Complaint Investigation Report
Parents v. Franklin County CDS
September 2, 2008

Complaint:	# 08.085C
Complaint Investigators:	Erica Thompson and Rebecca Halbrook
Date of Appointment:	May 23, 2008

I. Identifying Information

Complainants:	Parents Address City
Respondent:	Ed Ferreira, Board Chair Franklin County Child Development Services 11 School Lane New Sharon, Maine 04955

Special Education Site Director: Gregory Armandi

Child:	Student DOB: xx/xx/xxxx

II. Summary of Complaint Investigation

The Maine Department of Education received this complaint on May 22, 2008. One of the Complaint Investigators was appointed on May 23, 2008 and a confirming letter of appointment was sent to both Complaint Investigators on May 29, 2008. On or about June 9, 2008, the Complaint Investigators received 151 pages of documents from the Respondent and 151 pages of documents from (the "Parents"). On June 13, 2008, the Parents submitted a 2-page email, including a memorandum dated June 12, 2008 written by Timothy Buie, M.D., pediatric gastroenterologist and on June 25, 2008, the Parents submitted five additional pages of documents. At the request of the Complaint Investigators, the Respondent submitted three additional pages of documents on June 20, 2008 and 28 additional pages of documents on June 23, 2008. Interviews were conducted with the following: the Child's mother; Ed Ferreira, Board Chair of the Franklin County Child Development Services (CDS); Gregory Armandi, CDS Site Director; Andrew Bourassa, CDS Ed Tech III; Noel Danforth, CDS Ed Tech III; Arthur Nadeau, CDS Special Education Teacher; Julie Shible, CDS Case Manager; Cynthia Spence, CDS Occupational Therapist; Patti Wingo, CDS Case Manager; Cynthia Woodcock, CDS Special Education Teacher; Sara Meerse, Directing Attorney, Kids Legal; Michelle

Hathaway, Director of the Margaret Murphy Center; Stephanie Thomas, CDS Speech/Language Therapist; Susan Loughrey, Speech/Language Therapist, Franklin Memorial Hospital; Kathleen Hickey, M.D. FAAP, the Child's pediatrician, Pine Tree Pediatrics, Franklin Memorial Hospital; Iris Silverstein, M.D., LADDERS Program, Developmental Clinic, Massachusetts General Hospital; Carol Hubbard, M.D., M.P.H., PhD, Director of Developmental-Behavioral Pediatrics, Maine Medical Partners; and Karri White, Case Manager, Infinite Horizons. On June 23, 2008, the Respondent sent the Complaint Investigators a letter requesting that Tammy Delaney be removed from the interviewee list that had been previously submitted by the Respondent. In the course of the investigation, the Complaint Investigators granted two extensions of time for the parties to submit additional documents; the first extension extended the time to submit certain documents to June 13, 2008 and the second extension extended the time to submit other documents to June 23, 2008.

III. Preliminary Statement

The Child is approximately xx old and resides with his mother and father and a younger sister in Dixfield, Maine. The Child is eligible for Early Intervention Services from Child Development Services under the exceptionality of Developmental Delay. The Child has been medically diagnosed as a child with Autism. Since May 1, 2007, the Child has received early intervention services primarily in a home setting; however, currently the Child receives speech/language therapy in a clinic setting at Franklin Memorial Hospital.

The complaint was filed by the Parents alleging violations of the Maine Special Education Regulations, Chapter 101, as set forth below.

IV. Allegations

1. Failure of the IFSP Team to include in the IFSP a statement of specific early intervention services necessary to meet the unique needs of the Child and the family. MUSER Section IX.1.D.(4).

2. Failure to provide early intervention services to the Child in natural environments, including the home and community settings in which children without disabilities participate. MUSER Section X.1.B.

3. Failure of the IFSP Team to include in the IFSP a statement of the measurable results or outcomes expected to be achieved for the Child and the family. MUSER Section IX.1.D.(3).

4. Failure to provide to the Child and the family the early intervention services, including special instruction, speech/language services, physical therapy services, and occupational therapy services, in conformity with the IFSP. MUSER Section X.1.A; MUSER Section XI.

5. Failure of the IFSP team to consider an assessment of the Child which was provided to the IFSP Team and as part of the Periodic Review of the IFSP. MUSER Section IX.1.B.

V. Summary of Findings

1. The Child was born on xx/xx/xxxx and is approximately xx old. The Child resides in Dixfield, Maine with his mother, father and a younger sister.

2. On April 4, 2007, the Child, who was then approximately xx old, was referred to CDS for evaluation by his pediatrician, Dr. Kathleen Hickey, due to her concerns about the Child's development of motor skills and sensory issues. The Child was not walking at xx of age and had much difficulty with communication with his parents and others. The Child was evaluated on May 1, 2007 by the CDS using the Battelle II Developmental Inventory. The CDS Case Manager, Julie Shible, was the developmental screener and Carla Phair, a speech language pathologist, completed the communication section of the Battelle II inventory. The CDS also interviewed the Child's parents, reviewed a health and developmental questionnaire and observed the Child to gather background information.

