

Complaint Investigation Report
Parent v. Augusta

May 14, 2009

Complaint #09.072C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Parent
Address
City

Respondent: Cornelia Brown, Superintendent
12 Gedney St.
Augusta, ME 04330

Special Services Director: Donna Madore

Student: Student
DOB: XX/XX/XXXX

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on March 24, 2009. The Complaint Investigator was appointed on March 25, 2009 and issued a draft allegations report on April 3, 2009. The Complaint Investigator conducted a complaint investigation meeting on April 16, 2009, (originally scheduled for April 14, 2009 and continued at the request of Augusta Public Schools (the "District")) resulting in a stipulation. On April 23, 2009, the Complaint Investigator received 120 pages of documents and a list of proposed interviewees from the Complainant, and a 3-page memorandum and 52 pages of documents from the District. Interviews were conducted with the following: Donna Madore, special education director; Jan Rollins, assistant principal; Jeff Janell, case manager; Linda Herschenfeld, school counselor; Holly Daigle, teacher; Bruce Hunt, teacher; Margo Ogden, teacher; Sharon Beaver, teacher; Martha Baston, special education teacher; Roberta Masse, educational technician; Deb Castonguay, educational technician; Beth Hartman, school nurse; David Allender, psychologist; Kate McLinn, Ph.D., psychologist; Cheryl Trow, lunch room monitor; Paula Kendal, lunch room monitor; 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 (Other Health Impairment, Emotional Disturbance and Specific Learning Disability). This complaint was filed by the student's mother (the "Parent"), alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to fully and adequately implement the student's IEP with respect to provision of one-on-one aides in violation of MUSER §IX.3.B(3);
2. Failure to fully and adequately implement the student's IEP with respect to making therapeutic interventions in violation of MUSER §IX.3.B(3).

V. Complainants' Proposed Resolution (from Dispute Resolution Request form)

1. The District must consistently follow through on providing the necessary services for the Student, services that effectively deal with the Student's needs.

VI. Stipulations

1. At a meeting between the Student's parent and the school staff on January 29, 2009, the staff agreed to provide one-on-one support for the Student at all times during specials, recess and lunch.

VII. Summary of Findings

1. The Student lives in Augusta with the Parent, her half-sister and the Parent's boyfriend, and is presently attending xx grade in the Functional Daily Living Skills program at Farrington Elementary School. She received early intervention services when very young and began receiving special education services under the category Multiple Disabilities when she entered kindergarten.
2. During her life, the Student has been psychiatrically hospitalized on ten separate occasions, most recently on June 14, 2008, due to increased aggressive and out-of-control behavior. The hospitalizations have lasted for a minimum of four to six weeks. At the time of her most recent hospitalization, she was discharged with the following diagnoses: Mood Disorder NOS, Pervasive Developmental Disorder, Attention Deficit Hyperactivity Disorder, and Mild Mental Retardation
3. The Student received a psychological evaluation on December 30, 2008 from Leah Baer, Psy.D. Dr. Baer's diagnoses were as follows: Autistic Disorder, Mood Disorder NOS, Reading Disorder, Mathematics Disorder and Mild Mental Retardation.

4. The Student's IEP dated May 21, 2008 provided for, among other things, staff support when the Student was on the playground and at lunch, or transitioning to and from "specials" (art, music, physical education, etc.). A Behavior Intervention Plan ("BIP") was attached to the IEP that identified target behaviors as: bolting, assaults, threats (non-verbal or verbal) and non-response to direction. The BIP contained a "working plan" for eliminating the target behaviors, consisting of: 1) heading them off; 2) providing direct instruction prior to unstructured periods; 3) having meaningful consequences (school rules); and 4) a positive behavior plan (to reward incident-free unstructured periods). "Heading them off" is described as "always best" and is to be implemented by "detecting early signs of agitation exhibited by [the Student] such as: looking down, clenching fists, and/or a threatening facial expression." Under the plan, staff needs to make a therapeutic intervention when those early signs are detected. The BIP contains descriptions of such interventions, with suggested scripts for use in these situations.

5. On October 24, 2008, the Student was in physical education class (with a substitute teacher) when she became upset and punched another student in the back. She then returned to her life skills classroom where she flipped over a book case and threw some desks. The room was evacuated and the Student went with her aide, who was able to deescalate her, to the Principal's office.

6. At a staff meeting held to review the October 24, 2008 incident, the staff agreed to amend the IEP to provide one-on-one support during a specials class, instead of just when she was transitioning to or from the class, whenever there was a substitute teacher for the class.

7. On November 12, 2008, the Student was at recess when she apparently formed the impression that one boy was challenging another boy, and she came to the second boy's defense. The Student's aide tried to de-escalate the Student, and they began to move to the Student's "safe place" on the playground. Before they could get there, the Student turned and charged at the first boy. She became out of control, repeatedly body slamming the boy and a lunch monitor, and then throwing the school principal, Ms. Neighoff, to the ground. The incident resulted in a one-day suspension for the Student.

