

Complaint Investigation Report
Parents v. Bangor

March 8, 2012

Complaint #12.053C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Parents
Address
City

Respondent: Betsy Webb, Superintendent
73 Harlow St.
Bangor, ME 04401

Special Services Director: Patti Rapaport

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on January 25, 2012. The Complaint Investigator was appointed on January 27, 2012 and issued a draft allegations report on January 31, 2012. The Complaint Investigator conducted a complaint investigation meeting on February 9, 2012, resulting in a set of stipulations. On February 17, 2012, the Complaint Investigator received a 4-page memorandum and 44 pages of documents from the Complainant, and received a 13-page memorandum and 358 pages of documents from the Bangor School Department (the “District”) on February 21, 2012. Interviews were conducted with the following: Al Mooers, assistant principal for the District; Patti Rapaport, director of student support services for the District; George Brissette, special education department head for the District; Doris Inman, special education teacher for the District; Travis McClure, social worker for the District; Jennifer Mahan, outside agency case manager; the Student’s father; and the Student’s mother.

III. Preliminary Statement

The Student is xx years old and is currently receiving special education under the eligibility criterion Other Health Impaired (“OHI”). This complaint was filed by the Student’s parents,

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

IV. Allegations

1. Failure to conduct a proper and adequate manifestation determination review on March 31, 2011 in violation of MUSER §XVII.1.E;
2. Failure to provide special education and related services sufficient to enable the Student to advance appropriately toward attaining her behavioral goals, to be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities, and to be educated and participate in those activities with other children with disabilities and with non-disabled children in violation of MUSER §IX.3.A(1)(d);
3. Failure to provide educational services after the Student's suspension on March 31, 2011 so as to enable her to continue to participate in the general education curriculum, specifically, Freshman Sports and Spanish, in violation of MUSER §§XVII.1.B(2) and XVII.1.D(1)(a);
4. Failure to provide behavioral intervention services and modifications after the Student's suspension on March 31, 2011 designed to address the behavior violation so that it did not recur, in violation of MUSER §§XVII.1.B(2) and XVII.1.D(1)(b);
5. Failure to provide education to the Student in the least restrictive environment during the period from March 2011 through December 2011 in violation of MUSER §§X.2.A(4) and X.2.B;
6. Failure to consider the Student's individual educational needs, including the need for specialized instruction, when determining to provide tutorial services in the period from September 2011 to December 2011 in violation of MUSER §X.2.A(4);
7. Failure to comply with regulatory requirements for an abbreviated school day when determining to provide tutoring for 10 hours per week in Spring 2011 in violation of MUSER §§II.1 and VI.2.L;
8. Failure to comply with regulatory requirements for an abbreviated school day when determining to provide tutoring for 10 hours per week in Fall 2011 in violation of MUSER §§II.1 and VI.2.L.

V. Stipulations

1. When the Student was suspended on March 28, 2011, it was the third suspension she had received that year, and brought to 10 the total days the Student was removed from her placement.
2. The Student did not have any behavior goals in her IEP until 3/31/11.
3. As a result of the Student's removal from school after the March 28, 2011 suspension, the Student was unable to access her Freshman Sports class and therefore did not receive credit for that class at the end of her freshman year.

VI. Summary of Findings

1. The Student lives in Bangor with the Parents, and is presently attending xx grade at Bangor High School (the "School"). She began receiving special education services under the category Speech or Language Impairment on January 31, 2002, and has been diagnosed with Bipolar Disorder, ADHD-Combined Type, Oppositional Defiant Disorder ("ODD") and a Mood Disorder.

2. On February 3, 2010, the Student transferred from Brewer to the District. The District implemented the Student's last IEP from Brewer until March 15, 2010, when an IEP Team meeting was held and a new IEP developed. At the meeting, the Student's teachers reported on the Student's progress in her various classes. There were no reports of behavioral difficulties.

3. The Student's IEP dated March 15, 2010 indicated, in Section 3.E, that behavioral interventions were not needed. There were no behavioral goals. The service to be provided under the IEP was specially designed instruction in the resource room for reading/language arts, math and social studies. The IEP also contained various accommodations such as extra time for tests and assignments, verifying the Student's understanding of directions, and access to an after-school supported study group.

4. During the fall of the 2010-2011 school year, the Student received numerous detentions and warnings for things such as calling students names, slamming the classroom door, and using profanity. On December 9, 2010 the Student struck another student and received a warning. On December 17, 2010, the Student struck another student and received a two-day suspension. On December 21, 2010 the Student struck a student and received a one-day suspension.

5. The Student's IEP Team met on January 3, 2011 to discuss the Student's recent escalated behavior. The Team considered referring the Student for a risk assessment, but determined to first institute some interventions in an effort to help the Student avoid those situations where she seemed to most often become involved in conflict. As the Student's assaultive behaviors were occurring in the School hallways during transitions, her IEP was amended to provide the Student with the option to arrive late to classes without penalty, and to go to breakfast and then to the front office before her first morning class. This was intended to allow the Student to avoid the hallways during those times when they were crowded with other students.

6. During the next few weeks, the Student followed the new plan and there were no disciplinary incidents involving the Student. There were, however, occasions when the Student refused to follow the plan.

7. The Student's IEP Team met again on March 1, 2011 for the annual IEP review. The Student was receiving good grades and was reported as making progress on her IEP goals. The IEP that was developed at the meeting, dated March 8, 2011, stated at Section 3.D: "[The Student] at times displays social skills and maturity challenges that are aggressive and or avoidant that place her at a disadvantage in dealing with social situations at an age appropriate

level. She needs to continue to develop improved social and adaptive skills to aid in management of challenging daily life situations so that she can transition into adult living.” There were no behavioral goals added to the IEP, and Section 3.E continued to indicate that behavioral interventions were not needed. No new services were added, but the accommodations that allowed the Student to avoid stressful transition situations were continued.

8. On March 25, 2011, the Student was involved in an incident where she was asked to move her backpack out of the way; she refused to do so and then pushed a teacher who tried to move it. When another teacher approached and began to talk to the Student, the Student grabbed some keys that were around the teacher’s neck and threatened to kill him. The Student also spit on the social worker, Mr. McClure, who subsequently tried to talk to her. As a result of the incident, the Student was suspended for seven days.