3. The CDS Initial Developmental Evaluation was conducted on May 1, 2007 and the Initial Development Evaluation report, dated May 24, 2007, concluded that the Child's diagnosis was "Global Developmental Delay" and it recommended that the Child "receive developmental services to address [his] challenges." His challenges included development in "adaptive, receptive and expressive language, motor, and cognitive skills . . . [and] phonological (articulation), intelligibility, oral-motor and expressive language." The CDS concluded that the Child was eligible to receive early intervention services and, accordingly, convened an IFSP Team.

4. The Child's IFSP Team met on May 1, 2007 and developed the Child's IFSP, with a commencement date for services of May 1, 2007, and the IFSP provided for services including: (i) 60 minutes per week of speech/language therapy provided by a speech therapist; (ii) 60 minutes per week of occupational therapy provided by an occupational therapist; (iii) 60 minutes per week of physical therapy provided by a physical therapist; and, (iv) 60 minutes per week of developmental therapy provided by a developmental therapist. The IFSP stated that each of such services would be provided to the Child one time per week and in the in-home setting. The speech/language, occupational and physical therapies would be provided in a center "if no in home therapist [was] available." In the documents submitted by the CDS in this matter, the CDS stated that "[d]ue to the unavailability of providers, three of the therapies were in alternative placement status. Developmental therapy was not available until the end of July [2007]."

5. The Child's IFSP, initiated on May 1, 2007, set forth one Annual Goal which was to "Improve fine/gross motor skills and expressive/receptive language skills to a level commensurate with developmental ability." The IFSP also set forth four Long-Term Goals and four Short-Term Goals for speech and language development. In addition, the IFSP included nine categories of Future Learning Objectives in the areas of: (i) Adaptive: Self-Care; (ii) Personal-Social: Adult Interaction; (iii) Person-Social: Self-Concept and Social Role; (iv) Communication: Receptive Communication; (v) Communication: Expressive Communication; (vi) Motor: Gross Motor; (vii) Motor: Fine Motor; (viii) Cognitive: Attention and Memory; and (ix) Cognitive: Perception and Concepts. Providers responsible for the goals listed on the IFSP included "speech, physical, occupational and developmental therapists"

6. The Minutes of the IFSP Team meeting on May 1, 2007 indicated that the Child's mother questioned whether the Child had autism and the IFSP Team "did see some behaviors of the [Child] that made [the Team] question [whether the Child had] Autism too, but [the Team could not make a] diagnosis [of] Autism [and] a psychological evaluation should be completed."

7. In addition, the Initial Developmental Evaluation report recommended that the Team "should discuss having [the Child's] fine and gross motor skills assessed by an occupational therapist and physical therapist." On May 29, 2007, Rhonda Norton, PT evaluated the Child's gross and fine motor skills using the Peabody Developmental Motor Scales- 2nd edition and observation of the Child. Ms. Norton's conclusions in the Physical Therapy Evaluation report, dated May 30, 2007, included a recommendation of physical therapy services for the Child "to increase developmental gross motor skills, improve quality and efficiency of movement and increase strength and balance."

8. The Initial Occupational Therapy Evaluation was conducted by Deborah Frino, MOT, OTR/L on May 31, 2007, June 5, 2007 and June 7, 2007 using the Peabody Developmental Motor Scales-2nd edition, an Infant/Toddler Sensory Profile, clinical observation and Parent interview. Ms. Frino's report recommended "Direct Occupational Therapy services to address motor and sensory processing delays."

9. At the request of the parents, the IFSP Team met on June 22, 2007 and the Minutes of the Team meeting indicated that "The team met per parent request to discuss services for [the Child] and to explore all available services for him. . . CDS has set up speech, occupational and physical therapy at center based programs as no in home therapist's [sic] are available at this time. Developmental therapy has been referred and the therapist will be calling [the parent] to set this up in home when he is back from vacation."

10. The psychological evaluation of the Child, then approximately 19 months old, was performed by Stephen D. Rioux, M.D. of Maine Neurology in Scarborough,

Maine. Dr. Rioux's evaluation report, dated July 18, 2007, stated that the Child "made fleeting eye contact. He followed no commands and uttered no intelligible words. . . . [the Child's] history and examination today are consistent with diagnosis of childhood autism. . . . He is a candidate for an ABA [Applied Behavior Analysis] program. It is encouraging to see that his eye contact and social interaction are improving and that he has regained the ability to use at least a few sign language and words to express some of his needs. He will be evaluated soon by Dr. Iris Silverstein at Massachusetts General Hospital, Developmental Program. I have recommended a follow up here [at Maine Neurology] in six months."