8. On January 12, 2009, the Student was in art class when she became upset over something she thought she heard another student saying. While she was confronting that student, another student laughed and the Student went over to that student, grabbed him and kicked him in the leg.

9. At a staff meeting held on January 29, 2009 to review the January 12, 2009 incident, the staff agreed to amend the IEP to provide one-on-one support for the Student at all times during special classes, instead of just when she was transitioning to or from those classes.

10. On February 24, 2009, the Student was at recess when she got angry after another student ignored her. Other students became involved, and the Student ultimately charged at a group of them and threatened one student with her fist. The Student's aide attempted to intervene with the Student throughout the incident but the Student wouldn't respond.

11. On March 19, 2009, the Student was at recess when she became involved in an altercation between a 6th grade student and some 2nd grade students. The Student grabbed and pushed some of the 2nd grade students. The aide (a substitute) reported that she had turned her head away from the Student for only a moment, and that the incident occurred in a matter of seconds.

12. On April 6, 2009, the Student was in her life skills classroom when she became upset with another student. While the Student's aide was attempting to intervene, the Student shoved a chair toward the aide, striking her in the foot.

13. On April 29, 2009, while she was at home, the Student threatened her behavioral specialists with a golf club, caused some property damage to the home and then tried to run away from home. Afterwards, the Student told the Parent about an incident that had occurred on April 28, 2009 that resulted in the Student crying. The incident had not been reported to the Parent.

14. During the first 3 quarters of the current school year, the District documented: 26 occasions when the Student was presented with a provocative situation but made good choices and displayed responsible behavior; 13 occasions when the Student made an inappropriate response to a provocative situation, followed by de-escalation and processing with staff members; and 5 occasions when the Student's behavior necessitated a referral to the principal's office (including one suspension from school).

15. During an interview conducted by the Complaint Investigator with Jeff Janell, Mr. Janell stated the following: He is a case manager at Youth and Family Services, and has been the Student's case manager for about two years. He has never done direct observation of the Student at her school, but has spoken with various staff members about the Student's behavior incidents. The Student is a highly challenged and challenging child, and needs minute-by-minute support. That is not to say that she requires intervention every minute, but that things can be going smoothly and then very quickly and suddenly unravel. The Student's behavior can "turn on a dime."

He believes the Student's behavior plan is a good one, and he knows that a lot of work has gone into it. He believes the staff people implementing the Student's behavior plan are not being sufficiently effective and are not sufficiently experienced in working with students like the Student. He believes the Student's behavior plan is unlike most of the behavior plans with which the staff people in the District are familiar; there is less emphasis on reward and punishment. Once the Student has escalated, imposing consequences will only make things worse.

It is his impression that the incidents tend to occur when there are substitute teachers or aides in place of regular staff, or when someone tries to intervene who has not been trained to implement the plan. When incidents occurred, he believes it was because the aide didn't respond quickly enough or with the degree of therapeutic skill required. The staff needs to not make mistakes. The District has responded well when mistakes were made, but they need to be more proactive rather than reactive.

The plan requires staff to recognize certain emotional cues from the Student and to intervene before she escalates, rather than reacting to outbursts of behavior. He doesn't know how often the staff is making these interventions successfully, but it's not happening when the incidents occur. In this context, an 85% to 90% success rate is not good enough. That rate won't allow the Student to be successful in her current placement. The Student has already turned off a lot of her peers due to her out-of-control behavior.

16. During an interview conducted by the Complaint Investigator with David Allender, Mr. Allender stated the following: He is a licensed clinical professional counselor, and has been working with the Student for almost 4 years. Currently, the Student sees him twice a week right after school. On several occasions during this school year he has had to decompress the Student after an incident at school. He has not observed the Student in school, but bases his opinions on what he has seen and heard from the Student and from the Parent. The Student can be very verbal on these issues.

The school staff this year is not doing as well with the Student's behavior as last year. The Parent is very good at de-escalating the Student, and the District has brought the Parent in to help train staff on how to recognize when the Student is starting to lose control and how to react to her. It seems the staff is not capable of being trained adequately or of performing adequately.

He believes that the Student needs the type of educational program that has therapeutic interventions woven into it. If the interventions are implemented in a timely fashion, the Student can make some real academic gains. The Student can handle her behavior adequately if she gets help early enough. Her aides need to know her and intercede in time to avoid escalation. The Student can sometimes escalate very rapidly and without warning, but this is not her main presentation. Usually, one can anticipate when things are headed in a bad direction. There are many "tells" that the school doesn't seem to be picking up. Although the Student is not wandering off on her own this year as has happened in the past, so school staff seem to be following her more closely, they're not necessarily doing anything to intervene. There doesn't seem to be anyone consistently monitoring the Student.

