Dear Ms. Mursky,

We hereby submit the following complaint against the Madison Metropolitan School District. We understand that upon receipt of a complaint, the Department of Public Instruction will conduct an inquiry into compliance with the state standards as required by Wisconsin Statute s. 121.02(2).

Please know that the Madison Metropolitan School District willfully and chronically violates the provisions of Wisconsin Statute s. 121.02(1)(t), Wisconsin Statute s. 118.35, and Administrative Rule 8.01(2)(t)2. Specifically, Madison West High School willfully denies appropriate programs to students identified as gifted in general intellectual ability, in specific academic areas, or both.

Wisconsin Statute s. 121.02(1)(t) provides:

*Each school board shall provide access to an appropriate program for pupils identified as gifted and talented.*

Wisconsin Statute s. 118.35 provides:

*In this section, “gifted and talented pupils” means pupils enrolled in public schools who give evidence of high performance capability in intellectual, creative, artistic, leadership, or specific academic areas and who need services or activities not ordinarily provided in a regular school program in order to fully develop such capabilities. Each school board shall ensure that all gifted and talented pupils enrolled in the school district have access to a program for gifted and talented pupils.*

Wisconsin Administrative Rule 8.01(2)(t)2 provides:

*Gifted and talented pupils shall be identified as required in s. 118.35(1), Stats. This identification shall occur in kindergarten through grade 12 in general intellectual, specific academic, leadership, creativity, and visual and performing arts. A pupil may be identified as gifted or talented in one or more of the categories under s. 118.35(1), Stats. The identification*
process shall result in a pupil profile based on multiple measures, including but not limited to standardized test data, nominations, rating scales or inventories, products, portfolios, and demonstrated performance. [. . .] The school district board shall provide access, without charge for tuition, to appropriate programming for pupils identified as gifted or talented as required under ss. 118.35(3) and 121.02(1)(t), Stats.

To help clarify Wisconsin Statute s. 121.02(1)(t), the Department of Public Instruction supplies a Definition of Terms. Here the DPI stipulates that programming for talented and gifted pupils must be systematic and continuous:

**Appropriate program.** A systematic and continuous set of instructional activities or learning experiences which expand the development of the pupils identified as gifted and talented (from PI 8.01(2)(t), Wis. Admin. Code).

The DPI provides further illumination of Wisconsin Statute s. 121.02(1)(t) in its reference, “Meeting Standard (t).” Here again the DPI stipulates that school districts must provide systematic and continuous programming for talented and gifted pupils from kindergarten through grade 12:

**Standard (t) requires school districts to assure that the special needs of gifted and talented students are understood and accommodated in all Wisconsin public schools from kindergarten through grade 12. The standard is consistent with the philosophy of Wisconsin school districts that children are entitled to quality education.**

**The intent of the standard is to cause schools to develop the means by which gifted/talented pupils will be identified and, once identified, provided access to a set of systematic and continuous instructional activities which are appropriate to the developmental needs of those children and youth so identified.**

In 2009, the MMSD acknowledged its legal obligations to gifted and talented students in creating and approving the MMSD Talented and Gifted Education Plan. The TAG Plan commits the district to providing **challenging and continuous curricula and programming for identified students in order that they may achieve their full academic, intellectual, and creative potential.**

Yet the creation and approval of a plan in which the MMSD acknowledges its obligations to gifted students does not in itself satisfy those obligations. The MMSD must take appropriate actions to implement the TAG Plan.

For instance, Goal 2 of the TAG Plan provides:

**Programming will be aligned with the National Association for Gifted Children [NAGC] standards, the State of Wisconsin statutes and rules for gifted and talented education, and the Wisconsin Department of Public Instruction Gifted and Talented Resource Guide.**
Among the programming options recommended for gifted learners, the NAGC lists ability grouping as a demonstrated best practice. Citing long, consistent, and overwhelmingly positive research, the NAGC asserts:

*Grouping options should be available at each stage of development in a gifted child's school program, from primary through secondary.*

*In general, grouping gifted learners tends to be the least restrictive environment in which their learning can take place.*

*For full-time ability grouped options, the research shows substantial academic effects.*

*For options that do not meet daily, the academic effects are small to moderate.*


Accordingly, NAGC Standards provide:

*Flexible groupings of students must be developed in order to facilitate differentiated instruction and curriculum.* (Program Design, Guiding Principle 5)

*The use of flexible grouping of gifted learners must be an integral part of gifted education programming.* (Program Design, Minimum Standard 5.0M)

*Gifted learners should be included in flexible grouping arrangements in all content areas and grade levels to ensure that gifted students learn with and from intellectual peers.* (Program Design, Exemplary Standard 5.0E)