11. On July 25, 2007 Dr. Iris Silverstein M.D. of the LADDERS Program, Developmental Clinic, Massachusetts General Hospital, Wellesley, MA evaluated the Child, at the request of the Parents, and Dr. Silverstein's report contained several recommendations including the following three recommendations:

    1.[The Child] should have an immediate intensification of services through his Early Intervention program. There is good evidence that early intense and comprehensive autism-specific services are associated with the most favorable outcomes and developmental gains. A multidisciplinary team approach, with therapists at the same site for coordination and consistency of treatment is recommended. A center-based program should be age-appropriate, with other toddlers and young preschool children (>3 years) in order to best facilitate and model social interactions. 2. The core component of [the Child's] program and initial treatment should be applied behavioral analysis, building quickly to (ABA) 20-25 hours/week. This intensive, structured teaching program should focus initially to build basic attention, communication, socialization and imitation skills. This is a 1:1 therapy with an ABA trained professional based on an individualized curriculum. 3. [The Child] should receive individualized intensive speech and language services with a speech/language pathologist. Co-treatment with his ABA therapist may be beneficial. A total communication approach should be utilized including oral language, signing, and the Picture Exchange Communication System (PECS) in order for [the Child] to develop a functional means of communication.

12. During an interview conducted by the complaint investigators with Dr. Iris Silverstein, Dr. Silverstein stated that the recommendations in her report were based upon the research of the needs of children identified on the Autism Disorder Spectrum and outlined a level of ABA services in frequency and intensity. Dr. Silverstein stated during the interview that "where the services get delivered is not something she will give an opinion on." She went on to state that "20-25 hours of intensive Early Intervention services including Occupational Therapy, Speech and Language Therapy with a team approach and consistency is the best approach as well as the level of quality in the ABA and supervision by a Board certified Behavior Analyst to the program". During the interview Dr. Silverstein also indicated she has no experience with center based programs for

children under the age of three in Massachusetts where she is currently practicing as most services are coordinated through health and human services within the child's natural environment.

13. On August 3, 2007, Dr. Rioux wrote a letter, at the Parent's request, stating that the "ABA program is recommended [for the Child] and Child Development Services should follow the recommendations of Dr. Iris Silverstein."

14. On August 8, 2007, Kathleen Hickey, M.D., FAAP of Pine Tree Pediatrics, Franklin Memorial Hospital, Farmington, ME wrote a letter to Ms. Karri White, Case Manager, Infinite Horizons which stated that:

    > After discussions with both [the Child's] mother as well as Dr. Silverstein it is very clear that [the Child] needs some intensive therapy best provided in a social and collaborative environment. [The Child's] mother has identified the Margaret Murphy Center as the closest area [sic] that is appropriate for [the Child] and Dr. Silverstein did concur with the mother's assessment of this program. I would strongly recommend that [the Child] be allowed to attend the Margaret Murphy Center, using a Center-based approach to his services. If in fact he were not to qualify for that Center-based services, home-based services would need to have a minimum of 25 hours per week with adequate services, including PT/OT by qualified therapists that are accustomed to and skilled with working with children with PDD.

15. In the documents submitted by the CDS in this investigation, the CDS stated that:

    > [d]espite attempts by the CDS site director to discuss the {Child's] case with both Dr. Hickey and Dr. Rioux, neither responded. In addition, neither provider has ever attended an IFSP meeting although they have been invited. It should be noted that [the Child's mother] refused the site director's offer to [have the Child] . . . seen by a CDS contracted clinical psychologist with expertise in applied behavior analysis. . . . She questioned his qualifications as well as the CDS site director's [qualifications] and CDS staff [qualifications] in general. Since [the Child's mother] had no reason to even know anything about the CDS providers, the discussion led the site director to suspect [the Child's mother] had been coached into developing an unfounded distaste for CDS-Franklin County and its affiliates.

16. The Child's IFSP Team met on August 29, 2007 to review the Child's progress and consider reports and evaluations, including the recommendations of Dr. Silverstein and supportive letters from Dr. Hickey and Dr. Rioux that had not been available at the first meeting of the Team on May 1, 2007. The minutes of the IFSP Team meeting stated that:

    > The CDS-Franklin County director explained the philosophy and delivery model for children in [the Child's] age group which is the natural environment. This is in the home and/or in community centers where children without disabilities would attend (e.g. day care centers). The CDS mandate also promotes an extensive parent training component. Alternative

placements, [center-based services that do not fit the natural environment], were allowable on a temporary basis. A transition plan needed to be in place to restore the services to the natural environment. The recommendations from Dr. Silverstein, Dr. Rioux, and Dr. Hickey did not consider the natural environment as the most desirable location for services.

