

Complaint Investigation Report
Parent & Parent v. RSU #58

April 7, 2010

Complaint #10.070C
Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Parent
Address
City, Zip

Parent
Address
City, Zip

Respondent: Quenten Clark, Superintendent
1401 Rangeley Rd.
Phillips, ME 04966

Special Education Director: Laureen Olsen

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on February 2, 2010. The Complaint Investigator was appointed on February 4, 2010 and issued a draft allegations report on February 11, 2010. The Complaint Investigator conducted a complaint investigation meeting on March 5, 2010 (rescheduled from the original date of February 23, 2010 to March 4, 2010 at the Respondent's request, and from March 4, 2010 to March 5, 2010 at the Complainant's request). On March 11, 2010, the Complaint Investigator received 141 pages of documents from the Complainant, followed on March 19, 2010 by 14 additional pages of documents in response to the submission of RSU #58 (the "District") along with an annotated version of the District's memorandum, and a 14-page memorandum and 628 pages of documents from the District. Interviews were conducted with the following: Laureen Olsen, special education director for the District; Cindy Richards, special education teacher for the District; June

Flagg, special education teacher for the District; Linda Baker, special education teacher for the District; Crystal Knapp Polk, teacher for the District; Candace Dunham, teacher for the District; Amy Ryan, teacher for the District; Yolanda Smith, teacher for the District; Amy Arms, occupational therapist for the District; Sabrina Jellison Reed, speech/language pathologist for the District; Angel Allen, technology director for the District; Phyllis Fischer, Ph.D., reading disabilities specialist; Laurel Tinkham, M.Ed., M.S., LCPC, psychological consultant; the Student's father's fiancée; 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 Specific Learning Disability. This complaint was filed by the parent (the Student's father) and the parent (the Student's mother), alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to provide special education, related services and supplementary aids and services during the period from February 2, 2007 to February 2, 2010 sufficient to enable the Student to advance appropriately toward attaining her annual goals in violation of MUSER §IX.3.A(1)(d);
2. Failure to revise the IEP during the period from February 2, 2007 to February 2, 2010 to address the Student's lack of expected progress toward the annual goals and in the general education curriculum in violation of MUSER §IX.3.D(1)(b)(i);
3. Failure to fully and adequately implement the Student's current IEP with respect to provision of reading materials prior to class and ensuring that those materials are capable of being accessed by the Student's assistive technology in violation of MUSER §IX.3.B(3);
4. Failure to fully and adequately implement the Student's current IEP with respect to provision of specially designed reading instruction in violation of MUSER §IX.3.B(3);
5. Failure to fully and adequately implement the Student's current IEP with respect to provision of a type-to-learn program in violation of MUSER §IX.3.B(3);
6. Failure to fully and adequately implement the Student's current IEP with respect to provision of additional time to the Student to complete her schoolwork in violation of MUSER §IX.3.B(3);
7. Failure to fully and adequately implement the Student's current IEP with respect to provision of modified paper in violation of MUSER §IX.3.B(3);
8. Failure to fully and adequately implement the Student's current IEP with respect to provision by the occupational therapist of writing strategies in violation of MUSER §IX.3.B(3);
9. Failure to fully and adequately implement the Student's current IEP with respect to provision of periodic reports on the progress the Student is making toward meeting the annual speech/ language goals in violation of MUSER §IX.3.B(3).

V. Summary of Findings

1. The Student lives primarily with her mother in Strong, and is presently attending xx grade at Strong Elementary School (the "School"). She began receiving special education services under the category Specific Learning Disability in xx grade.
2. In September, 2006, the Student (then in xx grade) was referred to special education due to perceived memory deficits, as well as difficulty with word retrieval and phonemic awareness. The Student underwent evaluations which revealed a short term memory score (77) on the Woodcock Johnson Psycho-Educational Battery III (administered by Thomas Collins, Ed.D., a consulting psychologist for the District) that was well below average, and a broad reading score (73) and broad written language score (82) on the Woodcock Johnson Reading Mastery Test (administered by special education teacher Cindy Richards) that were rated low and were below grade level. This led to a determination that the Student was eligible for special education under the category Specific Learning Disability.
3. The Student's IEP team developed an IEP dated October 23, 2006, under which the Student received 30 minutes of direct instruction in reading four times per week, and 25 minutes of support for writing in the regular education classroom five times per week. The Student also received 60 minutes of occupational therapy ("OT") per week as a related service to remediate weakness in visual motor and attention skills. The IEP also contained modifications and supports such as preferential seating, extra time on written assignments and having the Student repeat and paraphrase directions.
4. On November 2, 2007, with the Student now in xx grade, the Student's IEP team met to conduct its annual review. The Student had been retested on the Woodcock Johnson Reading Mastery Test, and her broad reading score was now at an 87, placing her at a 2nd grade level. The Student's decoding skills had improved, and Ms. Richards, stated that the Student was "making good progress," although the Student still had decoding weaknesses. The Student was working from the Great Leaps reading program, focusing on sound awareness, phonics, letter recognition and high frequency words and phrases. Ms. Richards recommended that reading instruction be increased to 30 minutes five times per week, and that writing instruction be added to the IEP for the same amount of time. The OT provider, Barbara White, reported that the Student had attained three of her four goals, and recommended that OT be reduced to 45 minutes per week. These recommendations were ultimately accepted and written into the Student's IEP dated November 5, 2007.
5. On May 28, 2008, Ms. Richards re-administered the Woodcock Johnson Reading Mastery Test to the Student resulting in a broad reading score of 90, with a 2.6 grade equivalent. The Student's reading comprehension score increased from 86 (1.9 grade equivalent) in October 2007 to 95 (3.3 grade equivalent) in May 2008.
6. On September 26, 2008, with the Student now in xx grade, the Student's IEP team met to conduct its annual review. The team reviewed the results of retesting by Dr. Collins, who reported that the Student's short-term memory score (92) had improved and was now in the average range, although her broad reading score (74) and broad written language score (82)

were essentially unchanged and were in the well below average and low average range, respectively.

7. The team also reviewed a speech/language evaluation performed in May 2008 by Carla Phair, who concluded that the Student demonstrated “moderate language impairment in the area of phonological memory and rapid naming skills.” In her report, Ms. Phair noted that “students who show poor performance on rapid naming tasks are expected to have difficulty reading fluently.”

8. The team proceeded to develop an IEP dated September 29, 2008 which added services for speech/language at 60 minutes per week, with the speech/language therapist also providing 30 minutes per month consultation with other team members. OT services were continued at 60 minutes per week, with the addition of 15 minutes per month for consultation. Reading and writing instruction were continued at 30 minutes each 5 times per week, with the special education teacher providing support to the Student in the regular education classroom for 30 minutes four times per week. Additional accommodations were added, including offering multiple choice, fill-in blanks or sentence starters for responses, and providing verbal clues when the Student can’t find a word.

9. Shortly after the September 2008 meeting, the Student’s parents obtained an independent psychological evaluation of the Student from Laurel Tinkham, M.Ed., M.S., L.C.P.C. The parents wanted more information about why the Student was having difficulty building reading skills and what type of programming would be beneficial to her. Ms. Tinkham reviewed records, conducted interviews and administered a series of assessments. Based upon increases in scores obtained on the Woodcock Reading Mastery Test in May 2008 compared with October 2007, Ms. Tinkham stated that “it appears that [the Student] has been making some progress in her current special education program.”