In his opinion, of the 6 incidents this year, 4 or 5 could have been avoided with timely intervention. Many of the incidents seemed to happen when an aide "just looked away for a moment." One incident involved the Student getting worked up in a "specials" class, and then being allowed to walk back to her classroom without an aide attempting to intervene or even to alert the classroom teacher as to the Student's elevated distress level. Another incident involved a struggle on the playground over a pen that a student found. The dispute went on for at least a couple of minutes, and could easily have been short-circuited by a staff member taking away the pen or otherwise resolving the dispute before the Student became involved. Someone should have been paying attention.

Due to the recurrence of these incidents, the Student has been losing time from the classroom: sitting with the school counselor or the school nurse; being sent home early; or even being suspended. She also has lost privileges such as recess, which the Student really needs because she is so active.

17. During an interview conducted by the Complaint Investigator with Martha Baston, Ms. Baston stated the following: She is a special education teacher and has had the Student in her class this year. The Student currently has an educational technician “attached to her hip” at all times. If the regular educational technician (Ms. Masse) is out, they will use a substitute technician. Someone is available to the Student at all times. When the Student is at “specials” or at recess, the educational technician is there to support only the Student. At lunchtime, there may be other students at the same lunch table as the Student, but they don’t have provision of support as part of their IEPs.

At the beginning of the year, there was a staff meeting, attended by the Parent, to discuss use of educational technicians. Everyone, including the Parent, agreed that an educational technician should support the Student in transitions to and from “specials,” but that it wasn’t necessary to have them stay in the class with the Student. Then there was an incident in October where there was a substitute teacher in the Student’s physical education class. The Student became angry during the class and stormed out and came back to her classroom where the Student threw some furniture around. As no educational technician was present during the physical education class, there was no one to accompany the Student back to the life skills classroom, to intervene with the Student or to give her warning of the Student’s condition. Another staff meeting was held and it was decided that whenever a substitute teacher was in a specials class, the educational technician would stay for the class. Later in January another incident occurred in art class, and the staff and the Parent agreed that the educational technician would always remain in the class.

She has observed the educational technicians following the behavior plan at all times. Before the Student goes to activities, the educational technician will always give the Student verbal reminders. The Educational technicians will catch the Student when she’s agitated or defensive and will intervene. For example, one day the Student came into her classroom and saw a necklace that she had given to a boy she likes around the neck of another girl. The educational technicians were proactive in recognizing the situation and intervened, helping the Student to deal with it without escalating. They persuaded the girl to put the necklace away, and then took the Student to the school counselor where they validated the Student’s feelings and discussed how the Student could handle the situation. They helped the Student write a letter to the boy telling him how she felt. She has also observed the educational technician taking the Student for a walk outside the classroom and talking with her when the Student was becoming agitated.

She thinks the Student experiences two types of escalation. In the first, it is very clear from the Student’s body language that she’s becoming upset. The educational technicians are good at reading these cues and taking appropriate action. Sometimes this happens several times in a single day. The second type usually occurs in unstructured situations (lunch or recess), where the Student will misperceive something in the Student’s environment. For example, some students may be fooling around and the Student might misinterpret their behavior and believe that one of the students is being hurt or threatened. The Student will then become protective. In these situations the Student escalates very rapidly, and there is no way to anticipate it.

Regarding the incident on April 28, 2009, one of the boys in the Student's class said to one of the educational technicians that he wanted to play with his girlfriend at recess and not with the Student. The Student started crying. She, Ms. Masse and Ms. Herschenfeld all processed the incident with the Student and she seemed to handle it really well. Her feelings were hurt but she handled it very appropriately. Afterwards, the Student went outside to recess and seemed happy. The Student had a good day the next day as well. She spoke to the Parent about the incident the following day, but she never said that the Student covered her ears and put her head down; the Student didn't do those things.

She recognizes that there have been 6 aggressive incidents this year, but on the other hand, the Student hasn't needed hospitalization this year. Last year the Student was hospitalized twice.

18. During an interview conducted by the Complaint Investigator with Linda Herschenfeld, Ms. Herschenfeld stated the following: She is a school counselor, and has been at Farrington Elementary School for the last 15 years. The Student is in her second year at Farrington. She thinks the Student is a "cool kid" and likes her a lot. She thinks the Student is under tremendous pressure, a complicated child with a whole mix of diagnoses. She believes the Student sometimes distorts reality and misreads social situations.

Unstructured times (lunch and recess) are where behavior problems happen for most students, including the Student. The Student always has someone with her for support, but that person is not necessarily right next to her. They might be 5 feet away. The educational technicians try to strike a balance between giving the Student enough support and letting her have a normal social life. They try to provide support when things become unclear, but allow the Student to have social time with her friends. The staff has analyzed the Student's behavior and concluded that sometimes standing right next to the Student could actually cause the Student to escalate.

She has seen the interventions taught to the staff by Dr. McLinn being used consistently by the staff. Sometimes they have worked and sometimes they haven't. There have been occasions when staff people have called her saying the Student "looks like she's going to blow," and she's been able to avoid the Student's escalation. It's not a perfect system, however, in that not every escalation can be predicted and avoided. There is no therapeutic intervention that can stop some people from going from 0 to 1,000 in 2 seconds. What the staff has put in place with the Student makes this less likely to happen. The Student's educational technicians handle things in a sensitive manner and in the therapeutic manner in which they have been trained. She believes the staff has used appropriate therapeutic interventions 95% of the time, but they can't predict with certainty what is going to work in every situation. Not everything can be anticipated.