The minutes of the meeting also refer to (a) a report of the Child's progress from developmental therapist Arthur Nadeau who stated "that therapy sessions were going well and he supported increasing the number of intervention hours per week," (b) a report from physical therapist, Rhonda Norton, who "reported that [the Child has a low tolerance for therapy with a half hour being the maximum at this time . . . he does vomit when stressed . . . [and Ms. Norton" recommended physical therapy [be provided in] two ½ [hour] sessions per week and did not believe PT would be a long-term therapy for [the Child]," and (c) a report by speech therapist, Stephanie Thomas, who reported that the Child "needed more speech therapy time per week and consented that 3X per week with consultation time with an in-home [Developmental Therapist] was acceptable." There was no report given by the occupational therapist, Deborah Frino, since she had resigned from CDS and she would be replaced by a different occupational therapist who would be available to make home visits.

17. The minutes of the August 29, 2007 IFSP Team meeting also stated that Ms. Thomas

> supplied information on applied behavior analysis (ABA) and questioned whether the CDS-Franklin County program met the criteria. The CDS director explained that they did meet the criteria and had been utilizing ABA methods for more than ten years. . . . The [Parents] agreed that in-home services were desirable, but expressed concerns several times about CDS's ability to provide those services in the natural environment. These concerns were echoed by Stephanie Thomas [the Child's speech therapist].

18. After careful consideration of the recommendations of Mr. Nadeau, Ms. Norton, and Ms. Thomas, as expressed at the August 29th meeting, the Team developed an amended IFSP, with a commencement date for services of August 29, 2007, and determined that the diagnosis was Autism. The amended IFSP provided for increased levels of services for the Child including: (i) 180 minutes per week (60 minutes, 3 times per week) of speech/language therapy provided by a speech therapist; (ii) 60 minutes per week (1 time per week) of occupational therapy provided by an occupational therapist; (iii) 60 minutes per week (30 minutes, 2 times per week) of physical therapy provided by a physical therapist; (iv) 10 hours per week (2 hours per day, 5 times per week) of developmental therapy provided by a developmental therapist; and, (v) 30 minutes per month (one time per month) of consultation by the speech, occupational, physical and developmental therapists. The services described above were to be provided to the Child in the home setting unless "no in home therapist [was] available to

provide speech/language therapy, occupational therapy or physical therapy" in which case those therapies would be provided in a center.

Certain goals and objectives were set forth in the amended IFSP, as follows: the two annual goals adopted by the Team were: (i) to "improve fine/gross motor skills" and (ii) to "improve expressive and receptive language skills [and] improve pragmatic skills." Specific long-term and short-term goals were included in the IFSP, as drafted and signed by the occupational, physical and language/speech therapists. However, no goals and objectives were set forth in the amended IFSP with respect to developmental therapy. The parent signed the IFSP.

19. The Minutes of the Team meeting on August 29, 2007 indicated that Michelle Hathaway, Director of the Margaret Murphy Center, described the Center programs via conference call as follows:

> The CDS director asked questions about the frequency and intensity of [developmental therapy] at the center. They would be offering 2-3 hours per day with all therapies being included in that time frame per week. [Ms. Hathaway] mentioned there was a toddler group that had one (maybe two) typically developing children in attendance and that could be offered, as well as increasing 1:1 ratio [developmental therapy] based on [the Child's] performance and tolerance. The program would begin in a self-contained 1:1 setting with mainstreaming into a typically developing day care setting as the Child was able to tolerate. It would be a team decision when to make therapy changes. They could provide 2 hours per week of in home parent training.

The minutes of the IFSP Team meeting on August 29th also stated that the CDS director, Mr.Armandi, "expressed interest in looking at the Margaret Murphy Center as a possible socialization group location" and "[t]here was a brief discussion of finding day care placements that could serve as a location where [the Child] can be included with typically developing peers."

20. In the documents submitted by the CDS in this investigation, the CDS stated that the meeting on August 29, 2007 was held at the request of the Parents and described the meeting as follows:

> The [Child's mother] was dominating the meeting and did not inform CDS of her intentions which included handing out information, not previously seen by CDS, to support her new view that [the Child] needed to go to the Margaret Murphy Center. The independent speech evaluation conducted by Stephanie Thomas, SLP, recommended a very high level of speech therapy (7 days a week) and center based. . . . The Margaret Murphy Center was specifically brought up during the meeting. It is the CDS understanding that the provider [Ms. Thomas] has an affiliation with the Margaret Murphy Center . . . CDS contends the overt support of the Margaret Murphy Center generally fell outside the role of an IFSP Team member. . . .

> Despite the obstacles and the understanding that [the Child] has difficulty with extensive therapy time, the CDS site director acted in good faith by asking one of the team members – the director of Margaret Murphy Center (via conference call) – what she would recommend for total intensity and frequency of the program for a child [of the Child's] age. She responded by stating 2-3 hours per day. The direct services listed on the plan were based on her recommendation and an agreed upon modification of the speech therapist's recommendation. . . .
>
> Since services in the natural environment had not been provided for a long enough period to determine benefit to the child, CDS required the services be delivered in the natural environment consistent with MUSER X.1.B.