9. The Student’s IEP Team met on March 31, 2011 to conduct a manifestation determination review, although the District had determined that the Student’s total days of suspension (10) did not constitute a change of placement. The Team reviewed a functional behavior assessment completed by special education teachers, reports of other staff and the Student’s classroom teachers, and concluded that the incidents leading to the suspensions were “not due to [the Student]’s handicapping condition of OHI based on the diagnosis of ODD.” The Team further determined that there was a need for a risk assessment, a psychological evaluation and for development of a behavioral support plan and safety plan, and that the Student should not return to the School until those things had been accomplished. Accordingly, the Team determined to amend the Student’s IEP to reflect homebound instruction for 10 hours per week, with 15 minutes consultation with a special education teacher per quarter. A behavioral goal was added to the Student’s IEP as follows: “Given a situation that is stressful or causes anxiety, the Student will use strategies or activities developed through consultation with a psychologist in a Emotional Support and Safety Plan for physical calming and self-time out to increase appropriate participation to 90%.” In addition, psychological services consultation was added to the IEP as a related service for 30 minutes per quarter.

10. A behavioral protocol was developed for the tutor providing the homebound instruction to the Student, along with a report form for recording both what the Student worked on and the Student’s behavioral performance during each tutoring session.

11. The tutor reported good effort and good behavior from the Student for the most part, but on June 3, 2011 the Student had a meltdown and struck the tutor, whereupon the tutor refused to continue to work with the Student. Another tutor was assigned to the Student, and the Student continued to work with that tutor until the end of the school year. The Student successfully completed all of her courses for that year except for xx Team Sports.

12. The District referred the risk assessment to Dr. Bruce Saunders. On April 21, 2011, Dr. Saunders’ office called the Parents to schedule an appointment for the risk assessment. The Student’s mother said that she would not agree to have Dr. Saunders do the risk assessment, but that the family would be using another evaluator. The IEP Team met again on May 26, 2011 and determined to have Dr. Andrew Kahn perform the risk assessment instead of Dr.

Saunders. The Team also reviewed the evaluation report of psychologist Mark Roth, but determined that consideration of whether the Student could return to school could not be made at that time.

13. Mr. Roth's report, dated April 27, 2011, reported scores on the BASC-2 assessment that were clinically significant for hyperactivity, aggression, conduct problems, attention problems, depression and withdrawal. Mr. Roth also described the Student as having "poor adaptive skills and as being very different from her peers because of the behaviors she exhibits." Mr. Roth's recommendations include referral of the Student to a psychiatrist for a full mental health evaluation, counseling to address the Student's aggressive behavior, and for the Student to continue to receive homebound instruction until the risk assessment was completed.

14. Dr. Kahn performed a risk assessment of the Student on June 13, 2011. In his report dated August 15, 2011, Dr. Kahn interviewed the Student and her mother, and administered the BASC assessment. His diagnostic impressions of the Student were Mood Disorder NOS, ADHD-Combined Type, and ODD. Dr. Kahn found the results of his evaluation "provide limited support for [the Student]. [The Student] has failed to provide compelling evidence that she is willing to control her verbalizations or behavior in response to daily stressors...[The Student]'s present level of mood instability, immaturity, and impulsivity place her at elevated risk for acting out in both physical and verbal ways in response to daily academic and social stressors. [The Student] may be a candidate to return to school if she has access to a self-contained academic setting with adult supervision provided for all tasks...I would not recommend that she be returned to the regular education setting, and engagement in a day treatment style program (Southern Penobscot Regional Program) may be considered in the absence of appropriate support/programming in her home school."

15. After she reviewed Dr. Kahn's report, Ms. Rapaport discussed his recommendations with Dr. Kahn, resulting in an amended report in which Dr. Kahn deleted the reference to engagement in a day treatment program, substituting "...and engagement in a self contained classroom program should be considered in the absence of appropriate support/programming in her grade level classroom." Both versions of Dr. Kahn's report were sent to the Parents.

16. The Student's IEP Team met on September 15, 2011 to discuss Dr. Kahn's report and to make programming decisions for the 2011-2012 school year. The Student's mother had rejected further homebound instruction to that date. The District proposed a reintegration plan under which the Student, while continuing to receive one hour per day of homebound instruction, would gradually increase the time spent in the School, starting with one hour per day and adding one additional hour per day each week until the Student was attending four hours per day. The IEP Team would then meet again to reassess whether the Student should return to School on a full time basis. The Student's mother became angry and left the meeting before a determination had been made. The Team proceeded to adopt the reintegration plan as well as a behavior plan for the Student.

17. The Reintegration and Positive Intervention Plan provided that the Student: would utilize a daily schedule of events to help provide predictability; would be permitted to seek the

support of a guidance counselor, social worker or assistant principal when unable to resolve issues in the classroom; would be permitted to take a water or bathroom break; would be given access to alternative preferred activities to aid in stress reduction; and would receive adult supervision during transition times. If the Student refused to comply with this plan or became disruptive, she would receive a five-minute break in a safe administrative area in order to avoid further acting out and possible suspension. If the Student engaged in unsafe or aggressive behavior, the Student would be subject to regular disciplinary consequences.

18. An additional behavioral goal was added to the Student's IEP as follows: "Given the opportunity to use self-calming strategies, access to the school social worker, or guidance, or 5 minute break in a safe administrative area (not as a consequence but to de-escalate to avoid suspension or disciplinary action from behaviors), [the Student] will maintain safe and appropriate behaviors within the school setting."

19. The Student's mother continued to reject the reintegration plan and the homebound instruction offered to the Student. The Parents also rejected efforts of Mr. McClure to discuss the situation with them. The District complied with the Parents' requests to send to their home the Student's assignments from her classes. Another IEP Team meeting was held on October 24, 2012 which the Parents did not attend (the Student's mother called that morning to ask that the meeting be rescheduled, and rejected the offer to participate by telephone), and the Team determined that if the Parents continued to refuse to permit the Student to receive homebound instruction and to cooperate with the reintegration plan, the Student would be reported as truant. Another meeting was held on November 22, 2011 which the Parents did not attend, and the Team determined that the Student was truant and therefore would no longer receive her class assignments. The Team also determined that the Student's Spanish class would be dropped from her schedule.

20. Another IEP Team meeting was held on December 20, 2011, attended by the Student's father and the Parents' advocate. The IEP Team determined to revise the reintegration plan so that the Student would receive 2-3 hours of tutoring per day during the first two weeks, with one hour per day of school-based instruction in the first week and two hours in the second week. The third week the Student would attend school for 3 hours per day with no homebound instruction, and the fourth week the Student would attend school full time. The District also agreed to provide counseling services and school social worker services (both direct and consulting) to work on social skills and coping skills. The Team agreed to reconvene on February 6, 2012 to review the Student's status. The Student's IEP was amended to provide the agreed upon changes to the Student's program.

21. The Student began attending the School full time on January 23, 2012, and successfully completed her English and Math work for the semester. She re-enrolled in xx Team Sports, taking it concurrently with xx P.E., and was on track to graduate on time providing she continued to pass all of her courses.