With regard to the incident of April 28, 2009, Ms. Masse came to her room and explained that the Student was in class when a boy in the class (the boy to whom the Student had given a necklace that he then gave to another girl in the class) told Ms. Masse, within the Student's hearing, that he wanted to be alone with his girlfriend at recess and to keep the Student away from them. Ms. Masse said the Student had at first been calm, then became upset and started

to cry. She went to the classroom and the Student said she wanted to go to the office and call the Parent. She convinced the Student to go to her office instead, and told her she could call the Parent from there if she still wanted to. Ms. Masse came to her office too. The Student sat down, but didn't call right away. She reminded the Student about the incident with the necklace, and how they had talked about boys being less mature and insensitive, and how it turned out that the boy hadn't realized he was being hurtful - he was just thoughtless. The Student said she remembered, and it seemed to be important to her to think that the boy hadn't been purposefully mean. She told the Student that the boy's behavior was not okay, and that school staff would talk to him about it. The Student did a great job with processing this; the Student interacted with them and seemed to understand. She went back to the classroom with the Student, and it was almost recess time. She suggested to Ms. Masse that they keep the boy in at recess, talk about his behavior and give him time to think about how he was treating other people. They then pointed out to the Student on the playground that she had maturely handled the situation and was outside enjoying recess, while the boy was inside considering the consequences of his behavior. The Student seemed really pleased. She thought Ms. Masse and the Student had both handled the situation really well, and that it couldn't have gone better.

19. During an interview conducted by the Complaint Investigator with Jan Rollins, Ms. Rollins stated the following: She is in her first year as the Assistant Principal at Farrington Elementary School. She believes that educational technicians are with the Student 100% of the time. She sees an educational technician with the Student all the time: at recess, in the hallways, in the classroom and in the cafeteria. She is not aware of any incident when there was no educational technician with the Student. She has been to two staff meetings after behavioral incidents involving the Student, and she never heard anyone say that the educational technician hadn't been close enough to the Student to intervene in time. She can recall an incident when the Student ran out of her class and into the office, but the educational technician was running right behind her. When the Student once ran out of the building, her educational technician was there right behind her. There has never been a time when an educational technician didn't know where the Student was.

She can recall a couple of incidents where she observed an educational technician intervening with the Student. Both times the educational technician was following the behavior plan: getting in front of the Student, trying to establish eye contact, saying "I see that you're bothered" and trying to calm the Student down. The first time it didn't work, and she became involved and asked the Student to come with her to the office. The second time the educational technician was able to calm the Student and get her to go walk with her.

She thinks Ms. Masse is very diligent and conscientious. She doesn't know what more Ms. Masse could be doing. Sometimes the Student is very hard to read, and one can't detect when the Student is being triggered. In those instances, she doesn't know if anyone could intervene successfully.

20. During an interview conducted by the Complaint Investigator with Carolyn Neighoff, Ms. Neighoff stated the following: She is in her fifth year as the principal at Farrington Elementary School. She has never seen the Student in a situation where there was not one-on-

one support available. She has never heard of an incident where there was not one-on-one support available to the Student. At the time of the November 12, 2008 incident, when the Student threw her to the ground, there was lots of support available. There have not been very many behavior incidents involving the Student this year, although there have been some, but there would have been more had the Student not been getting support. She doesn't recall hearing of an incident where there was a failure to intervene on the part of an educational technician.

21. During an interview conducted by the Complaint Investigator with Roberta Masse, Ms. Masse stated the following: She has been an educational technician at Farrington Elementary School for the last 7 years, and has been working with the Student for the past two years. Educational technicians are with the Student at all required times. She schedules with Ms. Castonguay (the other educational technician in the life skills classroom) which of them will be with the Student at which times. There have not been any times when an educational technician was supposed to be with the Student but was not there.

When the incident happened on November 12, 2008, she was with one of the recess duty monitors. She sometimes keeps a little distance between the Student and herself, so that the Student can have some social time. She never stops looking at the Student, however, and is constantly monitoring what's going on around the Student. That morning the Student was pacing the perimeter of the playground, as she often does. There were some boys behind the Student tossing a football. In an instant, the Student went on defensive with one of the boys, protecting another one of the boys. She went right over to the Student, saying "I know you're upset. Let's go over to your safe place." The Student started to walk with her, but then spun around and charged the boy. A lunch monitor came over to try and talk to the Student. The boy went behind the lunch monitor and the Student charged at the lunch monitor. She was talking to the Student the whole time. She got the Student to again walk away with her, and then a girl made a comment about the Student being "psycho," and the Student grabbed the girl by the hair. She got in between them, and then the principal came out and put her hands on the Student's shoulders to turn her around. The Student turned and threw the Principal to the ground. Other staff came out to try to de-escalate the Student. She kept trying to talk to the Student the whole time, but the Student wouldn't respond. It was like the student was looking through her.