21. On September 25, 2007, an IFSP periodic review was conducted by the Team and concerns about the services provided to the Child were discussed. At that time, the services were provided in the home setting, except that physical therapy was provided in a center due to the unavailability of a physical therapist to provide services at the Child's home. During the meeting, the Child's mother stated that the Parents preferred center-based services for the Child and that the Child needed socialization opportunities. The parent requested Margaret Murphy Center as the program location. The Minutes of the September 25th meeting stated that Kendra Campbell of the Autism Society of Maine was "supportive of the center-based placement but [she] stated that in-home services were important also."

22. With respect to the September 25th IFSP Team meeting, the documents provided by the CDS in this investigation stated that:
> At the 09/25/07 IFSP meeting [the Child's parent] again brought new, previously unseen information to the meeting. The site director said this was not acceptable and one particular piece of new information from Stephanie Thomas, SLP was not to be reviewed. Michelle Hathaway also stated they would not typically provide that high frequency/intensity of speech. In addition, [the Child] would not qualify for a social group until he developed the appropriate skills. This is consistent with CDS goals of trying to develop [the Child's] skills in-home until he was ready to transition. . . . It should also be noted that Michelle Hathaway, the director of the Margaret Murphy Center, also stated that an in-home component was part of their program.

23. Ms. Cynthia Spence, the Child's occupational therapist, submitted an email dated September 24, 2007 for consideration at the September 25, 2007 IFSP Team meeting; the email supported a center-based program for the Child, as follows:
> [The Child] would most likely perform more consistently and receive better input if he were seen in a center-based program, possibly one that combines 1-2 hours of [developmental therapy] with [occupational therapy] in shorter increments and speech during and outside of [developmental therapy] time. It would appear that a program such as the CDS program should be adequate for a child his age. It is the opinion of this therapist that driving him 2 hours

a day for 2-3 hours of treatment further away would be contraindicated. . . .. Use of a center-based program would also allow the [occupational therapist] to use sensory integrative techniques consistently and it is probable that the rate of gains might be accelerated. This therapist has some concerns around [the Child's] nap schedule and possible impact on therapy time. Unfortunately, if [the Child] is asleep and not woken to have therapy, this therapist will be unable to simply wait for him to wake. If he is in a center-based program he will be on a regular program and this will avert issues around conflicting with his typical routine.

24. Apparently, the CDS director did not introduce at the IFSP Team on September 25, 2007 a letter dated September 26, 2007 written by Ms. Stephanie Thomas, the Child's speech therapist. The letter supported a center-based program for the Child, as follows:

    As I [Ms. Thomas] have stated before, a center based program with qualified professionals who have the ability to work closely with the child, the family and with each other is crucial for early intervention to be successful, or for any intervention to be successful. Clearly this is not the case in [the Child's] current program placement and therefore would be considered a more restrictive placement than center based at this point in time.

    In the documents submitted by the CDS in this investigation, the CDS stated that "It must be noted that Ms. Thomas suddenly discharged [the Child] from services (without telling us) and CDS replaced her with Audrey Lattz, SLP, CDS employed speech therapist, and would be starting in the home on 10/01/07. The site director believed Ms. Lattz was capable of making therapy decisions."

25. In response to the Parents' concerns expressed at the IFSP Team's September 25, 2007 meeting, that the Child had been provided no opportunities to interact with typically developing peers, the documents submitted by the CDS in this matter stated that:

    [The Parents] were provided contact information on the Early Head Start program which included regular social/community time for children with and without disabilities, the University of Maine-Farmington Infant Toddler group that meets weekly and includes typically developing children, as well as suggestions for local, community-based opportunities for their child. . . . [The CDS believed that the Parents] did not follow up on any of the suggestions and did not indicate any interest in CDS staff assistance with referrals. . . . For the record, CDS-Franklin County has a long history of providing therapy services in community settings such as Head Start, preschools, and daycare centers when these locations were a part of a child's educational or social experience. Center-based services for speech therapy were added to [the Child's] schedule because there were openings with the therapist who was already seeing [the Child] in his natural environment. . . . A schedule change initiated by [the Child's mother] resulted in a reduction of [the Child's] special instruction hours. CDS-Franklin offered replacing [sic]some of those

hours at the center since they were in town anyway for other services. [The Child's mother] cancelled all the appointments. And again, in January 2008, the [Parents] were offered a transition plan that would include developmental therapy time at CDS-Franklin County. These offers have not been acted on by the [Parents].

26. On November 10, 2007, Mr. Armandi, CDS Site Director, sent a letter to the Parents supportive of the in-home therapies being provided to the Child and stated as follows:

    I have spoken with four of the five therapists who provided services to [the Child] in his natural environment. It is my understanding that [the Child] is making satisfactory progress in that setting in both occupational therapy and developmental therapy. This is further evidenced by a progress report from the in-home occupational therapist that indicates [the Child] has met many of the outcomes listed and made satisfactory progress on most of the areas addressed. The developmental therapists compiled data and stated that [the Child] is making satisfactory progress. It is their opinion that an increase in the frequency and intensity of developmental therapy is contraindicated at this time. The physical therapist sent you a letter (a copy to CDS), indicating a reduction in services to one half of the original order. The CDS case manager confirmed [the Child's] satisfactory progress with the physical therapist.