10. Ms. Tinkham administered the Wechsler Intelligence Scale for Children (4th ed.), and recorded subtest scores ranging from a high of 108 on the Perceptual Reasoning Index to a low of 71 on the Working Memory Index, yielding a full scale I.Q. score of 89. In view of the significant discrepancy between the foregoing high and low scores, Ms. Tinkham opined that the Student’s I.Q. score “is not the best indicator of her cognitive potential.”

11. Ms. Tinkham also administered the Gray Oral Reading Test (4th ed.) (“GORT-IV”), and obtained the following scores: Reading Rate – 2 (1.7 grade equivalent); Reading Accuracy – 5 (2.0 grade equivalent); Fluency – 2 (2.0 grade equivalent); Reading Comprehension – 9 (3.7 grade equivalent), with an Oral Reading Quotient of 73 (4th percentile). These scores, other than that for reading comprehension, were described as significantly below average, leading Ms. Tinkham to state that the Student had made only “limited progress in these areas over the last couple of years.” Based on these scores, Ms. Tinkham recommended that the Student’s program might need to be revised with an eye towards phonological processing and phonological memory, using a sequential reading program such as the Lindamood Phoneme Sequencing Program (“LIPS Program”). Ms. Tinkham also recommended teaching the Student visualizing and verbalizing strategies developed by Nanci Bell.

12. The Student's IEP team met again on January 5, 2009 to review the results of Ms. Tinkham's evaluation, with Ms. Tinkham in attendance. The team determined to change the Student's reading program to include the LIPS program and to use color coding to improve the Student's accuracy, fluency and sight word development. As the Student had scored in the average range in comprehension, the comprehension goal was removed from the IEP. The Student's OT goals were changed to include teaching learning strategies, auditory training and monitoring of the Student's activity level. The team further determined to add direct instruction in math 60 minutes per week. The Student's progress would be measured by use of the Dynamic Indicators of Basic Early Literacy Skills ("DIBELS"), running records and the Developmental Reading Assessment ("DRA").

13. The Student's IEP team next met on June 12, 2009. The team determined that extended school year services would be provided to the Student for 20 hours over the summer (later expanded to 25 hours). The team reviewed the Student's Northwestern Evaluation Association ("NWEA") scores, on which the Student's reading score improved from 169 to 183, though her language score decreased from 193 to 192. The team also reviewed the results of the Gray Silent Reading Test, on which the Student scored 84, in the below average range. The team determined to administer the GORT-IV before the summer, the DRA during the summer and the GORT-IV and Woodcock Reading Mastery Test in the fall.

14. Ms. Richards and Christina Brackley (literacy consultant for the District) administered the GORT-IV to the Student on June 15, 2009. The Student's scores were as follows: Reading Rate – 6 (3.4 grade equivalent); Reading Accuracy – 4 (2.2 grade equivalent); Reading Fluency 4 (2.4 grade equivalent); Reading Comprehension – 9 (4.4 grade equivalent); Oral Reading Quotient – 79 (8th percentile). Compared to her scores eight months earlier, the Student had increased 1.7 grade levels in Reading Rate, 0.2 levels in Reading Accuracy, 0.4 levels in Reading Fluency, 0.7 in Reading Comprehension, and she had moved up four percentage points in her Oral Reading Quotient.

15. In August 2009, in response to a request by the Student's father, the District arranged for an assistive technology assessment for the Student. As a result, the District purchased computer software (Kurzweil 3000) that reads aloud the text from scanned or e-mailed documents. Training in the operation of the program was provided to school staff, the Student and the Student's mother on August 31, 2009.

16. The Student's father had the Student independently evaluated by Phyllis Fischer, Ph.D. on September 8, 2009. Dr. Fischer administered the Fischer Decoding Mastery Test, designed to test a student's decoding skills. The Student showed no mastery of any of the sections of the test. Dr. Fischer wrote that the Student's "lack of skills, coupled with her poor auditory and working memory, and her poor Rapid Automatic Naming abilities, indicates the need for a decoding program that focuses heavily on developing automaticity on both the orthographic and phonological pieces of the decoding process as the decoding skills are learned. Thus far, 'Concept Phonics' [a program proprietary to Dr. Fischer] is the only program that accomplishes this." Dr. Fischer recommended that the Student receive after-school tutoring, three hours per week, for decoding and spelling so that she could "catch up quickly" without being taken out of her classroom more than necessary.

17. On September 25, 2009, with the Student now in xx grade, the Student's IEP team met for the annual review. The team reviewed the results of recent assessments. On the GORT-IV (given September 24, 2009), the Student scored as follows: Reading Rate – 3.0 grade equivalent (a decrease of 0.4 levels since June 2009); Reading Accuracy – 3.2 grade equivalent (an increase of 1.0); Reading Fluency 3.0 grade equivalent (an increase of 0.6); Reading Comprehension – 5.0 grade equivalent (an increase of 0.6). On the Woodcock Johnson Reading Mastery Test (given in September 2009), the Student's decoding skills and word identification scores placed her at the 2.5 grade level, while her reading comprehension and writing skills scores were in the low average range

18. The IEP team determined to increase the Student's specially designed reading instruction to 40 minutes six times per week and writing to 40 minutes of support in the regular education classroom 5 times per week. The Student's reading teacher, June Flagg, would consult with a Lindamood-Bell representative or Linda Baker (a special education teacher in the District who had received training from Dr. Fischer) two hours monthly regarding reading instruction. Speech/language services would remain at 60 minutes per week, and OT 30 minutes per week direct instruction with 30 minutes of consultation. Keyboarding skills would be added to the OT goals. Prior to the meeting, the Student's father had presented the team with a draft IEP for their consideration, and the team agreed to incorporate many of the goals set forth in this draft IEP into the final IEP. Unlike previous years' annual review meetings, the team's determinations did not include reference to provision of progress reports to the student's parents.

19. The Student's IEP dated September 25, 2009 included the following goals:

- a) [The Student] will demonstrate appropriate spacing of letters and digits in classwork given modified paper and strategies for improved success in all subjects;
- b) [The Student] will improve her auditory/visual memory and short term memory skills by completing 2 samples of 'Fine Tuning-Auditory-Visual Training program' worksheets with 85% accuracy, in a timely manner, as observed by OT X3 sessions by 5/2010;
- c) [The Student] will consistently demonstrate the use of strategies/techniques to facilitate success in academic with minimal verbal prompting by 5/2010; and
- d) [The Student] will complete first 3 lessons of Type to Learn program with >95% accuracy.

20. The September 25, 2009 IEP included the following supplementary aids, services, modifications and supports:

- a) Extended testing time excluding timed tests; and
- b) Kurzweil 3000.

21. The September 25, 2009 IEP included the following accommodations for the NECAP assessment:

- a) Test and directions read aloud to student (Mathematics and Writing only);

b) Student dictates constructed responses (Reading and Mathematics only) to school personnel (School personnel scribes student responses exactly as dictated into the Student Answer Booklet).

