lori Coleman, Ms. Coleman stated the following: She is a teacher of the gifted and talented at the School. At the beginning of last school year, the principal of the School asked her to evaluate the Student, thinking that his problem behaviors might be because he's bored. She was familiar with the Student's family because his siblings were in her program. She did some testing of the Student and got teacher recommendations, and brought that information to the gifted/talented advisory committee which was the usual protocol for designation of someone as gifted/talented. The committee decided against designating the Student. He is very bright, but his scores were not that high. She's not sure how valid the scores are because the Student's behaviors get in the way, and they interfere with his being able to commit to doing well.

Although the Student wasn't designated for her program, she allowed him to sit in with his gifted/talented peers for their weekly literacy meetings as an opportunity for him to practice social skills. He seemed capable of the literacy work, but his behavior impacted his ability to be successful. He made underhanded and manipulative comments which made the other students feel bad about themselves. He often took over the class discussion, bringing group conversation to a halt. Other students didn't want to be with him.

She agreed with other staff members that his programming needed to focus on his acquiring social skills. If he were in a regular education class of 20 or more students, she believes that the teacher's focus would end up being on the Student's social behaviors.

15. During an interview conducted by the Complaint Investigator with Jill Fletcher, Ms. Fletcher stated the following: She is a case manager for Pathways of Maine, and had the Student on her caseload from the time the Student was in Kindergarten until the end of September 2015. In spring 2015, the Student was being unsafe in the home and in school, leading to his being hospitalized at Spring Harbor. After Spring Harbor, the Student was living at the Sweetser Family Focus program. The following fall, the Student was

transitioning back to school and from Sweetser Family Focus to the Student's grandmother's home.

She attended the September 22, 2015 IEP Team meeting, which was also attended by the Student's grandmother. The Student's teachers reported that the Student had been engaging in incidents of aggression targeted at other students and was struggling with attention. The School staff was reworking the Student's behavior plan, trying to get it better aligned with the Student's needs. They were trying to find a plan that would challenge the Student academically, as testing showed he had abilities there, but that also addressed his behaviors. The Student was used to getting a lot of attention for his behaviors. The Team built into the Student's program the availability of computer time as an incentive for appropriate behavior, and the opportunity to go to the special education classroom when he needed to regroup. She thought the Student's grandmother was comfortable with the plan. There was a teacher, Ms. Fullerton, who was committed to making the plan successful, but then Ms. Fullerton went out on extended medical leave.

After that meeting, there was a shift to more intensive services in the home, and a different case manager took over. She was still the case manager for the Student's siblings, however, so she still was in contact with the family. She had the impression that the new case manager was sometimes working directly with the School without involving the Student's grandmother.

16. During an interview conducted by the Complaint Investigator with Deanna Enis, Ms. Enis stated the following: She is a DHHS caseworker, and started working with the Student in May 2016. She performed an assessment as to whether there was abuse or neglect of the Student in the Student's grandmother's household, and found that there was high-severity emotional abuse of the Student by the Student's grandmother. DHHS obtained a preliminary protective order in mid-July 2016, removed the Student from the Student's grandmother's home and placed him in his mother's home under DHHS custody. School was a significant component of her assessment, in that she found that the Student's behaviors in school resulted in significant part from what was going on in the home, and the behaviors prevented the Student from being in the regular education setting. She was concerned that the Student's behaviors were keeping him from being in a setting appropriate for his intellect. She attended the IEP Team meeting on June 7, 2016. Reviewing the Student's behavior data, she saw many incidents of aggression that mirrored incidents occurring at home; things that the Student experienced at home carried through to school.

When she first became involved with the family, the Student's grandmother was not using any family supports and was fairly isolated. At her encouragement, the Student's grandmother decided to use some of those supports, including reaching out to the Complainant who until that point had not been involved at all with the Student. The Student's grandmother knew that the Student was in the special education classroom, and although the Student's grandmother knew that the Student had an IEP she was unable to find it. She did not find that the Student's grandmother was a reliable reporter; she claimed that she didn't have an IEP placing the Student in the special education classroom, but she had to have known about that placement – all of her communication with the School was through Ms. Currier.