22. During an interview conducted by the Complaint Investigator with Al Mooers, Mr. Mooers stated the following: He is the assistant principal for the School. In September 2010, he first became aware of the Student when she was sent to his office for refusing to follow directions, resulting in a warning. There were several more disciplinary incidents where the

Student was calling other students names, was using profanity, or was rude or disrespectful to staff, and he started issuing detentions to the Student. Sometimes when the Student was sent to his office he gave her time to cool off, and she usually could acknowledge that she had done something wrong. Half the time, when the Student was de-escalated, she was pleasant and easy to speak with; the other half of the time, the Student was really worked up and she didn't want to listen to anybody, or do what anybody said.

He participated in the January 3, 2011 IEP Team meeting, held after the Student was suspended twice in December for striking other students. Those two incidents happened in the hallway during transition time between classes, and the Team decided to allow the Student to arrive late to class in order to avoid being in the hallway during those times. There were other incidents that happened in the classroom, where the Student slammed the classroom door, or refused to put back a computer. He doesn't remember if there was any discussion addressing those incidents. The Student's disciplinary incidents were about evenly divided between in classroom and in the hallway.

He attended the IEP Team meeting on March 31, 2011, held after the Student's suspension on March 28, 2011. The Team determined that the Student's behaviors in the incident were not a manifestation of her disability. The Student had been swearing, pushing, pulled on a teacher's lanyard and threatened the teacher. Other students with the Student's disability didn't assault teachers like she did. He doesn't think that ODD leads to physical aggression and threats; the physical aspect is more than just defiance. He thinks that the Student clearly understood what was asked of her (to move her backpack out of the way), and that the request was made in a calm, supportive environment. The Student was angry – she was apparently looking for her camera in the backpack, and when one of the teachers went to move it she felt threatened. He doesn't know what caused the Student to escalate so rapidly.

He doesn't remember any discussion at the March 31, 2011 meeting about options other than homebound instruction for the Student. Once the decision was made to order the risk assessment, the Team decided to provide two hours of tutoring daily. Two hours is the standard amount and there was no discussion about this. The Department of Pupil Services sets up the tutoring and they decide, in collaboration with parents, the details about who, what and where.

Since the Student came back to school, there have been two or three disciplinary incidents. He suggested to the Student that she go back to avoiding the hallways between classes, and the next day she came to school saying that her parents told her not to do what the School staff tells her to do. He thinks that, in general, the Student has been doing better since she came back. She seems happier. There is a rule in school that students are not allowed to use their cell phones. The Student got in trouble with a teacher about her using a cell phone, and the next day she came to his office and left the phone with him so that she didn't get into trouble again. This showed him that the Student is trying to do the right thing.

23. During an interview conducted by the Complaint Investigator with Patti Rapoport, Ms. Rapoport stated the following: She is the director of pupil services for the District, and last year was interim director. The first IEP Team meeting for the Student she attended was on

January 3, 2011. The Student's behavior was leading to disciplinary action, and the behaviors were happening in the hallways during transition times, so the Team put some interventions in place that allowed the Student to avoid the hallways during those times. She felt that this would allow the Student to be safe in school, and no other services were considered at that meeting.

The next IEP meeting for the Student she attended was on March 31, 2011, after the Student had been suspended for a third time. When a student has multiple suspensions, the Assistant Principal notifies her office that an IEP Team meeting should be scheduled for purposes of conducting a manifestation determination review. The District does this even where the total days out of school do not exceed 10, because this sets the 10-day clock back to zero (it allows the District to suspend the student for another 10 days without triggering due process requirements). The Team determined that the Student's behavior was not a manifestation of her disability because the Student's primary disability was OHI based upon her ADHD. At the point that the IEP was developed, only the Student's ADHD was manifesting in the classroom. The assaultive behaviors didn't appear to be related to the Student's ADHD; they were more likely related to her bi-polar or ODD conditions, which were under the ED category.

The Team determined to make a temporary change of placement to homebound instruction until they could put supports for the Student into place, and to do that they first needed the results of a risk assessment and psychological evaluation. The Team on that day didn't have the expertise to enable them to determine what supports the Student needed to enable her to return to the School and be successful. Temporary placement in a day treatment program wasn't a consideration because that would require a recommendation from a psychologist in order for the State Department of Education to reimburse the expense. The self-contained classroom in the School was for students with cognitive disabilities, and wouldn't be appropriate for the Student. The Student's father attended that meeting, and he was completely in agreement with the Team's determinations.

The Student had five classes in her schedule, with three of them being special education classes. Based on the Student's work habits and past history, two hours of tutoring per day was the right amount of tutoring for the Student. Two hours is the standard amount of tutoring provided by the District, but there are students who get more or less than that amount, depending on their situation. She doesn't remember whether there was discussion at the meeting about the amount of tutoring the Student should receive.

In addition to tutoring services, the Team also determined to provide consultation services from a special education teacher to give the tutor suggestions on how to work with the Student, and to pull together assignments from the Student's classroom teachers. Although the IEP identified the time for this service as 15 minutes per quarter, the teacher providing the service actually spent about 15 minutes per week on it. The Team further determined to provide psychological consulting services, which involved Dr. Kahn reviewing the Student's file and helping to develop the reintegration plan.

The District's goal was to have the risk assessment completed within 45 days. The District can rely on Dr. Saunders to meet that deadline; he usually completes his report within one week from when he does the assessment, whereas Dr. Kahn or Dr. Rogers usually take 45 days from when they do the assessment. When the Student's mother said she didn't want Dr. Saunders to do the assessment, she said that she was going to have a neuropsychological evaluation done of the Student. Two weeks before the May 26, 2011 meeting, which had already been scheduled, the Student's mother called and said that she wasn't going to be able to get the neuropsychological evaluation done. The Team then met on May 26th and determined to have Dr. Kahn do the risk assessment.

She is working to change the way special education students are treated in the District. In the past, it was not common for there to be an ed tech or tutor working with a student in the classroom. She believed that, with the proper supports, the Student could remain at the School rather than being placed in a more restrictive setting. After she read Dr. Kahn's evaluation report, she had a conversation with Dr. Kahn about what she was thinking and why he was so quick to suggest placement in a day treatment program. Dr. Kahn then rewrote the report to clarify that the Student could return to the School with in-class support.

After the May 26, 2011 meeting, she obtained a FERPA release to enable her to speak with the Student's private counselor, because she wanted to incorporate into the Student's program the coping strategies the Student was being taught outside of school. She discovered, however, that although the Student had a rehabilitation worker and a case manager, the Student was not seeing a counselor. She was prepared to give the Student's mother a list of counselors who might be available to work with the Student, but the Student's mother said she didn't want it.

At the September 15, 2011 meeting, the District arranged for Mr. McClure to work with the Student on a social skills curriculum before the Student returned to school, but Mr. McClure is not qualified to provide therapy such as working with the Student on self-calming strategies. At the December 20, 2011 meeting, she offered to the Parents to have the District provide counseling to the Student after school, but they rejected that service.