22. At the meeting, the OT therapist, Amy Arms, reported that she had observed that the Student's eyes didn't focus when moving from quadrant to quadrant, and suggested that the Student be evaluated by a neuro-optometrist. Ms. Arms provided the Student's parents with information about this, as well as the names of some optometrists that could perform the evaluation. On December 3, 2009, Colin Robinson, O.D. performed the evaluation and reported that the Student had a condition called exophoria, an eye muscle imbalance. Dr. Robinson stated that treatment for this condition includes use of prismatic lenses and vision therapy. The evaluation was performed at the District's expense.

23. The District provided to the Complaint Investigator documentation of 25 instances of informal progress reports being provided by the Student's teachers to the Student's parents between September 25, 2009 (the date of the most recent IEP team meeting) and February 2, 2010 (the date this complaint was filed). In addition, formal trimester progress reports were sent to the Student's parents on November 24, 2009. Due to a clerical error, one of the two speech/language goal reports was not printed. Once the omission was discovered, the progress report was provided.

24. In the progress report from Ms. Arms, she reports that the Student completed lesson 1 of the Type to Learn program with 91% accuracy.

25. The District provided to the Complaint Investigator documentation of numerous instances of printed materials being provided electronically by the Student's teachers to the Student between September 25, 2009 (the date of the most recent IEP team meeting) and February 2, 2010 (the date this complaint was filed).

26. The District provided to the Complaint Investigator documentation of numerous instances of assignments or tests being given to the Student, or the Student's work being performed, on modified paper.

27. During an interview conducted by the Complaint Investigator with Phyllis Fischer, Ph.D., Dr. Fischer stated the following: She is professor emeritus at University of Maine Farmington in learning disabilities, and her expertise is in reading disabilities. She performed an initial evaluation of the Student in September 2009, and recently performed an updated evaluation. She had an opportunity to review the Student's IEP from September 2009, and there are many things in the IEP that are appropriate for the Student. The problem is that Ms. Flagg hasn't started doing the automaticity drills that are included in the IEP. The research shows that doing these speed drills can increase a student's reading rate.

Ms. Flagg says that accuracy is more important than automaticity, but she believes that the Student is too far along in her education for that approach. The Student needs for decoding to be so automatic that she doesn't have to pay attention to it. It leads to the development of a large sight word vocabulary. Once the Student has that, then she will be able to read more

fluently in context. She believes that the Student is ready to do that. At present, the Student guesses at words all the time. This is what students are taught to do in regular education.

The objective in the IEP regarding automaticity has measurement built into it. It should be measured by recording words read correctly per minute, with the Student reading from a list of words with the same decoding elements arranged horizontally. There are a number of programs from which a teacher could get those lists. Making occasional mistakes is not a problem as long as the Student's speed picks up. Ms. Flagg, however, is focusing on accuracy, not speed, and is testing the Student by having her read in context, rather than from a word list. Ms. Flagg is measuring fluency, not automaticity.

Ms. Flagg has been doing many things with the Student that need to be done, but at this point, she should be focusing on automaticity. Until the Student began working with Ms. Flagg, she wasn't being taught phonics. The LIPS program, however, does not work on automaticity. She is aware that Ms. Flagg did not receive training on that program, but she is not a LIPS trainer and she is not sure about the significance of that fact.

28. During an interview conducted by the Complaint Investigator with Laurel Tinkham, M.Ed., M.S., LCPC, Ms. Tinkham stated the following: She is a clinical counselor who also performs educational evaluations and acts as consultant to several school districts. She evaluated the Student at the Student's father's request in November-December 2008, and then again in February 2009. She attended two of the Student's IEP team meetings, one in January 2009 and one in June 2009. She has reviewed some of the Student's IEPs.

At the January 2009 IEP team meeting, she made it very clear to the team that in order to measure the progress the Student was making with her reading instruction, they needed to first set a baseline and then collect data to compare with the baseline. When she came to the June 2009 meeting, she was surprised that there was no baseline and no data. Team members kept saying how wonderfully the Student was doing, but there was no data to back it up. The only test scores at the meeting were from the Gray Silent Reading test, which had not been given before and therefore didn't reveal anything about the Student's progress (the Gray Silent Reading test is entirely different from and cannot be compared with the GORT-IV). After the meeting, the District sent to the Student's father some running records from the LIPS program, which he shared with her, but she couldn't make sense of it in terms of data.

The District later administered the GORT-IV to the Student and the scores reflected progress, but she doesn't believe that it was administered correctly. In order to get an accurate score, it is critical to start scoring at the correct level. When she gave the test to the Student, she had to keep going back to lower reading levels until she finally reached a level where the Student obtained the threshold score. She suspects that the District's teachers just assumed that the Student could read successfully at the lower levels, and this would inflate the Student's scores.

The Student's scores showed gains in comprehension, but not in reading rate. Also, the GORT-IV tests comprehension with multiple choice questions. The Student's perceptual organization score is in the high average range, and the Student is able to narrow the offered choices and figure out what the correct choice must be. She believes that if the Student was

asked to make inferences from what she read, her comprehension scores would be much lower. As time goes on, the written material being given to the Student will become more challenging and it will be harder for the Student to access it without having mastered basic decoding skills.

She agrees with Dr. Fischer that the Student's greatest obstacle is the lack of decoding automaticity, and that the Student should be working on the speed drills recommended by Dr. Fischer. When the Student reads, because there is no automaticity, she rereads constantly to try to figure out words. This makes reading take a very long time.

She believes that the LIPS program was appropriate for the Student, but she doesn't believe that it can be taught correctly by someone who has not been trained. She has not used the program herself nor attended any training (she does not do reading instruction), but she has spoken with people who have used it and knows that other school districts have sent staff members for two or three days of training (not the two hour overview the District invited her to attend this fall). At the June 2009 meeting, Ms. Richards told her that the Student had completed the LIPS program, but she doesn't believe it could be completed in that short a time if it were being done correctly.

She agrees that the District has implemented changes to the Student's reading program over the last couple of years, but she doesn't understand why the district won't make fuller use of Dr. Fischer's expertise and why they won't get their teachers the training they need. She is not really sure what Ms. Flagg's program consists of besides LIPS, but something is wrong because the Student is not improving, and the Student is not a slow learner generally.

With regard to the Student's optometric evaluation, the Student's father asked her what she thought about it. She told him that she has never heard of giving bifocals to a young student, and that, in her experience, students do not get good results from vision therapy. She recommended that the Student be evaluated by a pediatric ophthalmologist.

29. During an interview conducted by the Complaint Investigator with Amy Arms, Ms. Arms stated the following: She is an occupational therapist for the District, and has been working with the Student since the beginning of the current school year. She sees the Student once per week during the Student's breakfast time (as the Student's father only agreed to have the Student continue with OT if it could be done during her non-academic times), and she also consults with all of the Student's teachers on an ongoing basis. The Student has three IEP goals that are in her domain, and she generally tries to work on two of them each session. There have been problems with the Student's OT attendance because the Student would rather have her social time with her friends. Since she brought the attendance problem to the attention of the Student's mother, however, attendance has improved.

Her work with the Student involves a number of strategies to facilitate success in the academic environment, and includes use of an audio-visual training program (Fine Tuning) that has the Student listening to oral instructions for conducting a visual-motor exercise. She started the Fine Tuning program at an intermediate level, but the Student was finding it difficult so she went to the primary level. The Student is currently performing with 64% accuracy, with a goal of 85% accuracy. She expects that the Student will meet the primary

goal by the end of the year, but not the intermediate, and she believes that the Student's working memory deficit is causing the slow rate of progress. She also has worked with the Student on use of a ruler under the line of print she is reading, although the Student resists this because it makes her different from her peers.