17. During an interview conducted by the Complaint Investigator with [REDACTED], Ms. [REDACTED] stated the following: She is the Student's great aunt, one of four sisters to the Student's grandmother. All the sisters live in Sanford, and the family is very close. Every week she brings over food to the Student's grandmother's house and spends some time visiting. This spring, the Student's grandmother told her she really needed help, that she couldn't go through another school year like the last one, and she agreed to spend more time with the Student over the summer. She hasn't seen any problem behaviors when she is with him. She knows he struggles with his sisters at home. He has had a lot of trauma in his life, and was recently reintroduced to his mother who abandoned him twice. At home, there are three children all of whom have these issues and so there's a lot of attention seeking behavior.

She attended the IEP Team meetings in May and June 2016. At the May 31<sup>st</sup> meeting, she asked Ms. Carrier what she did with the Student academically. She responded that academics are on the back burner. There were no progress reports or teacher reports about the Student's academic progress at the meeting, and they couldn't produce the Student's IEP. She believes that the Student's behaviors at the School were the result of his being in the wrong setting. The Student wasn't getting any academics and there were also eight other students all trying to maintain good behavior. If the Student was engaged in academics he would be behaving appropriately. When the Student was in Ms. Noone's classroom he was appropriate, did his work, didn't hurt anyone and didn't bother anyone. He was also successful in the gifted/talented classroom. It's clear that when the Student is in the regular classroom with a teacher that responds to him he is successful.

After the May 31<sup>st</sup> meeting, she had obtained the Student's IEP (which the Student's grandmother knew nothing about and hadn't helped to develop) and it said that the Student was to be in the regular education classroom 85% of the time. At the June 7<sup>th</sup> meeting, when she confronted the School staff with the original IEP, they said that there had been two amendments to the original IEP (which the Student's grandmother knew nothing about), but they wouldn't show them those amendments. There was nothing in the Student's records that was signed by the Student's grandmother, even for the original IEP. At the June 7<sup>th</sup> meeting, the School staff wouldn't listen to her or the Student's grandmother, and wouldn't consider things such as the Student's success in the regular classrooms. They ended the meeting and left, even though she and the Student's grandmother wanted to continue discussing the Student's placement and the missing records.

## **VI. Conclusions**

**Allegation #1:** Failure to provide advance written notice to the Student's legal guardian of IEP Team meetings in fall 2015 at least seven days prior to the meeting in violation of MUSER §VI.2.A

### **VIOLATION FOUND**

An Advance Written Notice for the September 22<sup>nd</sup> meeting was sent to the Student's grandmother four days in advance of the meeting, short of the required seven days' notice. The meeting was convened at the grandmother's request, however, and she attended the

meeting. The purpose of the requirement is to ensure that a student's parent or guardian has full opportunity to attend the meeting. Although the District should have obtained the grandmother's waiver of her right to have seven days' notice, the fact that she requested and attended the meeting constitutes an implied waiver of that right.

As for the October 23<sup>rd</sup> meeting, no Advance Written Notice was sent because the meeting was unplanned, having been convened in response to the Student's extreme behavior on that day. Again, the District should have obtained the grandmother's waiver of her right to have seven days' notice, and she could have declined to attend the meeting at that time. As she attended the meeting and agreed to the amendments to the Student's IEP, however, there was again an implied waiver.

As the Student's grandmother's participated in the two meetings without protest of the shortened notice period, there was no deprivation of any substantive educational right associated with these technical violations.

**Allegation #2:** Failure to provide written notice within a reasonable time after IEP Team meetings in fall 2015 and at least seven days prior to the date when actions proposed by the District were to be implemented in violation of MUSER App. 1, 34 CFR §300.503 and 34 CFR§ 303.403

**VIOLATION FOUND**

No Written Notice of the September 22<sup>nd</sup> meeting was produced by the District, although there was evidence in the form of an internal email and reports of interviewees that the meeting took place. The Written Notice serves the important function of describing for the parent or guardian all those determinations reached at the meeting and the basis upon which they were made, and provides for the parent or guardian the opportunity to seek a due process remedy prior to the implementation of those determinations in the event the parent or guardian disagrees with such proposed action. As there was no evidence that the Student's grandmother disagreed with any of the determinations made at the meeting, the failure to provide this notice did not constitute a deprivation of any substantive educational right.