On February 24, 2009, the Student was trying to get a boy's attention at recess. At first, it was just in a friendly, playful way, but then she heard the Student say something with anger in her voice. She immediately tried to intervene, saying "I can see that you're angry. You need to come with me." Then a girl made a comment and the Student put her fist up to the girl's face. She tried to get the Student to go to her safe place, but the Student wouldn't go, storming into the school building instead. This was typical, in that what started as innocent social interaction very suddenly became an incident. She's pretty good at reading the Student's body language, and gets involved as soon as she detects a sign that the Student is getting upset.

The Student can go a whole week or so without requiring intervention, but there have been many times during the year when she has made a successful intervention with the Student.

Recently, the Student became angry in the classroom. When the Student gets angry, she paces. She got the Student to go walk the hallways of the building with her. The Student asked to go get out her art project so she could work on it. She sat and talked with the Student while the Student worked on her project. The Student calmed down and they had a very enjoyable time.

Another time, a student sitting near to the Student reached out to grab a third student. Ms. Baston came over and reminded the first student about the class “no touch” rule. The Student became defensive and said “Nobody tells my friends what to do. He didn’t touch anybody.” The Student made her hands into fists and slammed them on the table. She said to the Student “I know you’re upset. Let’s go to your safe place.” The Student went out of the classroom with her and sat on a bench in the hall. The Student’s fists were still clenched. When the Student got up and stormed off to the library, she followed. The Student told her she wanted to be left alone. She backed off a little bit and started looking at some artwork on the walls. She knew some of the artwork was done by the Student. After a little while, the Student got up and came over to her. They looked at and talked about the artwork together. The Student got more and more relaxed. After a few minutes, she asked the Student if she was ready to go back to the classroom, and the Student said that she was. The Student said “Ms. Baston called me a liar.” She talked with the Student about how different people can have different views of a situation, and it doesn’t mean one of them is lying. The Student accepted that.

The incident when the Student went running from the building happened last year. There have been no incidents this year with the Student leaving the building.

22. During an interview conducted by the Complaint Investigator with Deb Castonguay, Ms. Castonguay stated the following: She has been an educational technician for 20 years, and has worked at Farrington Elementary School for the last 3 years. She is sometimes assigned to the Student. She works out a schedule on a rotating basis with Ms. Masse. There is support for the Student at all times. In home room, special classes or lunch, it will always be either her or Ms. Masse. She is not aware of any occasion when the Student was without support. She has not been directly involved in any behavior incident with the Student. She has had occasion to intervene with the Student. One time the Student decided to try to participate in some physical skill trials in physical education class (she was given the option to not do them) and the Student and one other student were unable to successfully complete them. Later on, the two students were verbally putting themselves down (“We suck”) and the Student was becoming upset. She intervened and told the students they shouldn’t put themselves down. She explained that everyone has different strengths. It was already too late, however, and the Student escalated. The Student made the choice to go to the nurse’s office.

23. During an interview conducted by the Complaint Investigator with Bruce Hunt, Mr. Hunt stated the following: He has been a physical education teacher at Farrington Elementary School for the last 5 years. He sees the Student for physical education once a week. The Student has always had an educational technician with her, at first just to drop her off and come get her, but now to stay with the Student for the entire class. The Student really enjoys physical education and he hasn’t had any problem with her. The educational technicians are

engaged with the Student while she is in his class, and they sometimes get involved in the activity with the Student. A couple of times, the Student has had a problem with team rules, and started to get upset. The educational technician stepped in and explained things to the Student and the Student calmed down.

24. During an interview conducted by the Complaint Investigator with Margo Ogden, Ms. Ogden stated the following: She has been an art teacher at Farrington Elementary School for the last 25 years. She sees the Student for art class once a week. The Student seems to enjoy art and she normally has no problems with her. The incident of January 12, 2009 was the only time in the last 2 years when there was a problem with the Student in her class. Prior to that incident, the Student was always accompanied by an educational technician when the Student came into and left her classroom; since the incident, there has always been an educational technician in the classroom with the Student for the entire class (although she was not teaching during most of February and March due to illness and can't speak to that period of time). She recently observed the educational technician intervening with the Student. The educational technician came up to her and quietly told her that the Student was upset and that they were leaving the classroom.

25. During an interview conducted by the Complaint Investigator with Beth Hartman, Ms. Hartman stated the following: She has been the school nurse at Farrington Elementary School for the last 5 years. She always sees Ms. Masse with the Student, and she doesn't believe that there is anyone connected with the Student who is not doing her job. She has seen Ms. Masse intervene with the Student. Ms. Masse can read her pretty well and is usually able to talk her down. If she can't, Ms. Masse sometimes calls her, because the Student listens pretty well to her. Ms. Masse has no problem calling for help; there is no ego involved.