She works with the Student on appropriate spacing of letters and digits. For this work, she has been using the Handwriting without Tears program and the Print Tool Resource. The Student's scores on Print Tool were at the low end of the average range, with math being the lowest score. The Student is using a variety of modified paper in her classes, and she has consulted with the Student's teachers regarding the use of modified paper. In math class, for example, where proper spacing is particularly important, the Student does much of her work on graph paper. Her worksheets and exams provide designated blocks where her work goes for each problem. In other classes, the teachers are providing lined paper for written work and other graphic organizers.

She has also been working with the Student each week on the Type to Learn program, and the Student is making progress in typing fluency. Each lesson in the program has an instructional section, followed by five activities and then a challenge. To complete Lesson 1, it took approximately three sessions. The Student had to redo several of the activities in order to attain the requisite degree of accuracy. The Student is currently working on Lesson 3, where she is typing at 9 words per minute with 92% accuracy. Her goal is 20 words per minute with 95% accuracy. She believes the Student will attain this goal by the end of the year. This program has been put on the Student's laptop so she can access it at home, but she doesn't believe the Student is doing that.

For the March progress report, she reported that the Student was making satisfactory progress in all areas except for the Fine Tuning work, where the Student was making limited progress.

Following a consultation with Ms. Flagg, she recommended that the Student undergo a developmental optometric evaluation. The Student often goes off the line she is reading, and complains of eye fatigue. The Student is unable to read small print. When the Student works on the computer, she often rubs her eyes and reports that her eyes hurt. The evaluation demonstrated that the Student had binocularity and convergence issues: weak convergence, eye shifting and weak vision in the left lower quadrant. She believes these issues impact, and may be the single biggest factor in, the Student's efforts to improve her reading. She has been doing visual motor exercises to increase the Student's eye comfort and eye movement. She measures the Student's eye gaze for strength and movement, and the Student has improved somewhat.

30. During an interview conducted by the Complaint Investigator with Sabrina Jellison Reed, Ms. Reed stated the following: She is a speech/language pathologist for the District, and has been working with the Student for the past 1 ½ years. She evaluated the Student when the Student was referred initially, determined that the Student didn't require speech/language services and recommended that the Student be evaluated for learning disabilities. She evaluated the Student again in X grade, and this time determined that the Student was eligible for services. The Student has a deficit in her word retrieval strategy. The Student has difficulty speaking fluently – she misses words, blocks on words and substitutes words. At

the September 2009 IEP team meeting, the Student's parents agreed that they saw this word retrieval problem at home, too.

She believes that there is a relationship between this speech/language problem and the Student's literacy problem. It's difficult to tease this out, but she believes that speech/language intervention can help the Student with her literacy. She started out taking a broad approach, but as she got to know the Student better, she has narrowed this down somewhat. Last year, the goal for the Student was to work on sight words by using visual imagery to assist her memory. This helped the Student, and the Student was 87% accurate with a list of Frye words when she was tested in the fall. She found that it helps the Student to enlarge text on her computer screen. She also has encouraged the Student to use a window cut-out to isolate the text she is reading on paper. This year, she is working with the Student on her oral vocabulary. She gets content words from the Student's science and social studies teachers, and gives the Student memory techniques to help with her word retrieval. She also works on strategies for retrieval of common words, and has the Student use the words in context.

The Student seems more confident this year, and she is better able to talk about what she is doing. The Student also has a higher frustration tolerance. She seems happy and seems to feel better about herself at school. Word retrieval continues to be an issue, and it's difficult to measure the Student's progress; there is a lack of agreement in her field as to how to assess this.

She attended the IEP team meeting in September 2009, which lasted 4 ½ hours. She gave information to the team about what she had been doing with the Student, and provided an analysis of the Student's miscues. She wrote progress ratings and a few sentences to describe what the Student has been doing on the IEP. The 1st trimester, she learned that she had failed to record a progress rating on one of the two goals; she believes that she didn't click on "save" when she was entering it. As soon as she found out, she sent the report to the Student's parents. This month she sent the 2nd semester progress reports. She also began sending bi-weekly reports on February 10, 2010, and has been scanning and sending work samples.

31. During an interview conducted by the Complaint Investigator with Amy Ryan, Ms. Ryan stated the following: She is an English language arts teacher for the District, and has been teaching writing to the Student since the beginning of the current school year. She sees the Student for five 40-minute periods per week in the regular education classroom setting. In addition to herself, there is an educational technician present (with whom she consults on a daily basis) who helps the Student along with other students in the class. The Student is doing the same work as the rest of the class, and is doing very well (the Student had a B+ average this trimester). She is working on sentence structure, punctuation, quotation/dialogue rules and constructing a five paragraph essay.

She sees definite improvement this year in the Student's writing - in basic sentence structure, punctuation, capitalization and paragraphing. In general, the Student is more confident in putting her ideas down on paper, and seems more comfortable in the class. The Student

doesn't require extra time; she is in the middle of the class, with some students taking less time and some taking more. There is generally not a firm due date for assignments. Students can come into her class and work on assignments during lunch, but the Student usually finishes during class. There are occasional quizzes in her class, and the Student does not require extra time. She has not assigned much homework, but when she does, the Student turns it in on time. Any time she assigns homework to the class, the material gets scanned and sent to the Student so it will be available to her on her computer. Any rubrics and assignment criteria also are scanned.

She has been meeting with Ms. Arms throughout the year, and they decided that using regular lined paper was sufficient and appropriate for the Student, but that it should be used whenever the Student is doing writing. The Student's spelling has improved over the year. The Student uses her laptop often, and knows how to use spell-check. The Student keeps up with the other students when she is typing.

32. During an interview conducted by the Complaint Investigator with Cindy Richards, Ms. Richards stated the following: She has been a special education teacher at the School for 27 years, teaching students in grades Kindergarten through xx, and she taught the Student from when she was referred to special education in xx grade through her xx grade year. When the Student was in xx grade, her services were limited to reading instruction. She worked with the Student using a program called Assured Reading for Learning, on which she had received training, which focused on decoding. She also had received training from Candace Bray on a phonemic awareness program and used this as well. Both programs were based in phonics – concerned with letter-sound connections and word patterns. She also worked with the Student on comprehension - reading stories while discussing events and making predictions. The Student made progress towards her reading goals over the year.

In the Student's xx grade year, in addition to reading instruction, writing and math instruction were added to the Student's IEP. Additional reading goals were added, involving comprehension, fluency and decoding strategies. She used guided reading stories, where each story focuses on a particular sound pattern. She worked on building sight word vocabulary, doing drills with cards containing frequently occurring one syllable words. The Student eventually learned 220 of these words.

She started working with the Great Leaps program to improve the Student's oral reading fluency. The Student can be very inconsistent in her performance, however. The Student has skills, and when she is encouraged to slow down and use those skills, she can read accurately. When she is trying to read quickly – aiming for fluency – she gets nervous.