She brought the reintegration plan to the September 15, 2011 meeting as a draft plan, open to discussion. She also sent the plan to the Parents prior to the meeting, so that they could be prepared to discuss it at the meeting. The Student's mother walked out of the meeting, however, instead of continuing to discuss it. The Student's mother seemed to feel that the District was punishing the Student this year for something the Student did last year, instead of seeing it as a process for making the decisions that would enable the Student to be successful. She believes that the Student's mother was angry at the District for multiple reasons, even before the March 28, 2011 suspension, and that the Student's mother doesn't respect the administrators at the School.

With regard to the Student's Freshman Sports P.E. class, the District truly expected that the Student would be back in school before too long, six weeks at the most, and then she would have been able to make up the lost time when she returned. When a student is unable to make up lost class time, however, it is not a big problem – students can usually make up the time

the following year, as the Student is doing. There have also been students for whom the District provided some alternative way of meeting the P.E. requirement, such as giving them a YMCA membership.

With regard to the Student's Spanish class, the Student signed up for that class in the spring of last year. The District was prepared to begin providing tutoring to the Student on the first day of school this year, and the tutor could have worked on the early Spanish class material, but the Parents refused to allow it to happen. By the time the Student returned to school, too much time had elapsed for the Student to be able to make up what she had missed. At the last meeting, the Student's father suggested that, due to the Student's poor memory, Spanish was probably not a good choice. They decided to change the Student's schedule to have her take American Sign Language instead.

She complied with the abbreviated school day regulations while the Student was placed out of school. The courses the Student was to be tutored in were aligned with the Maine Learning Results. During the spring 2011 period, the staff was waiting for the results of the assessments before being in a position to delineate actions to assist the Student upon her return to school. In the fall, the Student would have returned to a full day program at the school within 45 days of the September 15th meeting, and been able to participate in the NECAP statewide assessments in October, had the Parents not refused to cooperate with the reintegration plan. The reintegration plan contained a list of strategies to support the Student when she returned to a full day program, and meetings were held in October, November and December, all within the required 20 school day time frame.

24. During an interview conducted by the Complaint Investigator with George Brissette, Mr. Brissette stated the following: He is the head of the special education department at the School. He first became aware of the Student at the March 15, 2010 IEP Team meeting, held at the middle school. The Student's teachers said that the Student was a hard worker and was doing very well. There were no concerns expressed about the Student's behavior. The Student had four diagnoses, in various states of documentation. The only manifestations the teachers were seeing at that point were of the Student's ADHD. There was no open defiance or aggression.

At the January 3, 2011 IEP Team meeting, after the Student had received two suspensions for striking other students, the Team considered whether to take her out of school and do a risk assessment, concerned that perhaps other students were in danger. These incidents had to do with poor relationships the Student had with her peers, and they took place in the hallways. The Team decided not to take the Student out of school, but to focus on the hallway setting. They developed a plan where the Student would be held back when the end of period bell rang, and an ed tech would accompany the Student to her next class after most of the other students had left the hallway. The ed tech would observe the Student's interactions with the other students at the end of class, and try to prevent any further assaultive behavior. Before the staff could figure out anything about what was triggering the Student's outbursts, the Student began to refuse to follow the plan; it became a compliance issue.

There was no discussion of a functional behavior assessment at the January 3rd meeting, since the assaultive behaviors were so new and alarming. There were behaviors in the fall that were leading to warnings and detentions, but those behaviors were being managed in the classroom. Behaviors of that kind (disrespect to teachers, profanity, etc.) are fairly common in the classroom, and staff deals with them all the time. The staff was also trying some things with the Student informally. Ms. Inman had arranged for the Student to bring a friend to her classroom in the morning when the Student was waiting for 1st period to begin. That didn't last very long because the Student would do things that would upset the friend, and then the friend wouldn't be willing to be with the Student any more.

Although the March 1, 2011 IEP referenced the Student's social skills deficits, the IEP didn't provide any services to address those deficits because the staff at that point was trying to determine whether socialization was the issue that was driving the Student's behaviors. The Student was having trouble not just with her peers, but with adults too. The staff was trying to gather information at that point, and informally trying to create situations where there could be supervised interactions between the Student and her peers. The staff couldn't figure out the bases for the Student's difficulties; the Student would be engaged in conversation with friends, and for no apparent reason would get angry and swat someone. The staff wasn't sure which diagnosis was at work here, possibly the ODD or bi-polar disorder.

When the Team met on March 31, 2011 to conduct the manifestation determination review after the Student assaulted the teachers, the Student's disability was OHI, but the behavior they were seeing looked more like Emotional Disturbance ("ED"). Assaultive behaviors are not really implied by any of her diagnoses; it looked more like an explosive disorder. There are students in the School all the time with the same diagnoses as the Student who don't assault anyone. He believed there had to be something else going on with the Student.

There was discussion at the March 31st meeting about the amount of tutoring the Student required. The Student is a fast, diligent worker and a good student – there were no concerns about her academics – so the Team decided that two hours per day was enough. Part of the tutorial program is that students are supposed to do work on their own outside of the tutorial session.

Sometime in March 2011, the District decided that the Student should have counseling, but they were told by the Parents that the Student was getting this privately. The staff was wondering why they weren't hearing from this counselor, and wanted to know what the counselor was working on. The staff later discovered that the service that the Parents were referring to was being provided by a rehabilitation worker who was not qualified as a counselor. Counseling was added to the Student's IEP as a related service at the December 20, 2011 IEP Team meeting.

With regard to the reintegration plan, Dr. Kahn worked this up with Ms. Rapaport and brought a completed plan to the September 15, 2011 meeting. Ms. Rapaport asked whether there were any questions about the plan or anything that should be added or deleted. He had certain concerns about the plan, particularly about the Student's schedule and how the Student was going to manage it, and there was discussion about this.

No social work services were included in the Student's IEP at the September 15th meeting due to concerns that it could lead to oppositional behavior on the Student's part; they had enough experience with the Student by that time where if the Student was told she must do something like that she would refuse to comply. He thought it was better for the Student to have visits with the social worker as something that was voluntary. Later, in preparation for the Student's return to school in January 2012, Mr. McClure met with the Student for five sessions, at which point the Student refused to attend any further sessions with him. He doesn't know where the Student would be learning the self-calming strategies referenced in the behavioral goal adopted at that meeting, but that is not something that a social worker would do with a student.

At the beginning, the Parents were working with the District, but then all of a sudden they decided not to cooperate and there was nothing the staff could do. If the Parents had cooperated, the Student would have been back in school in May or June at the latest. Then the Parents refused all services for the Student and refused to respond to the District. After the Student returned to school this year, she started to have trouble again in the hallways between classes. The District asked the Student to go back to the program where she went late to class to avoid the crowded hallways. The next day, the Student went out of her way to come to his office and tell him that her mother said she shouldn't do what the staff told her to do.