The Student has had episodes this year, but overall she is maturing and is better able to calm herself down. The Student comes to her every day to get her medication, and this year the Student is sometimes allowed to come to her office to get her medication by herself. She just walks from the life skills classroom around the corner to her office, and only when she is having a good day. It is part of allowing the Student to grow up, and there's never been a problem with it. The Parent is aware of this and is okay with it. The Student has been a little more successful this year with friendly social interaction. She seems to understand a little better what is appropriate social behavior. She likes being helpful. She is also better this year at being able to say "I can't talk now," or "I can talk now."

26. During an interview conducted by the Complaint Investigator with Joan Alexander, Ms. Alexander stated the following: She is a lunch monitor at Farrington Elementary School, and sees the Student every day. At lunch, the Student sits at a table with a few other students. There is always an educational technician with her. She has never seen the Student on the playground without an educational technician nearby, usually Ms. Masse. The educational technician follows the Student around wherever she goes. She has seen the educational technician get in between the Student and other students, trying to calm the Student down or remove her from the situation. The Student can get angry in an instant. Sometimes the Student just takes off and the educational technician follows after her.

27. During an interview conducted by the Complaint Investigator with Judy Wildes, Ms. Wildes stated the following: She is a lunch monitor at Farrington Elementary School, and sees the Student every day. The Student always has an educational technician with her at the lunch table. Outside, there is always an educational technician following the Student around. She has seen the educational technician intervening with the Student, trying to make eye contact and talking to her calmly. Sometimes it works and sometimes it doesn't. In the November 12, 2008 incident, she was body slammed by the Student. She doesn't remember how the incident started. The educational technician was right there, trying to talk to the Student and calm her down.

28. During an interview conducted by the Complaint Investigator with Holly Daigle, Ms. Daigle stated the following: She teaches xx grade language arts at Farrington Elementary School, and this year has had the Student in her homeroom. This means the Student is in her classroom for about 10 minutes each day. When the Student is in her classroom, there is always an educational technician with her, and the educational technician accompanies the Student to the next class. There hasn't been a behavior incident involving the Student in her class or in her presence. She is familiar with the Student's behavior plan, and she has heard the educational technicians using the language from the plan (e.g., "You're starting to get upset. What's going on?").

29. During an interview conducted by the Complaint Investigator with Kate McLinn, Ph.D., Dr. McLinn stated the following: She is a psychologist providing consultation to the District, and was retained to assist with programming for the Student. She had been previously involved with the Student when the Student was xx years old and attending Gilbert School. Currently, she sees the Student for about 15 minutes every month, and observes the Student on the playground and in class. She coaches the staff on interventions, and she has applied the interventions with the Student herself. She has attended staff meetings to review a behavior incident involving the Student, and she has never heard of an incident where an educational technician was not present when she should have been. She never heard that the Student was alone because the technician had to step away, or was spread too thin.

There have been many examples of successful interventions by the staff. Ms. Herschenfeld told her that she thinks they have a really good team this year and are making progress in working together as a team and in applying the behavior plan. Ms. Herschenfeld also told her that she thinks the educational technicians are "really getting it" and are growing in terms of their skills.

There is a pattern in the Student's behavior that makes intervention with her difficult. Some days the Student comes to school and is irritable, so that the staff is continually de-escalating her. Other times, the Student seems to be fine, is engaged in peer interaction, and then suddenly goes "from 0 to 60" without warning. She has processed these incidents with the staff to look at what else the staff could have done, focusing on trying to look for cues. The behavior plan involves more, however, than just intervening to de-escalate the Student. They are trying to give the Student alternative strategies that she can use to avoid incidents. They process with her, asking "Do you want to be the kind of person who...?" and "What will happen if you...?" Part of the problem is that when the Student is not agitated, she doesn't

want to deal with this material, so they are working with the speech therapist on incorporating these lessons into scripted stories. Ms. Masse is working with the Student on these scripts.

Regarding the incident of March 19, 2009, the Student had very distorted perceptions. The 6th grade student thought he was handling things. It would have been great if staff could have read the Student's mind, but they saw a student who was handling things and couldn't have foreseen the Student's misperceptions and instant reaction. It wasn't a horrible outcome; there were no serious injuries and the Student wasn't suspended. The staff uses these situations to try and develop the Student's coping skills, encouraging her to ask herself: "Does this person really need my help?" "How can I find out if he needs my help?" The staff tries to give her steps to follow before immediately taking action.

She has seen real growth in the Student this year, displayed in the incident when the boy gave away to another girl the necklace that the Student had given to him. The Student was able to talk about her feelings and hear what staff told her about boys being less mature than girls, and sometimes being insensitive to others' feelings. The Student also was able to adapt to a new teacher this year. Her gains this year have been modest, but visible.