The Student made good progress over the year. She increased her vocabulary, improved her comprehension (the Student brings a lot of outside knowledge to the comprehension task) and improved her decoding skills (she mastered consonant blends, vowel teams and diphthongs). She charted the Student's progress with her sight word vocabulary by testing her with word cards, and recorded increases in how many she got right. The Student increased her score over the year in the Woodcock Reading Mastery test from reading level 2.0 to 2.6. Given the Student's extreme working memory and short-term memory deficits and her rate of working

(the Student is reflective and doesn't hurry when she is working), six months gain in seven months is excellent progress. Doing this work was also very hard for the Student, and very tiring. She complained of headaches and often rubbed her eyes.

In xx grade, at the January 2009 IEP team meeting, the Student's father wanted to discontinue the Great Leaps program. The IEP team considered this and, because the timed tests caused the Student so much stress, agreed. At that meeting, Ms. Tinkham recommended using the LIPS program and the team agreed to start using it. The LIPS program is very similar to Assured Reading for Learning and other programs with which she is familiar. It focuses on patterns within words (e.g., hard "g" and soft "g" or hard "c" and soft "c"), and contains multi-syllabic word lists. The LIPS program also focuses on the shape of the mouth when making the different sounds. In fact, it is primarily a speech/language tool, and the District had the program because a speech/language pathologist had purchased it.

She had not had experience with the LIPS program before this, but the speech/language pathologist showed her the program and gave her instructions on its use. She also read the manual, which provides sample lessons, charts and lists. Training would have been helpful, but the nearest training was in Reno, Nevada, and the District would not approve her traveling there. She reviewed the various components of the program and selected certain word lists to work on. She also used the colored cubes. The focus was on helping the Student to become aware of sound patterns, e.g., "qu", "gn", adding "ing" or "ed", recognizing open vs. closed syllables and various vowel/consonant patterns. From the charting she did over the year, it is clear that the Student made steady progress, although the progress was slow. The Student developed more sight words, and was able to recognize patterns.

She also continued to work on vocabulary development and word building. She focused on word parts (e.g., "ight" or "tion"), doing drills with words containing the same part without speed drilling the words. The Student requires many repetitions before a word gets stored in her long-term memory. Even then, the Student may have trouble accessing it. The Student has a word retrieval problem.

She read stories with the Student from the "Magic Treehouse" series, beginning at the 2.5 level and working upwards. The books have a controlled vocabulary, focusing on certain new words while keeping all the surrounding vocabulary very basic. The Student became more proficient at recognizing basic words. The Student also appeared to lose her fear of reading over the year, and actually started to enjoy reading. Her reading comprehension also continued to improve.

Another change to the Student's IEP in xx grade was the addition of speech/language services. The Student has a language-based problem with her speech output, having difficulty finding enough words to make herself understood. The speech/language work was directed at word finding and improving automaticity of speech.

She is not convinced that insisting that the Student read a certain number of words per minute will make the Student a reader. Not all children read quickly. She believes that it is more important that the Student understand what she reads. Ultimately, a component of the

outcome for the Student will be her willingness to do the hard work of reading, including doing numerous repetitions. She is not certain that the Student does much reading outside of school.

33. During an interview conducted by the Complaint Investigator with June Flagg, Ms. Flagg stated the following: She has been a special education teacher for the District for 39 years, and has been working with the Student this year in the resource room, six times per week. The Student has a really stubborn disability based on her working memory deficit. She works with the Student on sound-symbol association, with lots of drills and practice. The Student knows her digraphs and blends, but she's working with the Student on increasing her speed. She also works on syllables, recognizing different kinds (e.g., open and closed) and trying to get that to be automatic. Currently they are working on consonant-le words. The Student needs a lot of practice on all of these. She has also been doing drills with frequent repetition to increase the Student's sight word vocabulary.

She meets with the Student after school two days a week. They take turns reading the Student's class material, and when she reads the Student follows along in the text with her finger. She has helped the Student with her assistive technology, although the Student tells her that she doesn't always use it because she doesn't want to. She also consults twice a month with Ms. Baker, who gives her additional materials to use.

She tests the Student using DIBELS at least twice a month. She started with the 4th grade level, because automaticity is a problem for the Student and she wanted her to have a chance to build that up. The Student started with a score of 44, and has gone up and down in her scores since then, with a high of 68 and a low of 28. The Student's last score at the 4th grade level was 55. Last week she started testing her at the 5th grade level, and the Student read 79 words with 4 errors. This week she read 61 words with 6 errors. She doesn't believe that a teacher should stress increasing speed until a student can read automatically. A student has to learn to read slowly but correctly first. She has, nevertheless, been following the Student's IEP because she is required to. She did speed drills with some sounds that the Student has trouble with, and the Student finally got it – she now reads them correctly most of the time. Dr. Fischer wants the Student to read two-syllable words at 75 words per minute, but as soon as the clock starts, the Student can't read them. The Student gets very frustrated that her words-per-minute rate is not increasing consistently.

When she administered the GORT-IV to the Student, she studied the manual very carefully. Following the manual, she went down through the levels until she reached the level where the Student could obtain the threshold score.

The Student is making progress. She just had a teacher substitute for her who had substituted for her in the fall. The substitute teacher commented to her on how much the Student had improved. The Student is better at decoding, especially when she takes the time to decode. She has started keeping track of how many sentences the Student reads with no mistakes, and this number has been increasing. The Student also reads more fluently, with less rereading. She is certain that the Student's sight word vocabulary has increased; the Student can read words correctly now that she usually made mistakes with at the start of the year. The

Student's reading comprehension has also definitely improved. She doesn't think the Student will meet all her reading goals this year, but she will have made progress. She believes the Student should continue with the same program, or something similar; she believes it is working.

She doesn't disagree with Dr. Fischer, but she believes that speed isn't everything. Every child works in her own style. She would like to see the Student attain the speed goal, and she will work to make it happen, but it may not happen. The Student also has to want it to happen. The Student has to be willing to sit with her feet on the floor and her book flat on the table, tracking the words with her finger. Right now, she has to continuously remind the Student to do those things.

She also believes that the Student has a problem with her vision. The Student will sometimes slip down and read a word two lines below where she is reading. When the Student gets tired, she braces her chin so that her head doesn't move. The Student also complains that her eyes get tired.

34. During an interview conducted by the Complaint Investigator with Linda Baker, Ms. Baker stated the following: She has been a special education teacher for the District for 10 years. She has taken multiple courses with Dr. Fischer, did an independent study and a week-long training with her. She frequently uses Dr. Fischer's Concept Phonics program with her own students. At a workshop she participated in last year, Ms. Richards shared materials from the Great Leaps program (which she hadn't seen before then), and she was favorably impressed with it. She thought that it matched up well with what Dr. Fischer has been doing.

This year, she has been consulting with Ms. Flagg, and has observed Ms. Flagg working with the Student on three occasions (in January, February and March 2010). Ms. Flagg has been very faithful in following through on her recommendations. She finds that Ms. Flagg is very well organized, and doesn't waste any of the time she spends with the Student. Ms. Flagg keeps a good pace during the session. She also observed that Ms. Flagg had a good rapport with the Student, and that the Student responded well to her. The Student appeared to be engaged and responsive, especially when she was doing reading. She asked questions of Ms. Flagg about what they were doing, and seemed genuinely interested.