Staff members were aware of the abbreviated school day requirements, and were careful to make sure that meetings were held within the regulatory time frame.

25. During an interview conducted by the Complaint Investigator with Doris Inman, Ms. Inman stated the following: She is a special education teacher at the School, and had the Student in her language arts class last year. The Student began the year doing very well; she looked no different than the other students in the class. She picked the Student as one of the students she would mentor (each teacher is mentor to two students) because the Student didn't look like she had a lot of friends.

The last five minutes of class time, during announcements, is unstructured time and was very difficult for the Student. She asked students to sit at their desks during this time, but that was hard for the Student to do. The Student wanted to socialize and tended to stand very close to other students' desks; she came across as needy. She tried to find things for the Student to do in the classroom, like passing out folders, and the Student enjoyed that. The Student was very good at participating in class; during structured academic times the Student was great. The Student was not alone in not knowing how to socialize with other students; a lot of students have that problem. The School has an anti-bullying program, and she brings that up with her class on a regular basis. The Student was more apt to be the bully than to be the target of bullying.

The Student didn't start to stand out until January 2011, when one of the other students reported to her that the Student had written some awful things about her. The Student readily gave her the written note when she asked for it, and she told the Student that it was not okay

to write things like that in school. The Student told her that it helped her to write things down, so she gave the Student a spiral notebook to take home and told her she could write what she wanted in that book, but that she couldn't bring the book to school. The Student agreed, and she thought that was a very positive response from the Student. Then things started to fall apart for the Student.

The Student was mostly getting into trouble in the hallways, and the staff developed a plan to keep the Student out of the hallways during those times when they were crowded with students. She felt that the staff was doing a lot to help the Student. The Student came to her classroom in the morning as a safe place for her to wait until 1st period. She knew that the Student was very social, so she offered to arrange for a friend to stay with her in the morning. It didn't take very long before she ran out of students she could invite to the room. The Student, without realizing it, does and says things that turns other students off. Also, students generally would rather be with their own group of friends. When the socialization part of the morning stopped happening, the Student got tired of the plan and started refusing to follow it.

By February 2011, the Student started being a problem in the support study hall. There are computers in the room that students are allowed to sign out when they need to work on them for a school project. The Student asked for a computer on March 16, 2011, but at the time the Student was still working on a different assignment. She told the Student that she needed to complete that assignment before she could have the computer. The Student went up and grabbed the computer. That was the first really defiant behavior she had seen from the Student.

After March 28, 2011, while the Student was out of school, she was giving class work to the tutor and looked at the work the Student was doing during tutoring. The Student was working very well with the tutor, getting a lot done and getting excellent grades.

This year, the Student was in a different teacher's English class until 3rd quarter, when the Student's schedule changed and she ended up back in her class. The Student has been doing really well so far, with no problems. The Student has been responding to redirections and seems very happy to be at school.

26. During an interview conducted by the Complaint Investigator with Travis McClure, Mr. McClure stated the following: He is a social worker for the District, working in the School and in one other school. He has known the Student since her freshman year. It was well known at the School that the family didn't work well with the School on any issues. Staff members couldn't talk to the Student's mother – she would hang up or scream at them.

His office was in the special education wing of the School, so he often saw the Student. He noted that she had peer relationship issues, typical for students transitioning into high school. His involvement with the Student was to allow her to use his office as a place to go during stressful times, but he didn't have a therapeutic relationship with her. Then there was the incident of March 28, 2011. The Student was refusing to leave the gym, was growling and hissing, and when he tried to talk with the Student she spit at him. He had seen some oppositional behavior from the Student before that, refusing to do something at the first

request and growling, but nothing as extreme as the behavior he saw that day. The only person that was effective with the Student that day was the safety officer, who was able to get her to be compliant and leave the gym.

Before that incident, he didn't think that the Student's behaviors were any different than other children who access special services, that she needed social work services or that the School should push the Parents to get the Student to engage in therapy. He was under the belief that the Student was getting in-home support of some kind, either counseling or behavioral support. He had no recommendations for services for the Student at the March 31, 2011 meeting; when the District has decided to do a risk assessment, it looks to the psychologist performing that assessment for advice on what should be done for the student.

During this fall, he was asked to try to communicate with the Parents because they were refusing to allow the Student to be tutored. He went to the Parents' home on four occasions and nobody would answer the door (at least twice he heard noise and saw the curtains move). Just before the winter holiday, he was asked to work with the Student on some coping skill strategies before she reentered school. Dr. Kahn provided the curriculum for these sessions. He was scheduled to meet with the student six times, 30 minutes per session, but the Student left during the fifth session and wouldn't see him for the last one. He also tried to get a release from the Parents so he could talk with the Student's home care worker, to find out what she had found to be successful in working with the Student, but the Parents wouldn't provide the release. Throughout the sessions, the Student resisted doing the work with him, saying she didn't get angry anymore and that her mother told her she didn't need to do this work. The Student's words were pleasant, but she was being defiant, showing refusal verbally rather than physically.

He left it with the Student that she could come talk with him if she wanted to do that. He went to the Student's teachers and told them about the strategies he had worked on with the Student and some strategies they could follow. He checked in with the Student a few times during her first week back, and periodically since then. The Student has reported that everything is fine.

27. During an interview conducted by the Complaint Investigator with Jennifer Mahan, Ms. Mahan stated the following: She is a Family Specialist II for Community Health and Counseling Services, and worked with the Student's family from November 2010 to November 2011. Her role was to advocate for school services to be appropriate for the Student and meet the Student's needs. She also connected the family with in-home support, which started in January 2011 and continued to March 2011, when the Student's mother chose to end it. The family was receiving home and community treatment, consisting of a therapist and a behavioral health professional. Those providers worked with the Parents on things like setting limits on the Student and behavioral strategies for when the Student had outbursts. The Parents decided to end it after they asked one of the providers to look into what had happened at school in connection with the March 28, 2011 suspension, and the provider told the Parents that the Student's punishment was fair. The Parents didn't like hearing that, and claimed that the provider had no business having those conversations with School personnel. The following September, the Parents asked her to get the services started again with a

different agency. She doesn't know if those services are still continuing. There seemed to be a lot of miscommunication surrounding the family, not just with the District, but with other providers as well.

When she first started working with the family, the Student was experiencing some behavioral challenges, but seemed to be getting support when she needed it. The challenges began to increase in the winter, and there were some suspensions. She generally found out about the suspensions well after the fact, and the Student's mother wouldn't tell her much of the details, just that the Student's mother didn't like what happened. She attended the January 3, 2011 IEP Team meeting, and the Parents certainly agreed with the plan developed at the meeting. The plan seemed to meet the Student's behavioral needs during the periods between classes. Those supports were continued at the March 1, 2011 meeting. The supports were not always working, but there were days where everything was fine for the Student. Her role at the meeting was to support the Parents, and they weren't expressing concerns for program changes. The Parents at that time were also hoping that the in-home support could help turn things around for the Student, but those services are not designed to address problems in the school setting.