In addition to ability grouping, the NAGC prescribes appropriate modifications to standard curricula for gifted students:

*Regular classroom curricula and instruction must be adapted, modified, or replaced to meet the unique needs of gifted learners.* (Curriculum and Instruction, Guiding Principle 2)

*Instruction, objectives, and strategies provided to gifted learners must be systematically differentiated from those in the regular classroom.* (Curriculum and Instruction, Minimum Standard 2.0M)

Ability grouping and systematically differentiated curricula and instruction are thus firmly established as essential components of the "appropriate programming" that gifted and talented students need in order to fully develop their intellectual and academic capabilities per ss. 118.35(3) and 121.02(1)(t), Stats.
Please know that with regard to these essential components of appropriate programming--ability grouping and systematically differentiated curricula and instruction--Madison West High School willfully violates NAGC standards, the MMSD TAG Plan, and Wisconsin State statutes by requiring ninth and tenth grade pupils with performance capabilities far beyond grade level to take standard academic curricula in classroom settings inappropriate to their learning needs.

The West High School pupils adversely affected by this requirement have shown evidence of high performance capability through one or more of the following measures:

• They have scored at or above the 95th percentile on standardized tests such as the MAP or the WKCE.
• They have demonstrated their high ability through classroom performance, consistently exceeding grade-level expectations.
• They have been recommended for gifted (advanced, accelerated) programming by one or more teachers.
• They have participated in Academic Talent Search tests (EXPLORE, ACT, or SAT), and their scores have merited the NUMATS recommendation of service category 3 in one or more subjects. (For fourth graders taking the EXPLORE: 18 or higher in English or Science; 16 or higher in Reading. For fifth graders taking the EXPLORE: 19 or higher in English, Reading, or Science. For middle school students taking the ACT or SAT: above the 50th percentile relative to college-bound high school seniors.)
• They have qualified to participate in gifted programs at other schools, WCATY, or NUMATS.
• They have qualified to attend a school for academically gifted children.
• They have scored in the gifted range on IQ tests administered by licensed professionals.

For these academically gifted pupils, Madison West High School illegally denies appropriate programming and limits access to advanced levels of core academic subjects in the following ways:

1. **English.** West provides no programming for ninth grade pupils gifted in language arts that includes ability grouping or a modified curriculum. The sole programming option available to ninth graders with high performance capability in language arts is subject acceleration. This option scatters gifted ninth grade pupils randomly in sections of English 10, a standard course for tenth graders with heterogeneous classes that span extreme ranges of abilities. This separates gifted ninth grade students not only from intellectual peers in their own cohort, but also from gifted tenth grade pupils who skipped English 9 and completed English 10 as ninth graders themselves the previous year.

2. **Biology.** In violation of the State mandate to base student identification on multiple measures, West imposes a single measure to determine eligibility for Accelerated Biology. West limits access to this course to a predetermined number of pupils by using a single qualifying exam and manipulating the cut score on this exam to include only the targeted number of pupils. This provides just enough pupils for a predetermined number of sections of the course and excludes
all others who desire an accelerated option and could otherwise qualify using multiple measures of motivation and performance capability.

3. **History.** There is no ninth grade programming at all for pupils gifted in social studies. West requires pupils who show high performance capability in social studies to take the standard US History 9 curriculum in heterogeneous classrooms with extreme ranges of abilities. In rare cases, West allows gifted pupils to skip History 9 and take Western Civilization 10. Western Civilization 10 is not a course with a modified curriculum or ability grouping for gifted pupils, but a standard curriculum in heterogeneous classrooms with extreme ranges of ability.

Within the mixed-ability classrooms of English 10 and Western Civilization 10, West currently offers an "embedded honors designation." The embedded honors designation does not satisfy the State's requirement for "systematic and continuous instructional activities." It entails no systematically differentiated instruction, objectives, or strategies, and it fails to provide the intense exploration of topics and the high level of cognitive thinking in group discussions and classroom lectures that would motivate and challenge gifted pupils to develop their potential per the MMSD Mission Statement articulated in the Strategic Plan; to achieve their full academic, intellectual, and creative potential as articulated in the TAG Plan; or to fully develop their capabilities per ss.118.35(3) and 121.02(1)(t), Stats.

West's lack of appropriate gifted programming for ninth and tenth grade English; its single, exclusive criterion for access to Accelerated Biology; and its requirement that gifted pupils take regular US History 9 and regular Western Civilization 10 with a standard curriculum in heterogeneous classrooms violate the mission of the MMSD TAG Plan as well as the State statutes for gifted education. In requiring that pupils identified as gifted and talented follow the regular core academic program, West willfully denies these pupils the services they need to fully develop their capabilities.