She read the report of Mr. Allender. She thinks that Mr. Allender should be very careful about using the Student as a reliable informant about what happens at school or even about her own mental state. She has had conversations with the Student about where the Student used to live, and sometimes that place is dramatically portrayed as wonderful, and sometimes dramatically portrayed as terrible. One day, she and Ms. Batson both had a particularly positive conversation with the Student. Later that day, another staff person said to the Student "I heard you had a nice conversation with Ms. Batson." And the Student answered "She hates me. She never talks to me." She would like better communication with Mr. Allender so they can stay on similar themes and messages with the Student. She would like the school's relationship with Mr. Allender to be less adversarial.

30. During an interview conducted by the Complaint Investigator with Donna Madore, Ms. Madore stated the following: She is the director of special education for the District, and is in her fifth year in that position. She is very familiar with the Student, as she provided speech services to the Student when the Student was younger. She doesn't recall ever being at a staff meeting to discuss a behavior incident involving the Student where there was agreement on the part of staff that the IEP hadn't been implemented correctly or the Student not handled properly.

She believes the staff is well trained to work with the Student. Ms. Castonguay has many years of experience, including previous experience working with students with emotional disabilities, and Ms. Masse has also worked in special education for many years prior to working with the Student. At the end of last year, there were three training sessions with Dr. McLinn attended by the Student's special education teacher, her educational technicians and the Parent. The District had to pay the staff extra, as well as pay Dr. McLinn, to attend these trainings. They discussed how to recognize the Student's signs of distress, how to perform a therapeutic intervention and what language to use with the Student. Dr. McLinn also explained the functions and the neurological components of the Student's behavior. Since

school began this year, Dr. McLinn has continued to work with the staff, individually and as a group, and has observed the staff working with the Student. As of March 21, 2009, Dr. McLinn had spent over 24 hours on staff training for the Student. In addition, all the District educational technicians attended training run by the Maine Support Network on the subject of behavioral interventions.

There are times when the Student displays signs she is becoming upset, and the staff knows what to do to deescalate the Student. There are other times, however, when there are no signs to warn the staff in advance. It's not that the staff isn't tuned in to the Student, it's that the Student just suddenly snaps without warning. With the incident of March 19, 2009, the Student misperceived what was going on. The Student tends to see herself as a super-powered savior. She even likes to read books with characters like that. The other students were roughhousing a little bit, but it wasn't a situation that appeared to require intervention by the staff. The Student took it upon herself to intervene. When they interviewed the student that the Student was "protecting" afterward, he said he wasn't in danger.

She believes that the Student has made some real progress this year. The point of the Student's IEP is not to manage her behavior, but to teach the Student new strategies and coping skills so she can manage her own behavior. She notes that in each of the first two quarters of this year, there were 5 documented examples of exceptional behavior by the Student, and in the third quarter there were 12 such incidents. She believes this demonstrates that the Student is learning new skills and is utilizing them. Some of the other positive things that have happened this year include that some of the Student's artwork was chosen for a student art show, and the Student won an award in a school-wide competition connected with African-American History Month.

31. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: She believes the District was not providing aides to support the Student at those times required under the IEP because, after behavior incidents involving the Student, she was told (usually by either Ms. Herschenfeld or Ms. Rollins) that the Student just showed up by herself in the office or in the school foyer. She was also told that, during some of these incidents, a lunchroom monitor or a recess monitor just turned their head for a moment and then the Student acted out. At the beginning of the year, the Student was chased by school staff all the way to the street.

With regard to failure to make therapeutic interventions, she attends staff meetings after behavior incidents involving the Student to look at what had happened, and those attending might identify three triggers where someone could have caught the Student and stopped the escalation. For example, when the Student first started interacting with the boys and becoming defensive in the November 12, 2008 incident, the educational technician should have been there talking to the Student and asking the Student to go walk with her. In the March 19, 2009 incident, the Student says that Ms. Masse was off talking with another teacher when the incident started and wasn't near her. The Student says that one of the younger boys was choking the 6th grader and his face was turning colors. She agrees that sometimes the Student misperceives a social situation, but not that time. She spoke to that 6th grader herself and he confirmed that he was being choked and was telling the younger student

to stop. If Ms. Masse had been right there and paying attention, she could have broken up the fight and stopped the situation before the Student became involved. Most recently, the Student had a major assaultive incident at home on April 29, 2009 involving her behavior specialists, and then tried to run away. The Student later told her that something had happened at school the day before, and she had been crying. When she talked to Ms. Batson about this, Ms. Batson told her that there had been an incident, but that Ms. Batson felt they had successfully processed it with the Student. Ms. Batson said, however, that the Student put her hands over her ears and her head down while the staff was talking to her. She felt it was obvious that the Student hadn't successfully processed the incident, but had bottled up her anger until it finally came out the next evening.

Until she filed this complaint, she was receiving frequent phone calls from the District, sometimes as often as three times per week, asking her either to talk to the Student on the phone and calm her down, or to come to the school to help get the Student back into the classroom. She doesn't think the educational technicians really understand what they're supposed to do to make a therapeutic intervention. The educational technicians don't come to the staff meetings where they discuss the behavior incidents. She assumes they get some training, but if they aren't at those meetings, they won't learn what to do with the Student the next time a similar situation arises. She agrees, however, that there are many times when the educational technicians do intervene successfully and prevent incidents from developing, and that it is unreasonable to expect a 100% success rate.