27. In November 2007, the CDS contracted with the May Institute/May Center for Child Development and consulted with educational consultant, Ms. Tammy Delaney M. Ed., regarding various aspects of the Child's early intervention services. Ms. Delaney observed the Child on November 28, 2007 in the home setting and again on January 22, 2008 in the home setting. Ms. Delaney concluded in a memorandum to the CDS dated January 22, 2008 that:

    After reviewing the previous observation [on November 28, 2007], parental concerns, CDS staff concerns, and notes from this second observation, it is my recommendation that [the Child] participate in a center-based program for as many hours as he qualifies. I also recommend that the team designate one hour per day for a carryover approach to the home. In [the Child's] situation, I feel the current environmental variables outweigh his age when considering staff's ability to provide a consistent and productive as well as therapeutic learning environment in the home. [The Child] has a difficult time separating work time from time being with his family, which clearly interferes with skill acquisition and behavioral modifications implemented by the CDS staff. [The Child] has also shown a difficult time adjusting to different therapists in his home. With each new therapist, behaviors regress to where [he] has to start over again with what is expected and what is appropriate and accepted by that new person. With a center-based approach, [the Child] would automatically work with different people and would adjust to a variety of people all at once versus after a lengthy period of time.

28. On January 23, 2008, the IFSP Team met to review the IFSP and to consider the goals and objectives and progress reports by the Child's therapists. The Meeting Notes stated that "In general, [the Child] is making great gains. Not sure if gains are natural or due to intervention. . . . Parent distributed [a] written packet and read some concerns that she would like addressed by therapy staff. Compensatory education was mentioned [due to gaps in services] and there may be discrepancies between what parent and CDS director believes is the amount of time owed." At the January 23rd meeting, the Team discontinued the services of the physical therapist since, according to the physical therapist's progress report, the Child's skills were age-appropriate. The Team increased the occupational therapy services by an additional 30 minutes per week for a total of 90 minutes per week, to be provided by an occupational therapist.

29. In the documents submitted by the CDS in this matter, the Respondent stated that "the entire [IFSP Team] was satisfied with [the Child's] progress. All therapists involved have provided information of this nature through plans of care and quarterly progress reports, and verbal reports. CDS-Franklin has done the same. The [Parents] assertion that CDS-Franklin unnecessarily hamstrung the IFSP team is totally false." The documents submitted by the CDS and the Complainant in this matter include: two plans of care for the periods of 12/12/07 – 03/14/08 and 03/15/08 – 06/12/08 signed by Noel Danforth, developmental therapist; a Quarterly Report/Plan of Care for the periods of 9/11/07-12/11/08 and 1/28/08-03/19/08 signed by Arthur Nadeau, developmental therapist; and a Short-Term Objective Form for Individual Developmental Therapy with short-term objectives and results for Block Stacking and Puzzle Play 4 piece Non-Interlocking trials during the period of 12/12/08 – 03/14/08.

30. The IFSP Team acknowledged, during the January 23, 2008 IFSP Team meeting, that the Child had not received physical therapy services during the period of November 29, 2007 until approximately mid-January 2008, a period of approximately seven weeks, and therefore there was a shortfall of seven hours of physical therapy services as specified in the Child's IFSP. In addition, the CDS admitted that developmental therapy services were not provided to the Child during May – July 2007, a period of twelve weeks, and therefore there was a shortfall of approximately twelve hours of developmental therapy services. The CDS also admitted in Mr. Armandi's letter dated November 10, 2007 that it had difficulty in providing two of the three hours of speech therapy, as specified in the IFSP adopted at the August 29, 2007 Team meeting, during the period of mid-September through November 2007. This time period was approximately ten weeks, and therefore there was a shortfall of approximately 20 hours of speech therapy services.

31. There were additional gaps in services provided to the Child but it is not clear whether the gaps in such services occurred because of the Child's health issues, transportation or weather issues, school vacation and professional days or a failure

by the Parent to access those services, or all of the mentioned problems. The documents provided by the CDS in this investigation stated that

> it should be noted that therapy appointments for [the Child] have been cancelled a number of times over the months of his eligibility for PT, OT and DT services . . . There have also been problems with [the Parent] changing therapists, leaving the CDS case managers unable to keep up with her movements. Second, it should be noted that [the Parent] has also chosen not [to] access available services that were requested and authorized by CDS in January 2008 (e.g. increased occupational therapy time to assist [the Child] in learning to drink from a cup). . . . Third, it should be noted that [the Parent] has a long history of interference and lack of follow through with therapy goals. It has been reported several times, even as recently as May 2008 that [the Child] is not able to access the 3 hours of daily developmental therapy nor has his tolerance for increased hours been demonstrated since January 2008. Both unfortunate truths are due to [the Child's mother's] constant interference. The irony here is that increases in frequency and intensity as well as compensatory services are inconsistent with [the Parent's] motivation to actually facilitate the therapy outcomes.