She looked at the program Ms. Flagg was using with the Student to make sure that it contained the various components dictated by best practices (phonics, decoding, vocabulary, comprehension, etc.), and found that it contained all of the essential components. Ms. Flagg was working on decoding, and using Concept Phonics. She was doing speed drills and other drills using materials, such as sight word cards, that she developed for the Student. This is consistent with Dr. Fischer's training, which encouraged teachers to make their own materials based on a particular student's miscue analysis. She agrees with Ms. Flagg that accuracy is more important than speed. Some students almost shut down when they are being timed. She mostly doesn't time her students.

From her first observation of the Student to her most recent, she saw improvement in the Student's ability to break words into syllables. She also knows that the Student's reading

level had increased based on the level of the materials that Ms. Flagg was working from. Ms. Flagg showed her the Student's DIBELS scores, and although they showed overall improvement, they also documented how inconsistent the Student was. This is part of the Student's profile, and is not unusual for children with learning disabilities.

35. During an interview conducted by the Complaint Investigator with Lauren Olsen, Ms. Olsen stated the following: She is special education director for the District, having taken that position on July 1, 2008. Since that time, she has attended all of the Student's IEP team meetings. She has observed while the Student was reading on many occasions, more this year than last.

When Ms. Richards first started working with the Student, the Student had no sound-symbol association. Ms. Richards had to go back to the beginning of reading instruction. The Student built a foundation with Ms. Richards and is now going further with Ms. Flagg. The biggest obstacle to the Student's progress in reading has been oral fluency – she can read, but she goes slowly, and when she speeds up she makes mistakes. The Student reads steadily and accurately, but once the timer comes out, the Student becomes apprehensive. The Student needs to learn to recognize sound patterns, and she now has learned to recognize many of them, including vowel sounds and blends. Both Ms. Richards and Ms. Flagg have charted the Student's errors, so they could focus on those patterns with which the Student has difficulty. The Student still doesn't have automaticity for multi-syllable words. The Student continued to work on this during the extended school year program ("ESY").

When the Student was in xx grade, she had Ms. Baker review the Great Leaps program that Ms. Richards was using with the Student, and Ms. Baker highly approved of it. Ms. Baker received training from Dr. Fischer (as did both she and Ms. Flagg), and Ms. Baker continues to consult with Ms. Flagg. Ms. Flagg thought that it was important initially to work on steady and accurate reading, but now she feels the Student is ready to work more on speed. Ms. Flagg has increased her use of speed drills, to try and improve the Student's automaticity. She believes that this year the Student is solidifying the skills she worked on in Great Leaps and LIPS. A lot of consultation is taking place among staff members beyond what is specified in the IEP. Also this year, the Student stays after school two days per week to do extra work on reading. It's a chance to reinforce the skills she is working on. She sees the Student as "on a roll" right now.

Ms. Flagg went through the LIPS program with the Student, but by the end of xx grade the Student hadn't mastered the last few sections of it. For that reason, the Student continued to work on those sections over the summer. During the summer, she consulted by phone with someone at Lindamood-Bell, who told her many reading specialists and psychologists, especially in the Northeast, are not up to date on their programs. Current recommendations are that LIPS should be used only in 1st and 2nd grades. For children in higher grades, Seeing Stars is the appropriate program. After that conversation, she decided that the Student should finish with the LIPS program and move on to Seeing Stars. This further seemed appropriate because she has observed that the Student doesn't have difficulty with her mouth forming the word sounds.

The Student is reading at a higher grade level now than she was when she started receiving services. She now can read many multi-syllable words. The lexile scores (based on length of sentences and number of multi-syllabic words) of the books the Student is reading has increased. The Student is also more comfortable with reading – she reads with expression and seems to be enjoying herself. She is more confident in her reading this year compared with last year. She no longer has to decode as many words. She believes there has been significant improvement in the Student's skill set. Although the Student's reading rate has not increased, she is now being tested on xx grade material, so maintaining her score means that she has made progress. Also, her comprehension scores continue to increase, and if the Student wasn't learning how to read more complex words, this wouldn't be the case. Furthermore, the fact that the Student has met standards on the MEAs and NECAPs shows that there has been progress.

There has been a tension between the District's desire to have the Student receive individualized instruction and the Student's father's desire to keep the Student in the regular education classroom. At the last meeting, the Student's father wanted to dismiss speech/language therapy, but the team convinced him that the Student's word finding problem was connected to her reading problem – was part of what was interfering with building automaticity. The Student's father finally agreed to have the therapy continue as long as it didn't take the Student out of her academic classes.

The staff is making sure the Student's assistive technology is accessible to and is being used by the Student. Over the summer, the Student's father requested an assistive technology evaluation. The District agreed, and gave the parent choices of who might perform the evaluation. The Student's father made his selection, and the District made it happen. Training in the technology took place on the first day of the current school year. Training was attended by the Student, her mother, Ms. Flagg and other staff members. The Student's father was invited to attend, but he said he was unable to do so. A technician was assigned to oversee the process, and she checked the program against many types of materials to make sure they would scan properly. There have been a few glitches. One day, for example, the icons appeared different to the Student and she wasn't sure what to do. The Student needs to remember how the files are organized, and this is sometimes difficult. The Student usually prefers to read to herself, asking for help with any words that she doesn't know, so she often chooses not to access the technology. Nevertheless, she has been monitoring the Student's teachers from the start of the year to make sure they scan all materials the Student will be using. All students store their laptops during the day so that they will not use up their charge; the Student stores hers in Ms. Flagg's classroom. Ms. Flagg's classroom is located very near to the other middle school classrooms. The Student can come and get it whenever she needs it, and she has not been told that she must return it after each class; the Student could carry it from class to class if she so chooses.

With regard to the Type to Learn program, there was a lot of preparation required before the Student could even begin with Lesson 1. The program is on the Student's computer so she can continue to work on it at home.

The staff members have been using modified paper for the Student's assignments, although there was one instance where a current events assignment went home on unlined paper.

With regard to speech/language progress reports, at the end of the first trimester, one of the goals was sent without a progress report. This was a computer error, and as soon as Ms. Reed learned of the problem, she corrected it. She does not remember a discussion of bi-weekly updates at the September 2009 IEP team meeting. She is certain, however (because she does it at every meeting), that at the end of the meeting she reviewed all the determinations that the team had reached during the meeting. If the Student's parents had said that bi-weekly updates should have been included, she would have addressed it.

With regard to the May 2009 IEP team meeting, about which the Student's father and Ms. Tinkham have complained that there wasn't data available for them to review, the purpose of the meeting was to decide how much time the Student would have available for her ESY program, and to give the Student's parents a chance to meet some of the middle school staff. It was never intended to be a time to review the Student's progress. This purpose was explained in an e-mail and on the Advance Written Notice. The Student's father did not tell the District in advance that Ms. Tinkham would be attending the meeting, or that he wished to review progress data. The Student's father has been receiving records of progress on an ongoing basis, including records that reflect the Student's accuracy while doing oral reading. The District has an open invitation to the Student's father to come to the School and look over the instructional materials and records of the Student's work, but he has not chosen to do this. She extended the same offer to Ms. Tinkham, who also has not visited the School.