The District did produce a Written Notice for the October 23<sup>rd</sup> meeting, which indicates on its face that it was mailed to the Student's grandmother, along with a copy of the amended IEP, on November 5<sup>th</sup>. With respect to the assertion that the Student's grandmother was surprised to learn on May 31<sup>st</sup> that the IEP had been amended to change the placement of the Student so that he received all of his academic instruction in the special education classroom, this was belied by the reports of several of those interviewed that the grandmother was frequently in the School and in Ms. Currier's classroom where she greeted the Student, and that the great majority of her communication with the School was with Ms. Currier and not with regular education teachers.

**Allegation #3:** Failure to fully and adequately implement the Student's IEP with respect to the Student's placement in a regular education classroom in violation of MUSER §IX.3.B(3)

**NO VIOLATION FOUND**

This allegation is based on the premise that the Student's IEP developed on May 5, 2015 remained in effect during the school year, and required that the Student be placed in the regular education classroom for 85% of the school day. The information obtained through the investigation, however, indicates that the IEP was amended with respect to the Student's placement as a result of both the September 22<sup>nd</sup> and October 23<sup>rd</sup> meetings, and that the District complied with the amended IEP with respect to placement.

**Allegation #4:** Failure to develop a behavior plan for the Student, using positive behavioral interventions and supports and other strategies, to address the child's behavior issues, in violation of MUSER §IX.3.C(2)(a)

**NO VIOLATION FOUND**

Ms. Currier described a behavior plan for the Student that was in effect at the beginning of the school year involving a behavior sheet based on the Student's behavior goals, with privileges contingent on performance and review of his behavior with him when problem behaviors occurred. The plan was modified in response to the Student's request to have a plan that was similar to those of the other students in her class, and continued to be further modified during the school year in response to his behaviors and with input from two behavior consultants. The District also supplied to the complaint investigator daily behavior data sheets and summaries maintained by Ms. Currier throughout the year.

**Allegation #5:** Failure to provide requested education records within 45 days of the Legal Guardian's request in violation of MUSER §XIV.3

**NO VIOLATION FOUND**

MUSER §XIV.3 provides that a school unit must provide a parent or guardian with access to a student's educational records "without unnecessary delay" but in no case more than 45 days after the request to review those records. In this case, the Student's grandmother, then the legal guardian, requested records on June 3<sup>rd</sup>. Despite having been advised that the records would need to be compiled and copied and would be ready on June 6<sup>th</sup>, Ms. [REDACTED] appeared at the District special education office on June 3<sup>rd</sup> and demanded the records. The records provided on that date were admitted by the District to be incomplete, but delivery of incomplete records two days after receiving the request clearly does not amount to unnecessary delay and was well prior to 45 days. There was no indication that the grandmother did not eventually have all the requested records within that time frame. To the extent that there were items missing from the Student's file that the grandmother expected to find, the District cannot provide access to records that they do not have.

**Allegation #6:** Failure to provide education in the least restrictive environment by placing the Student in a self-contained behavioral classroom in violation of MUSER §X.2.B

**NO VIOLATION FOUND**

The IDEA has stated an unambiguous preference for having students be educated with their non-disabled peers to the "maximum extent appropriate." See MUSER §X.2.B. See also *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). To determine whether an IEP appropriately

placed a student in the least restrictive environment, the issue is "whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child." *P. ex rel. Mr. & Mrs. P. v. Newington Bd. of Educ.*, 546 F.3d 111, 120 (2d Cir. 2008). In considering this, several factors must be considered, including: "(1) whether the school district has made reasonable efforts to accommodate the child in a regular classroom; (2) the educational benefits available to the child in a regular class, with appropriate supplementary aids and services, as compared to the benefits provided in a special education class; and (3) the possible negative effects of the inclusion of the child on the education of the other students in the class." *Id.* If the disabled child's inclusion in a regular class excessively disrupts the class or requires so much of the teacher's attention that other students are ignored, a general education placement may be inappropriate. *Oberti v. Bd. of Educ. of Clementon Sch. Dist.*, 995 F.2d 1204, 1217 (3d Cir. 1993).