32. The Minutes of the January 23, 2008 IFSP Team meeting stated that "Transition conversations [would] begin sometime in March [2008] concerning [the Child's] transition from Part C to Part B services." And the documents submitted by the CDS in this matter stated that "again, in January 2008, the [Parents] were offered a transition plan that would include developmental therapy time at CDS-Franklin County center-based program. These offers have not been acted on by the [Parents]."

33. In addition, in the documents submitted by the CDS in this matter, the CDS maintained that "[the Parents] and their attorney, Sara Mareese [sic], were informed – at the 01/23/08 IFSP [Team] meeting - that a transition plan for [the Child] which would include center-based services prior to his 3rd birthday - could be discussed starting in March [2008]. [The Parents] have been re-offered invitations to discuss this possibility on more than one occasion. They have consistently not responded. In addition, due to a schedule change initiated by [the Child's mother] in April 2008, [the Child's] special instruction time was reduced. CDS offered center-based services to the family consistent with the overall transition plan offer to make up the lost time. Although a schedule was developed with staff available, the [Parents] cancelled the appointments. . . . The CDS offer to discuss a transition plan that includes center-based services at CDS-Franklin County remains open."

34. On April 7, 2008, Carol Hubbard, M.D., Ph.D. wrote a letter regarding the Child, who is a patient in Dr. Hubbard's developmental behavioral pediatric office. Dr. Hubbard offered her opinion on the Child's program of services as follows:

> In terms of [the Child's] program of services, I agree with his mother's sense that [the Child's] home environment may not be the least restrictive environment for learning for him and that he may do better in a center-based program. Significantly, he has very few opportunities for social interactions with other children his own age, and therefore a center-based program will offer additional advantages. Any center-based program should include opportunities for interaction with verbal peers, preferably including typically developing children. I share concerns reported by [the mother] that [his] in-home services are sometimes sporadic and that he has not received the full amount of time outlined in his plan. Placement in a center-based program would address these concerns. . . . The Margaret Murphy Center has been identified as an appropriate program for [the Child] and we would support his enrollment there.

VI. Conclusions

Allegation #1. Failure of the IFSP Team to include in the IFSP a statement of specific early intervention services necessary to meet the unique needs of the Child and the family. MUSER Section IX.1.D.(4). **NO VIOLATION FOUND.**

Allegation #2. Failure to provide early intervention services to the Child in natural environments, including the home and community settings in which children without disabilities participate. MUSER Section X.1.B. **NO VIOLATION FOUND.**

Based on the facts and circumstances found by the Complaint Investigators in this matter, we concluded that the investigation of neither Allegation #1 nor Allegation #2 revealed a violation by the Respondent of the cited sections of the Maine Unified Special Education Regulation (MUSER). The IFSP Team, having initially developed the Child's IFSP on May 1, 2007 and having conducted subsequent meetings to discuss various aspects of the IFSP on June 22, 2007, on August 29, 2007, on September 25, 2007 and on January 23, 2008, complied with the MUSER requirements in question.

The Child's IFSP provided for early intervention services for the Child in natural environments, including the home and community settings in which children without disabilities participate and which "fosters the use and development of natural supports in a family's social and cultural network, promoting the child's and family's full participation in community life." MUSER Section X.1.B. The IFSP Team carefully considered the opinions of a psychologist and three medical doctors, their consultant at the May Institute, and the opinions of the therapy providers who had day-to-day contact with the Child. The Child's therapy providers were almost unanimous in their conclusions that the Child was making satisfactory progress with the program, as provided in his IFSP. Thus the Team determined that the Child should receive early intervention services preferably in the natural environment and services would only be provided in a center-based setting when in-home services were unavailable.

The Team's determination to provide the services in the natural environment is consistent with the MUSER Section X.1.B which provides that "each IFSP service is required to be provided in natural environments unless an outcome or outcomes cannot be achieved satisfactorily by doing so." The IFSP Team determined by obtaining progress reports from several therapists, who provided services to the Child pursuant to the IFSP, that the desired outcomes had been satisfactorily achieved and that the Child had made satisfactory progress on his program.

Moreover, the Child's IFSP did set forth a statement of specific services necessary to meet the unique needs of the Child and his family and, in fact, the specific services and levels of services were adjusted by the IFSP Team to fit the needs of the Child as he was evaluated or re-evaluated and as he developed skills over the timeframe of the early intervention services. In addition, services were offered and put in place by the site only to have the services discontinued by parent request and moved to different providers of the parent's choice. Part C of IDEA is a voluntary program, and the site was under no obligation to provide the services where and with whom the parent requested. The site could have continued to have the services available until the parent chose to access the services. Moreover, even though it was not required to do so under the natural environment definition, the CDS offered the family services within a center-based program for the delivery of developmental therapy located at the Franklin County Child Development Services building instead of the Margaret Murphy Center, but the family has not accessed the scheduled appointments (see Paragraph #32 above). Although the parents' participation in and input to the IFSP Team is very important, the site has the obligation and authority to determine where the services will be offered and by whom.