Recently, the Student has been saying she doesn't want to go to school, and asks if she can stay home. This represents a big change for the Student. She wasn't like that and didn't say those things last year, although the year before that at Gilbert Elementary School the Student was very unhappy with her teacher. While it is true that the Student is xx years old, and has been experiencing a growth spurt, she's not xx mentally and doesn't act like a xx year old. She throws fits, she threatens aggression and she runs out of the home. The Student is not very different at home this year compared to last. The Student is extremely frustrated now. She doesn't like where she is in her body; she wants to be normal.

VIII. Conclusions

Allegation #1: Failure to fully and adequately implement the student's IEP with respect to provision of one-on-one aides in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

There is simply no evidence of a time when, under her IEP, the Student was supposed to have staff support but did not. The incidents of October 24, 2008 and January 12, 2009 occurred at a time when the IEP did not require an educational technician to remain with the Student in the "specials" classes. The Student's IEP was subsequently amended.

The Parent's bases for this allegation were that: 1) she was told by either Ms. Herschenfeld or Ms. Rollins that the Student had just showed up without an aide in the office or the school foyer; 2) she was told that incidents occurred when a lunchroom or recess monitor turned her head for a moment (with the implication that they were the only ones monitoring the Student);

and 3) the Student ran out of the building (with the implication that she was not being supervised at that time). The complaint investigation uncovered the following information regarding those points: 1) neither Ms. Herschenfeld nor Ms. Rollins, nor any other school personnel, corroborated this assertion; 2) in the only incident that featured a report of someone turning her head for a moment, it was a substitute educational technician assigned to support the Student; and 3) this incident occurred in 2007, and there was an educational technician following closely behind the Student.

Allegation #2: Failure to fully and adequately implement the student's IEP with respect to making therapeutic interventions in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

The District prepared for the current school year by hiring Dr. McLinn to conduct three training sessions for the educational technicians that would be most often responsible for implementing the Student's behavior intervention plan. Those educational technicians were both experienced in their field. As the year progressed, Dr. McLinn continued to work with the technicians to refine their technique and improve the chances of their making successful interventions. After each behavior incident involving the Student, the staff gathered to sift through the reports of the incident, looking for further ways to keep the Student safe going forward.

It is true, of course, that there were incidents during the year involving assaultive behavior on the part of the Student. The evidence was that, except for those incidents where no educational technician was present in accordance with the Student's IEP, the educational technician supporting the Student at the time of the incident attempted to intervene using the method described in the behavior plan. A lack of success in preventing the Student's escalation does not in and of itself constitute a failure to implement the plan. Several of those interviewed, including the Student's case manager, spoke of the speed and suddenness with which the Student could escalate. Several of those interviewed, including the Student's therapist, described two different modes of presentation when the Student escalated: in the first, there were cues noticeable from the Student's behavior and expression that signaled her initial agitation; in the second, the escalation was sudden and with very little warning.

In addition, when the Student was at recess (where the likelihood of provocation was greater), the educational technician had to maintain a balance between exercising a higher degree of supervision (and thus stifling the Student's social and recreational urges) versus letting the Student engage in a more typical play experience.

It was clear that in the great majority of provocative situations, the educational technicians were able to intervene successfully and avoid a full-blown incident. This process involved more than just calming the Student down; it was also a learning experience. Educational technicians talked with the Student about the consequences and implications of her behavior, as well as about alternative responses available in a given situation. The Student was given reminders on later occasions of the messages she received during an intervention. Perhaps more importantly than the number of successful interventions, there was evidence that the

Student was improving in her ability to manage her own behavior, in her being able to recognize and express, for example, when she was and was not able to talk about a situation.

To the extent that the behavior plan was not implemented perfectly, perfection is not a legal requirement. The District's obligation is "to provide an adequate and appropriate education. The IDEA does not place a school system under a compulsion to afford a disabled child an ideal or an optimal education." *C.G. and B.S. v. Five Town Community School District*, 513 F.3d 279 (1st Cir, 2008). The District's implementation of the Student's behavior plan was most certainly adequate and appropriate.

The Parent's belief that the Student's Behavior plan is not being properly implemented appears to be based, in part, on the feedback she is receiving from the Student's case manager and private therapist, neither of whom appear to be familiar with applicable legal requirements and neither of whom have ever observed the student in her educational setting. These individuals instead appear to rely on assertions of the parent (which this investigation has determined to sometimes be unfounded) and the student (which this investigation has determined are often unreliable). If these individuals are going to remain engaged in the student's educational planning – and one hopes that they would – they will better serve the interests of the Student by becoming more familiar with what the law provides, and more willing to work with the District.

IX. Corrective Action Plan

None is required.