The Student began the school year spending all but 60 minutes a day in the regular education setting, with a behavior plan, check-ins and motor breaks, and weekly social work services. Despite those accommodations and services, the Student engaged in seven assaultive incidents with other students during the first seven weeks of school, culminating in his being suspended on October 23<sup>rd</sup> for stabbing another student in the head with a pencil. In addition to the physically assaultive behavior, there were also reported incidents of classroom disruption and verbally assaultive behavior.

Ms. Currier, Ms. Cyr, Ms. Noone and Ms. Coleman all had the opportunity to observe the Student in the classroom, and all spoke of the Student's struggles to connect socially with his peers and of the extent to which his social skills deficits and emotionality both interfered with his learning and disrupted the classroom for the other students. The suggestion by Ms. [REDACTED] that the Student's problem behaviors were the result of his not being challenged academically in Ms. Currier's class were refuted by his teacher's reports of his often being unwilling to engage with more challenging schoolwork and of the appearance of his problem behaviors in regular education classrooms.

In sum, the determination of the Student's IEP Team to place the Student in the special education classroom was reasonably based on reports of the Student's struggles to benefit from his participation in the regular education classroom, despite the provision of accommodations and supports, and of the extent to which he disrupted those classrooms. The facts that the Student was given the opportunity to spend time in Ms. Noone's and Ms. Coleman's classrooms and will next year be receiving reading instruction in a regular education classroom with adult support demonstrate that the IEP Team is making reasonable efforts to support the Student to move towards increasing his time in the mainstream.

**Ancillary Allegation #1:** Failure to review the Student's IEP at least annually in violation of MUSER §IX.3.D(1)(a)  
**VIOLATION FOUND**

The effective date of the Student's IEP in effect at the start of the school year was May 5, 2015, and thus was required to be reviewed no later than May 4, 2016. The annual review meeting did not take place until May 31, 2016.

**Ancillary Allegation #2:** Failure to obtain the informed consent of the Student's legal guardian before providing special education and related services to the Student in violation of MUSER §V.1.A(4)(a)(ii)

**VIOLATION FOUND**

MUSER §V.1.A(4)(a)(ii) requires that a district obtain informed consent from a parent or guardian before the initial provision of special education and related services. The state-required Written Notice form contains a space for the signature of the parent or guardian evidencing that consent. Neither the Written Notice of the May 5, 2015 meeting, the meeting at which it was determined that special education and related services would be provided to the Student, nor any other document provided to the complaint investigator, contained the signature of the Student's grandmother representing her consent to services. There was, however, every indication that the grandmother was aware that services were being provided and did not object to same.

**Ancillary Allegation #3:** Failure to include a regular education teacher as a necessary member of the IEP team for the meeting of October 23, 2015 in violation of MUSER §VI.2.B(2)

**VIOLATION FOUND**

MUSER specifies that a regular education teacher be included as a member of the IEP Team whenever the student is, or may be, participating in the regular education environment. Particularly as the meeting of October 23<sup>rd</sup> was to discuss whether the Student should continue to receive his academic instruction in the regular education environment or, alternatively, receive that instruction in the RISE classroom, it was critical that a regular education teacher participate in that discussion. Acknowledging that the meeting was impromptu in nature, nevertheless, if it was not possible to obtain that participation from a regular education teacher the meeting should have been scheduled for the next day or as soon as a full IEP Team could be secured.

**VII. Corrective Action Plan**

The District will be required to, within 60 days from the start of the 2016-17 school year, conduct a training session for all special education staff regarding, at a minimum, the following aspects of the special education process: the proper use of the Advance Written Notice and Written Notice; the requirement to obtain the written consent of the parent or guardian prior to the initial provision of special education and related services; the composition of the IEP Team; and the requirement to conduct annual review of the IEP. The School shall document its fulfillment of this plan by providing to the Department, with a copy to the Complainant; identification of the individual(s) conducting the training; the agenda of the training session; a list of all staff members in attendance; and a copy of any materials distributed as part of the training session.