36. During an interview conducted by the Complaint Investigator with Candace Dunham, Ms. Dunham stated the following: She is a science teacher at the School, and has been teaching the Student since the beginning of the current school year. The Student has been doing very well, and is keeping up with the rest of the class. The Student has good schema that she builds into everything. The Student contributes to class discussions at least as much as the other students. The Student completes all her assignments. She hasn't given the class any long assignments, but sometimes the Students are asked to answer questions in the text. The Student does not require extra time to complete her work. She hasn't observed the Student having any difficulty accessing her written materials, although the class doesn't involve a great deal of independent reading.

She always scans any written materials she will be using so that the Student can access it on her computer, in time so that the Student will have them in her computer when class starts. The Student was initially reluctant to use her Kurzweil 3000 program because it made her feel different from her peers, but she has gotten better at using it.

She has made some modifications to her worksheets that require the students to do writing (e.g., using lines instead of blank spaces), but she makes sure to give them to all the students. The Student sometimes asks her to look over what the Student is writing to make sure she is on track. The Student is really good at trying things first, and then checking in to make sure she's doing it right.

37. During an interview conducted by the Complaint Investigator with Crystal Knapp Polk, Ms. Polk stated the following: She is a social studies teacher at the School, and has been teaching the Student since the beginning of the current school year. Last trimester, the Student had a 93% average in her class. She is not aware of the Student having any difficulty accessing written materials for her class. She sends all written material to the Student by e-mail in advance, although there isn't a lot of reading in her class; the class is mostly direct instruction, discussion and question-and-answer. The Student contributes to discussions and raises her hand to answer questions.

Currently, the class is doing research on the 50 states. The Student does her research on the computer; the Student's Kurzweil program can read to her, or there is a program on all students' computers that can read to her. When the students are working on their states projects, she walks around the class and asks the students questions to make sure they're understanding what they're reading. She has not had concerns about this for the Student. The Student is making progress in her research skills.

She consults with Ms. Arms, and she has been making sure that when she gives the class a worksheet or test, there are not just big blank spaces for the answers. There are always lines, and all the students get the same materials. Ms. Arms also looks at the journal the Student keeps to look at her handwriting. The Student can write neatly when she's focused. Since the beginning of the year, she is aware of only one instance when she gave the class a current events assignment with unlined paper for their work.

She has given the Student extra time to do an assignment, but she generally does not penalize any student for turning in something late. When she gives directions, she asks the Student to repeat it back to her to make sure the Student understood it. Most of the time, the Student does understand, although sometimes the Student has questions. This is true of most students.

38. During an interview conducted by the Complaint Investigator with Yolanda Smith, Ms. Smith stated the following: She is a math teacher at the School, and has been teaching the Student since the beginning of the current school year. Most of the work she is doing with this class is computational, and doesn't require a lot of reading. There are usually seven word problems in each lesson. When the word problem is short, the Student can read it to herself. Sometimes the class will read a word problem as a group, and sometimes she will read the problem together with the Student. She talks to the Student before she starts to work on the problem to make sure the Student understands it. She makes sure the Kurzweil 3000 is available to the Student, but the Student isn't using it and she doesn't think the Student needs it in her class. She has noticed that the Student's reading has improved, and that the Student now uses her finger to follow the text when she reads.

Ms. Arms has discussed with her several times the use of modified paper to make it easier for the Student to transfer numbers. Since the year began, she has made graph paper available for the Student's use, and sometimes she uses lined paper turned sideways. Sometimes she preprints the problem in the answer space. The Student has at times been resistant to the use of graph paper, and she may not be taking it home with her assignments, but it is always available in class.

The Student is given as much time as she needs to finish her work, as are all the students, but the Student is usually done before some of the other students.

39. During an interview conducted by the Complaint Investigator with Angel Allen, Ms. Allen stated the following: She is the technology director for the District. In mid-August, Ms. Olsen told her that she had a student that needed adaptive technology. She spoke with Mike Adams, who had performed the evaluation, about what the software was, what hardware requirements were associated with the software and whether the hardware the District had would be compatible. She assigned one of her technicians, Cara Smith, to work with Mr. Adams and get the technology in place. Mr. Adams ordered the software (Kurzweil 3000, Read Out Loud and Bookshare), but when it arrived on August 28, 2010, she discovered that he had ordered the wrong version. They were able to install the trial version of the correct program while they sent the incorrect one back and waited for the replacement.

Mr. Adams conducted training on August 31, 2010, attended by Ms. Smith, the Student and several of the Student's teachers. Mr. Adams demonstrated how to operate the software, how to scan documents to pdf files so Kurzweil 3000 can read them and how to use Bookshare to download text. The District has copiers that can scan documents to pdf files. All the Student's teachers received handouts as references for how to use the software, and all the teachers have been trained on how to use the scanners. Some teachers have contacted her department to say that the Student needed something to be downloaded. All the teachers can access Bookshare, and the Student's mother can too. She is told by the Student's teachers that they are providing all their materials in the proper format so that the Student can access them.

There have been some problems caused by human error, and Ms. Smith has delivered additional training. Some texts were not available through Bookshare, but they found that the texts were available as audio tapes. Three weeks ago, the Student's father contacted her to report that the Student couldn't access her e-mail. She re-sent the Student's password, and that solved the problem. The Student claims that someone altered her password, but she is not aware of anyone having done that.

40. During an interview conducted by the Complaint Investigator with the Student's father, the Student's father stated the following: The Student has made, at best, only minimal progress with her reading, as evidenced by evaluations of her reading rate, her DIBELS scores, her decoding levels and her reading grade level. When he goes out with the Student, she struggles to read street signs, or a restaurant menu. The Student told him she had to memorize a short story. The Student chose a story at a xx grade reading level, and still struggled to read it. The Student still sounds out words; she can't decode. It is evident that the Student's teachers have not been focusing on the right programs, or she would now be able to decode and would be moving on to other things.

The Student's comprehension scores have improved, but comprehension was never an issue. That's why they removed the comprehension goal from her IEP. When you give the Student a multiple choice question about comprehension, she is able to pick out the correct answer.

He acknowledges that the District did make changes to the Student's IEP, particularly in response to his suggestions, but the Student's teachers still weren't focusing on teaching the Student to decode as Ms. Tinkham and Dr. Fischer recommended. The District agreed to use the LIPS program, but they didn't have a person who had received training in the program administer it. He has been told by someone who received the training that it's not easy to do properly even with the training. He doesn't have any specific information that either Ms. Richards or Ms. Flagg used it incorrectly.

Prior to the Student's xx grade year, Ms. Richards was using the Great Leaps program, which is designed to develop reading fluency, not decoding. It is also intended for use with groups of students, not with one-on-one instruction. Seeing Stars is also a program to develop reading fluency. If the Student can't decode effectively, then working on fluency is pointless; fluency will follow from learning to decode words. Everything else Ms. Flagg is doing with the Student is effectively putting the cart before the horse. The Student's level of decoding skills is still at xx grade. He doesn't have any reason to believe that Ms. Flagg is not working on decoding using speed drills or other exercises, but she's not spending enough time on this. Ms. Flagg is using the Concept Phonics program, but she hasn't received training in this program either. He is aware that Ms. Baker consults with Ms. Flagg two hours a month, but that's not the same as having her work directly with the Student.