There was discussion about further evaluation of the Student at the January 3rd and March 1st meetings. The Student's mother objected to having a particular provider do an evaluation because the provider had done an evaluation for the family before and she hadn't been happy with the results. She connected the Parents to a provider who could perform a neuropsychological evaluation of the Student, but she doesn't believe that the Parents followed through on it.

After the March 28th suspension, the Student's mother told her that she had taken the Student back to school and was told that the Student wasn't allowed to come back until the risk assessment and psychological evaluation had been completed. Later in the spring, the Parents were unhappy with the tutoring because they said that many times the Student was uncooperative with the tutor and the tutor would leave early. The Student's mother told her that the School wasn't following up on getting the Student's class work home. She got this information from the Student's mother, and doesn't know the extent to which it was accurate. The Student's mother's perception seemed at times to be different from what was actually going on. She knows that the Student's mother was refusing to answer the phone when District personnel called.

She attended the September 15, 2011 IEP Team meeting, when the Student's mother was very verbally aggressive and swore at everybody. The Student's mother had gotten Dr. Kahn's report before the meeting, and as soon as Dr. Kahn started speaking, the Student's mother started to swear at him, telling him that the report was all lies and telling him that she didn't want him to speak. The Student's mother wasn't open to discussing anything. Ms. Rapoport asked the Student's mother what she would suggest for a transition plan to get the Student ready to resume returning to school full time, and the Student's mother just said that the Student should be back full time. Ms. Rapoport said that the reintegration plan was just a starting point, and was prepared to increase the number of hours the Student spent at school

based on the Student being successful during the time she was in school. After the meeting, the only thing she heard from the family was that they were going to move back to Brewer.

The Student was only minimally engaged in the meetings she had with the family. The most the Student would tell her is that she hated school and that nobody at school was nice to her. The Student was not open to talking about school or how she was doing there.

28. During an interview conducted by the Complaint Investigator with the Student's father, the Student's father stated the following: At the March 15, 2010 IEP team meeting, he doesn't remember the Student's teachers describing any behavior problems. The Parents started getting messages from the School after the Student started xx grade that the Student was swearing at other students, that she hit a teacher and other things. The Parents didn't ask that the District do anything to help the Student, but the District never offered anything. The Parents told the District that the Student had bi-polar issues.

When the District decided to suspend the Student after she assaulted some teachers, the Parents were totally against it. The Student failed her P.E. course because of her being out of school, and was unable to take Spanish. At the March 31, 2011 meeting, the staff never asked why the Student behaved the way she did; they should have asked what her problems were. He believes the problem was the Student's bi-polar condition; sometimes he says something to the Student and she becomes very upset. He told that to the Team at the meeting. The Student says that she was going to move her backpack like the teacher asked her to, but then the teacher grabbed it. No one at the School ever talked with the Student; the social worker never talked with her until this year.

This year, the Parents thought that the Student would be allowed back in school at the beginning of the year, but then they found out that the District wanted to keep tutoring her. The Parents didn't allow the Student to be tutored because the Student needed to access all of her education at the School. School staff said that the Student had to be ready to go back into the school system. When the District finally agreed that the Student could come back to school, a tutor was provided to help her get ready. The Student was gradually spending more time at the School until she was full-time.

Since the Student returned to school, there have been some minor problems and one meltdown, but he talked to the Principal about that and the Student was fine the rest of the day. The Student is taking xx P.E. along with xx P.E., and the District says she will be able to graduate on schedule.

29. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: She agrees that the Student had no behavior problems in xx grade, and she was fine with the Student's IEP going into xx grade. In xx grade, there were some students picking on the Student and, due to her bi-polar condition, when someone says something bad to the Student the Student might become very angry. She didn't ask the District to do anything to help the Student at that time.

She didn't disagree with the Student being suspended after the March 28, 2011 incident, but the District kept her out of school for too long. She wouldn't allow Dr. Saunders to do the assessment because she had a bad prior experience with Dr. Saunders. She became upset at the September 15, 2011 meeting because the Parents believed that the Student would be able to return to school in September 2011; that was the understanding of the Student's father after the May 26, 2011 meeting. She also had a problem with Dr. Kahn's report. Dr. Kahn said that the Student was tearing up his office, was picking her nose and that she and the Student were arguing the whole time. None of that was true. She disagreed with the reintegration plan because it would take four weeks for the Student to be back in school. She disagreed with the plan in December 2011 too, but the Student's father and the advocate agreed to it and she let it go; if she had been there she wouldn't have agreed to it.

After the Student went back full time, other students started bullying the Student again. She's not glad that the Student is back in school, but the Student is glad. The Student is only going to be able to take so much of the mistreatment before she reacts, because of her bi-polar condition. School staff members never listen to the Student's side; they always take the side of the other students.

She doesn't think Mr. McClure was helpful to the Student when she met with him before returning to school, because she's still having trouble at school. Mr. McClure asked the Student how old the Parents were, and that was none of his business. He wasn't teaching the Student coping skills. The Student gets counseling once a week at Care and Comfort home services.

VII. Conclusions

Allegation #2: Failure to provide special education and related services sufficient to enable the Student to advance appropriately toward attaining her behavioral goals, to be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities, and to be educated and participate in those activities with other children with disabilities and with non-disabled children in violation of MUSER §IX.3.A(1)(d)

VIOLATION FOUND

Based upon the reports of the Student's teachers at the March 15, 2010 IEP Team meeting, the absence of any behavioral goals or services addressing behavioral issues was reasonable. As the Student began to evidence behavioral difficulties in xx grade, it became increasingly evident that the Student had deficits in behavioral areas that were interfering with her education. By the January 3, 2011 meeting, the Student had received two suspensions for striking other students, as well as six detentions. The IEP Team considered conducting a risk assessment, but chose instead to institute some interventions that were designed to remove the Student from situations that seemed to be related to the incidents of assaultive behavior and that, at least initially, appeared to be successful. Those interventions were reasonable responses to the most troubling of the Student's behaviors, but did little to address the underlying causes. The Student was not going to be able to indefinitely and completely avoid

situations where she was with large groups of students, and it was apparent to Ms. Inman, at least, that the Student engaged in behaviors that drove her peers away.

Furthermore, nothing was done to address the noncompliant, oppositional behavior the Student was exhibiting in the classroom. While it is true that students generally can be noncompliant or disrespectful and receive detentions at times, the Student had a disability related to that behavior, and the frequency of the behaviors seemed to be increasing. The Team did not at that time consider conducting a functional behavior assessment to determine why the Student “engages in challenging behaviors and how the behavior relates to the child’s environment.” MUSER §II.15.