For years, parents of gifted pupils have persisted in the effort to persuade the MMSD and West High School to accommodate the needs of these children, and some of us devoted a large part of our lives in 2009 to helping the District write and pass the new TAG Plan. We gave our time and effort in good faith that Madison schools would, as a result, begin to provide the ability grouping and advanced, accelerated instruction that these pupils urgently need. Changes, however, have not been forthcoming; on the contrary, West educators and administrators have clearly resisted the mandate to provide programming for gifted students. On April 13, 2010, more than 105 West area parents and community supporters sent a petition to Assistant Superintendent Pam Nash, Superintendent Dan Nerad, West Principal Ed Holmes, and the Madison School Board, calling on them to remedy the situation by implementing the following changes at West:

1. **English.**

   • For pupils identified as gifted in language arts, provide an advanced level of English 9, with the number of sections based on demand and student eligibility determined by any one of
multiple measures: demonstrated performance in language arts, teacher recommendation, standardized test scores, Academic Talent Search test scores, portfolio of student's work, or student essay.

• Provide an advanced level of English 10, with the number of sections based on demand and student eligibility determined by any one of multiple measures: demonstrated performance in language arts, teacher recommendation, standardized test scores, Academic Talent Search test scores, portfolio of student’s work, or student essay. Group ninth grade students who opt to skip English 9 into this advanced level of English 10.

2. Biology.

• Open access to Accelerated Biology to all ninth grade students with high ability and interest in science by using any one of multiple measures to determine eligibility: demonstrated performance in science, teacher recommendation, score on qualifying exam, standardized test scores, Academic Talent Search test science score, or student essay.

3. History.

• Provide advanced sections of U.S. History 9, with the number of sections based on demand and student eligibility determined by any one of multiple measures: demonstrated performance in history and social studies, teacher recommendation, Academic Talent Search test critical reading score, portfolio of student's work, or student essay.

• Provide advanced sections of Western Civilization 10, with the number of sections based on demand and student eligibility determined by any one of multiple measures: demonstrated performance in history and social studies, teacher recommendation, Academic Talent Search test critical reading score, portfolio of student’s work, student essay.

In the petition from April 13, 2010, we asked to meet with Pam Nash by May 7, 2010, to discuss the MMSD’s response to these specific requests.

On May 12, 2010, Assistant Superintendent Nash responded as follows to our call for West High School to comply with State statutes and remedy the school's refusal to provide appropriate programs for ninth and tenth grade students gifted in science, language arts, and social studies:

Regarding your questions about West and honors:

West will offer Accelerated Biology to as many students who wish to take it in 2010-11. There will be no cut score used, but students will be made aware of the course requirements, text reading level and other information that would help students as they make course choices.

The school has also committed to a comprehensive data-based evaluation of existing courses, a task force that will develop a model for better meeting the needs of all students, and solicitation
of feedback from all parents at West High School. Next year will be devoted to those tasks so that the results garnered can be implemented in 2011-12.

While this response explains that West has committed to doing an evaluation, forming a task force, and gathering feedback, it fails to say that West will provide appropriate programs--i.e., ability grouping and systematically differentiated curricula--for students who have shown high performance capabilities in general intellectual ability and specific academic areas.

Further, in the interim since this response, West has taken no steps to start the evaluation, form the task force, or begin gathering feedback.

Further, in the interim since Ms. Nash explained that West would expand access to Accelerated Biology, West has neither eliminated the cut score on the single qualifying exam nor complied with the mandate in Wisconsin Statute s. 118.35 to use multiple measures for identification. During the week of June 28, West notified students who had taken the qualifying exam in early May whether or not they had been accepted into the class. Students who scored below 75% on this single exam were denied access to the class.

Not only has the MMSD refused to provide a program for delivery of state-mandated services to talented and gifted ninth and tenth grade West students in general, but the MMSD has also illegally denied state-mandated services to a number of individual students whose families have specifically requested alternatives to the regular program for the 2010-11 school year.

With this, the MMSD has chosen to continue willfully violating State statutes by illegally denying talented and gifted programming in English, science, and social studies for identified ninth and tenth grade students in the 2010-11 school year and indefinitely into the future.

Thank you for your inquiry into this complaint.

Sincerely,

[Fifty names and signatures]

Enclosed please find supporting documents, including the State statutes for gifted education, the MMSD TAG Plan, the MMSD Strategic Plan, the Wisconsin DPI Gifted and Talented Resource Guide, the NAGC Gifted Program Standards, Accelerated Biology qualifying exam results, the April 13 petition, the MMSD’s response, an updated petition sent July 27, 2010, and a sample of correspondence to MMSD educators that verifies their awareness of non-compliance and chronicles their willful denial of services to gifted pupils.