Allegation #3. Failure of the IFSP Team to include in the IFSP a statement of the measurable results or outcomes expected to be achieved for the Child and the family. MUSER Section IX.1.D.(3). **VIOLATION FOUND.**

During the initial IFSP meeting of May 1, 2007, a goal was written to "Improve fine/gross motor skills and expressive/receptive language skills to a level commensurate with developmental ability" with the persons responsible listed as "speech, physical, occupational and developmental therapists". During the meeting of August 29, 2007 the IFSP was amended to reflect an increase in the frequency and intensity of all of his services while omitting goals for the individual developmental therapy based on the ABA approach. The goals listed on the IFSP for OT and Speech and Language listed the developmental therapist as a person responsible in addition to the OT and SLP.

In a review of all documents and conversations of the interviews, there is evidence of developmental therapy plans of care with updated progress in meeting the goals throughout the length of services provided by the developmental therapist. There is also evidence that the family had access to the goals of the therapy in hard copy as well as opportunities to discuss progress towards the goals upon request. Therefore, a procedural violation has been found in that the site failed to list the specific goals for developmental therapy on the IFSP as the documentation of progress towards the goals outlined in the plans of care were evident throughout the documents submitted.

Allegation #4. Failure to provide to the Child and the family the early intervention services, including special instruction, speech/language services, physical therapy services, and occupational therapy services, in conformity with the IFSP. MUSER Section X.1.A; MUSER Section XI. **VIOLATION FOUND**.

The CDS conceded that the developmental therapy, speech therapy and physical therapy services specified by the IFSP Team were not consistently provided to the Child during the timeframe in question. The Complaint Investigators concluded that the shortfall in the amount of physical therapy services provided to the Child was seven hours; the shortfall in the amount of developmental therapy services provided to the Child was twelve hours; and the shortfall in the amount of speech therapy services was twenty hours. The failure by the IFSP Team to provide the required therapy services constitutes a violation of MUSER Section X.1.A and MUSER Section XI.

Allegation #5. Failure of the IFSP team to consider an assessment of the Child which was provided to the IFSP Team and as part of the Periodic Review of the IFSP. MUSER Section IX.1.B. **NO VIOLATION FOUND.**

Compliance with respect to MUSER Section IX.1.B was assured by the IFSP Team by its careful consideration of all aspects of the Child's program, its several Team meetings conducted during May 2007 – January 2008 to review the Child's progress and its proper and timely periodic review of the IFSP. The Team was not required to reconvene to consider a report which was received but not considered at the January 23, 2008 IFSP Team meeting. We find no violation of MUSER Section IX.1.B with respect to the matters set forth in Allegation #5.

VII. Corrective Action Plan

1. The CDS must convene an IFSP Team meeting within fourteen days of receiving this report. At the IFSP Team meeting, the IFSP Team shall also determine a compensatory education plan for providing the thirty-nine hours of compensatory education service required hereunder. Once the IFSP Team has developed the Child's compensatory education plan, accurate and complete records and reports will be maintained by the CDS, including at a minimum, the dates and hours of services provided, names of the qualified personnel and service providers and a description of the services provided.

   During the IFSP meeting, the team will complete the new State Required IFSP form in its entirety including developing clear appropriate goals and strategies for all services provided to the child and family.

   A copy of the CDS records and reports will be provided to the Due Process Office. In addition, each service provider will maintain an accurate record consisting of a log (with each entry duly initialed by the service provider) that details the dates, times and a description of services provided. Copies of the logs shall be provided to the CDS and the Due Process Office. A copy of all of the minutes of the IFSP Team meetings relating to compliance with this Corrective

Action Plan shall be sent to the Due Process Office, the Parents, and the Complaint Investigators.

Upon completion of the compensatory education plan, a copy of all records and reports maintained by the CDS that relate to the compensatory education plan and the logs shall be sent by the CDS to the Due Process Office, the Parents, the Advocate for the Parents, and the Complaint Investigators.

Recommendations:

In research completed by the complaint investigators during this complaint investigation, it is recommended that the parents consider their geographic location to the Franklin County Child Development Services office in comparison to the CDS Opportunities Mexico location. Throughout the interview process and review of documents, the complaint investigators noted that the child was often receiving services by staff of the Opportunities CDS site due to the travel distance and availability of providers. The family lives in Dixfield, Maine which is part of Oxford County and is physically closer to the Mexico branch of CDS. Travel time to and from services may be reduced and would therefore create less of an impact on family and site resources while implementing the child's IFSP and future IEP within the local school administrative unit. If the parents wish to pursue such an option, they may contact the State CDS office at 624-6660 to inquire about the protocol for doing so.