By the time the IEP Team met to conduct the annual review on March 1, 2011, Ms. Inman had exhausted the supply of possible friends to keep the Student company in the morning and the Student was refusing to follow the interventions developed at the last meeting. The IEP developed at the March 1st meeting recognized that the Student needed to “continue to develop improved social and adaptive skills to aid in management of challenging daily life situations,” but included no goals in the area of social and adaptive skills, nor provided any services designed to address those skill deficits. Having identified a need of the Student related to her disability, the IEP Team was required to include in the IEP goals to meet those needs (MUSER §IX.3.A(b)(i)) and the services to be provided to help her attain those goals (MUSER §IX.3.A(d)(i)).

Even after the Student’s IEP was amended to add a behavioral goal on March 31, 2011, under which the Student would use strategies or activities for physical calming and self-time out, the only service related to that goal was consultation by a psychologist to develop a behavior plan. No services were being provided to the Student directly to instruct her in those strategies or activities, and no services were being provided to assist the Student with her social skills deficit. The IEP was further amended on September 15, 2011, adding another behavioral goal which referenced self-calming strategies. No provision was made for how the Student was to learn those strategies. Neither did the IEP Team appear to discuss the recommendation of Dr. Kahn that a self-contained classroom placement be considered for the Student.

Not until the IEP amendments of December 20, 2011 (when the Parents were assisted by an advocate) were services provided that related to the behavioral goals, namely social work and counseling services. It is unfortunate that the Student did not choose to fully access the services offered by Mr. McClure, and this refusal seems to have been encouraged by the Student’s mother. Even where a district anticipates that a student or student’s family may reject services, however, the district is still obligated to offer them and identify them in the IEP.

Allegation #1: Failure to conduct a proper and adequate manifestation determination review on March 31, 2011 in violation of MUSER §XVII.1.E
VIOLATION FOUND

When a disciplinary incident leads to a change of placement (removal from school for more than 10 days) for a special education student, MUSER §XVII.1.E dictates that the student's IEP Team meet and determine whether the student's conduct was either "caused by, or had a direct and substantial relationship to" the student's disability, or "the direct result of the SAU's failure to implement the IEP." In this case, the Student's March 28, 2011 suspension of seven days brought to 10 the total number of days that the Student had been removed from her placement. As the subsequent decision to change the Student's placement to homebound instruction was not a disciplinary measure but a safety measure, the 10-day mark had not been exceeded and the requirements for a manifestation determination would not necessarily apply. The District, however, chose to treat the suspension as though it did trigger the requirements of MUSER §XVII and, as Ms. Rapoport described it, intended to set the 10-day clock back to zero. Thus all the requirements of that section were applicable.

The Team met on March 31, 2011 and duly considered the first of the above described determinations. The District concluded that the Student's assaultive and escalated behavior during the disciplinary incidents was not typical of an ADHD student, but looked more like the behavior of a student with a different disability who would be classified as Emotional Disturbance ("ED"). Even though the Student had been diagnosed with ODD and bi-polar conditions, conditions which, by themselves, could have resulted in the Student receiving the ED classification, the District considered the Student's ADHD to be the primary disability, and therefore the aggressive and out-of-control behavior was deemed not to be a manifestation of the Student's disability.

Fine distinctions of this kind are not what the regulations in question intend. A student with a disability presents with all those disabling conditions with which the student has been diagnosed. While, for purposes of developing the Student's program, one condition may be identified as primary for categorization purposes, the student's program must address all of those conditions which adversely effect the student's education. Likewise, when making a manifestation determination, all the student's disabilities are to be considered, and if any of the disabling conditions can be said to be causative or to have a direct and substantial relationship to the conduct, then the conduct is a manifestation of the student's disability. The Student in this case did not make a calculated decision to violate the student code. The descriptions of the incident makes clear that the Student was in a highly escalated, out-of-control state, behavior to which the Student's constellation of diagnoses bore a direct and substantial relationship.

Had the conduct properly been determined to be a manifestation of the Student's disability, the District would have been required to: conduct a functional behavior assessment ("FBA") under MUSER §XVII.1.F (1)(a)(an FBA was completed on March 25, 2011 and reviewed at the March 31st meeting); develop or review the Student's behavioral intervention plan under §XVII.1.F (1)(b)(this the District did at the September 15, 2011 meeting); and retain the Student in her current placement unless the Student's parent agreed to a change under §XVII.1.F (2)(the Student's father agreed at the March 31st meeting to keep the Student at home, and the Student's mother stated that she was initially in agreement with this decision as well). Overall, then, the District's failure to make the proper determination did not result in any adverse consequences to the Student.

As to the second determination the Team was required to make regarding implementation of the Student's IEP, while there is no indication that the Team discussed this, there was also no indication that the District in fact failed to implement any of the accommodations and modifications identified in the IEP (as previously noted, there were no services identified in the IEP relating to the Student's behavior). The District is cautioned to remember this second element of the manifestation determination process for future cases.

Allegation #4: Failure to provide behavioral intervention services and modifications after the Student's suspension on March 31, 2011 designed to address the behavior violation so that it did not recur, in violation of MUSER §§XVII.1.B(2) and XVII.1.D(1)(b)

NO VIOLATION FOUND

MUSER §§XVII.1.B(2) states that when a student with a disability has been removed for disciplinary reasons from her current placement for 10 school days in the same school year, the school district must provide services to the extent required in MUSER §§XVII.1.D during any subsequent days that the student is removed from that placement. MUSER §§XVII.1.D(1)(b) provides that such a student, even where the behavior that led to the disciplinary incident is determined not to be a manifestation of the student's disability, shall receive a FBA when appropriate, and shall receive "behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur."

As previously noted, the District had performed an FBA shortly before the March 28, 2011 incident. With regard to the requisite behavioral interventions and modifications, the plan put into place on September 15, 2011, a plan developed with the assistance of Dr. Kahn, contained a variety of interventions and modifications designed to prevent reoccurrence of the problem behaviors, including: a daily schedule of events; permission for the Student to seek the support of a guidance counselor, social worker or assistant principal; permission to take breaks; access to alternative preferred activities; and adult supervision during transition times. These elements of the plan satisfied the regulatory requirements.

Allegation #5: Failure to provide education to the Student in the least restrictive environment during the period from March 2011 through December 2011 in violation of MUSER §§X.2.A(4) and X.2.B

NO VIOLATION FOUND

When the District determined to change the Student's placement to homebound instruction, it was prompted by very real concerns for the safety of the Student as well as the greater School community. Although that placement represents the most restrictive placement on the continuum, the District reasonably concluded that not enough was known about the Student's conditions that were driving her behaviors, and that until a risk assessment and psychological evaluation were conducted a proper determination of appropriate placement could not be made. The District then acted with reasonable promptness to obtain those evaluations, but

was thwarted by the Student's mother. Had she not interrupted the process, the District anticipated that the IEP Team would be able to make its placement determination within 45 days. At the point that the evaluations were completed, the District developed a plan that would offer the Student a gradual reintroduction to school with additional supports in place. Again, the Student's mother delayed the process by refusing to cooperate with the plan. As the danger presented by the Student's behavior was real and immediate, and as the District acted at all times to bring the decision-making process to a conclusion with reasonable speed, no violation is found as to this allegation.

Allegation #6: Failure to consider the Student's individual educational needs, including the need for specialized instruction, when determining to provide tutorial services in the period from September 2011 to December 2011 in violation of MUSER §X.2.A(4)

NO VIOLATION FOUND

MUSER §X.2.A(4) specifies that, when tutorial instruction is to be provided to a student with a disability, "there is no minimum or maximum number of hours a day that must be provided, rather this determination will be made by the IEP Team based on the child's individual educational needs." There were conflicting reports about whether or not the Team on March 31, 2011 discussed the amount of tutoring to be provided to the Student (Mr. Brissette recalled that there was discussion) as was required, but the decision appears to have been made on the basis of the Student's individualized needs (she was strong on academics and was a fast and diligent worker). Ms. Rapoport stated that, although two hours per day is the norm, the District provides some students with less and some with more than that amount, based upon their unique needs. Furthermore, there was no indication that two hours was insufficient to enable the Student to make satisfactory progress in her classes.

Allegation #7: Failure to comply with regulatory requirements for an abbreviated school day when determining to provide tutoring for 10 hours per week in Spring 2011 in violation of MUSER §§II.1 and VI.2.L

NO VIOLATION FOUND

At the time that the District determined to limit the Student's educational program to two hours of homebound instruction per day, MUSER §II.1 defined an abbreviated school day as applicable to a student whose IEP Team determined that the student, for reasons including the student's behavior, was prohibited from participating in a full day of school. Thus, the educational program developed by the Student's IEP Team on March 31, 2011 constituted an abbreviated school day. As such, MUSER §VI.2.L imposed the following requirements on the District: 1) document in the Written Notice the basis for determining that the Student required an abbreviated day; 2) address how the Student would meet the Maine Learning Results; 3) develop a plan for the Student to return to a full school day within 45 calendar days; and 4) delineate actions to be taken to assist the Student to participate in a full school day.

As to the first requirement, the Written Notice makes plain that the basis for the IEP Team determination was the unsafe and assaultive behavior exhibited by the Student in the March 28, 2011 incident, and the concern that the Student, and the rest of the School community, would not be safe were the Student to return for a full school day. As to the second, the provision of tutoring in subjects aligned with the Learning Results satisfied the requirement, particularly as the Student did not generally have difficulties with her academic subjects. The third and fourth requirements hinged on the completion of the risk assessment and psychological evaluation, which the District put into motion without unreasonable delay. As the Parents derailed this effort by refusing to permit Dr. Saunders to perform the risk assessment, the District was prevented from complying with the 45 day time limit and with determining which actions were necessary to assist the Student with her return to a full school day, and so was not in violation of the regulation.

Allegation #8: Failure to comply with regulatory requirements for an abbreviated school day when determining to provide tutoring for 10 hours per week in Fall 2011 in violation of MUSER §§II.1 and VI.2.L

Allegation #3: Failure to provide educational services after the Student's suspension on March 31, 2011 so as to enable her to continue to participate in the general education curriculum, specifically, xx Sports and Spanish, in violation of MUSER §§XVII.1.B(2) and XVII.1.D(1)(a)

NO VIOLATION FOUND

On July 1, 2011, a revised version of MUSER §VI.2.L went into effect and became applicable to the Student's educational program. One of the changes was the inclusion of language that, in addition to addressing how a student with an abbreviated school day will meet the system of learning results, required the IEP Team to address how the student will receive full access to the general curriculum. MUSER §§XVII.1.B(2) and XVII.1.D(1)(a) likewise require that a student with a disability who is removed from her regular educational placement due to disciplinary action must receive educational services so as to be able to participate in the general education curriculum.

It is true, of course, that the Student was unable to participate in her Freshman Sports class during her period of homebound instruction. This period was, however, substantially prolonged as a result of the Student's mother refusing to allow Dr. Saunders to perform the risk assessment, even though the Student's father had consented to it. The District expected that, providing the results of the risk assessment supported the Student's return to the School, the Student would be able to return during the spring when there was still enough time for her to make up the missed classes and successfully complete her P.E. class. In any event, the Student was able to make up the missed course during the current school year and is on track to graduate with her class.

With regard to Spanish class, the District was prepared to include a basic introduction to Spanish as part of the Student's homebound instruction in the fall of 2011, but the Parents refused to allow this tutoring to take place. Ultimately, the Team (including the Student's

father) determined that the Student would do better with a different language class, and Spanish was dropped from the Student's schedule.

The revisions to MUSER §VI.2.L also include a requirement that, if a student does not return to full time within 45 days, the IEP Team must convene every 20 school days thereafter to review the student's progress. The Student's IEP Team met on May 26, 2011, September 15, 2011, October 24, 2011, November 22, 2011 and December 20, 2011. The lack of progress on May 26, 2011 was due to the inability of Dr. Saunders to perform the assessment, and the lack of progress at the other meetings was due to the Parents' refusal to cooperate with the reintegration plan. The District complied with the abbreviated day requirements.

VIII. Corrective Action Plan

The District shall convene the Student's IEP Team, as expeditiously as possible, to consider: a) whether the Student requires additional annual goals and further services designed to address the Student's behavioral needs and social skills deficits; b) whether the Student's disability category should be changed to ED (if that has become the Student's primary impairment) or to Multiple Disabilities (if OHI and ED are now concomitant impairments); c) whether further psychological evaluation is necessary in order to make the foregoing determinations; and d) whether and to what extent compensatory services are appropriate due to the Student's failure to receive such services between the dates of January 3, 2011 and January 3, 2012. The District will submit a copy of the Advance Written Notice, Written Notice and any IEP amendment that results to the Due Process Office, the Parents and the Parents' advocate.

The District shall also conduct an in-service training for all District special education staff on the topic of disciplinary procedures for students with disabilities, including the topics of conducting the manifestation determination and determining the appropriate tutoring services. This training shall be conducted by an attorney licensed in the State of Maine who specializes in special education law. The District will document the conducting of this training by submitting to the Due Process Office, the Parents and the Parents' advocate: a copy of the syllabus of the training; copies of all hand-outs distributed in connection with the training; the identity and qualification of the person(s) who conducted the training; and a list of the names and job titles of all those who attended the training.