Regarding the Kurzweil program, Ms. Smith told him there was no real reason for the Student to use it in math class. The Student doesn't carry her laptop from class to class, so if she decides she needs it in a particular class, she has to leave the classroom and get the computer. This makes her reluctant to use it. The District says it trained the Student and her teachers on the program, but the Student told him in October and November, 2009 that her teachers couldn't get the program to work. In January 2010, the Student tried to access it at home and she couldn't do it. If she had been doing it on a regular basis, by that time she should have been able to make it work. He was invited to attend training on the program, but he was unable to make it; he did not ask to be trained afterwards. Since he filed this complaint, the School set it up so that there is a link to the program as soon as she opens the computer. Also, the Student started receiving e-mails from teachers with attachments that she could read with the program.

With regard to the Type to Learn program, it was never explained to him at the IEP team meeting that the OT provider would be the one to work with the Student on this. If he had understood this, he would not have agreed to only 30 minutes per week of OT. The Student is spending her OT time on other things, like eye yoga. He should have been told.

With regard to provision of extra time to the Student, the Student reported that she was taking a test and, because she was taking too long, the teacher ended up reading the questions to her and writing the answers for her. This should not happen. The Student needs to do her own work. At the June 2009, IEP team meeting, when they were discussing the Student's NWEA scores, Ms. Smith said the Student's score was not at all indicative of the quality of work that she sees in the classroom. He was told that the Student received assistance with the test, but this is not an accommodation on her IEP. She must have been given hints, or else she

couldn't have scored so high. Her math test scores are usually in the 60s, and the NWEA score was in the 90s, so she must have gotten help.

With regard to provision of modified paper, during the IEP team meeting, it was his understanding that the student would be given graph paper for all her math work, and lined paper for all her writing. He has never seen any math homework or a test that had graph paper with it. The Student tells him that she uses graph paper sometimes. A few weeks ago, the Student brought home some work that she was supposed to redo, and there were problems with a regular work sheet; there was no graph paper. The only time he has seen lined paper is on the Student's journal for Ms. Polk. The Student was supposed to get the lined paper that has a dotted line halfway up to help her with lower case and upper case letters, but he has never seen the Student using that paper. The Student brought home a current events worksheet, and it just had a big, unlined white space for the Student to write her work.

With regard to writing strategies, he was never given any information as to what those strategies would be, so he doesn't know if the Student has been working on them. Again, the OT provider has such a limited amount of time to work with the Student.

With regard to progress reports for the Student's speech/language goals, he hasn't gotten any information from the speech/language pathologist. All of the other teachers provide some information to him. When the first trimester reports came out, there were no progress reports for the speech/language goals, although he didn't notice it until he was preparing to file this complaint. At that point, when he complained about it, the District provided some information. He also never got bi-weekly updates. Even though this was discussed at the IEP team meeting (Ms. Olsen asked whether they should continue, and he said yes), it didn't end up in the IEP. Most teachers understood that it was required and supplied the information, but some did not. He didn't notice that it was missing from the Written Notice and IEP.

The first time he had ever heard that the Student was having vision problems was at the September 2009 IEP team meeting. At home, the Student doesn't complain of headaches or say that her eyes hurt. They did some research into vision therapy, and found out that only one of the optometrists whose names the District gave them actually did vision therapy. They decided that the Student's mother would take the Student for the evaluation. He got a phone call from the Student's mother at the optometrist's office saying that he was prescribing bi-focals. He was very surprised by this, because he thought they were there for possible vision therapy. He spoke with Ms. Tinkham, who thought that bi-focals were overly aggressive intervention for someone who never had vision problems. Ms. Tinkham also told him that there was not a lot of good data that vision therapy helps. He decided to make an appointment for the Student with a pediatric ophthalmologist to get a second opinion.

41. During an interview conducted by the Complaint Investigator with the father's fiancée. The fiancée stated the following: She is the Student's father's fiancée, and has known the Student since the Student was xx years old. She often does reading activities with the Student, including working on homework. She can see the Student's frustration when the Student reads. They do cooking together, and she asks the Student to read recipes from a box. It takes the Student a long time to get through even a simple recipe, because she has to

sound out the words. She believes that the Student has made only minimal progress over the last three years. The Student has learned to sound out words, instead of guessing at them like she used to do. The Student more often recognizes single syllable words now, but even if the Student gets through a sentence with no mistakes, the Student's reading is slow and choppy. The Student reads like someone just starting to read.

Recently she helped the Student with a current events assignment. The Student picked out an article to read. The article was about politics. She noticed the Student had a puzzled look and seemed frustrated. She suggested that the Student start with just the first sentence. The Student read it five or six times, but couldn't get through the sentence without missing several words. She finally suggested that the Student choose a different article. The Student found an article about snowboarding in the Olympics, and the Student pretty much understood the article. The Student could answer specific questions about the article. This is typical – the Student can pull information out of what she reads, but is unable to just summarize it.

When the LIPS program was first recommended to them for the Student, she researched and couldn't find anyone in their area who had received training in that program. She also learned that Lindamood-Bell only does training every so often, and they had just completed a training session. She doesn't understand why the District would think they could just buy the program and have an untrained person administer it. She discussed with a language arts specialist the fact that the Student's teachers claimed to have completed the LIPS program in just a few months, and was told that was impossible. There is an assessment that is part of the LIPS program to determine whether the Student is ready for Seeing Stars; she has not heard that the Student was given this assessment.

Now Ms. Flagg is blending several programs together. She understands that there is not necessarily one perfect program for every student, but only a trained person can make that determination. Otherwise, there may be no benefit to the Student, and there could even be harm. Ms. Flagg is not a reading specialist. When the Student was younger, she was taught to guess at words she didn't recognize. Now Ms. Flagg says she is working to undo that instruction. In her opinion, if Ms. Flagg had been teaching the Student since xx grade, the Student's father probably wouldn't have had to file this complaint.

She and the Student's father offered suggestions to the IEP team in hopes of making the Student's program better; the District changed the IEP, but then used an untrained person to deliver the program. A teacher is only as good as the level of training she has received. We were excited when we learned about Dr. Fischer being nearby, and we hoped that the District would agree to have her instruct the Student. Instead, the District told them that if they wanted to take the Student to Dr. Fischer for tutoring, that was up to them.

The Student has lately been using the Kurzweil program more often. She doesn't have to go through as many steps to access it. As recently as January, the Student was having trouble using the program. She spoke to the Student about her resistance to using it in school. The Student said she didn't like wearing the big headphones, and she doesn't like having to leave class to go get her laptop.

42. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: She has seen some improvement in the Student's reading skills, but just this year. The Student always had trouble with sight words, but has gotten better. Now, when the Student doesn't recognize a word she tries to sound it out, instead of guessing at it.

She has observed Ms. Flagg giving reading instruction to the Student. She has seen Ms. Flagg using flash cards, writing words on the white board, having the Student write words in the air with her finger, learning a new word by writing it down with a definition and then drawing a picture, and doing timed speed drills on Golch or Frye words. She believes that Ms. Flagg is using the LIPS program and Dr. Fischer's decoding program. She thinks that Ms. Flagg is very thorough; she has binders for everything she is doing with the student. Nevertheless, the Student is still reading on a xx grade level. She is not sure that the Student will ever catch up with her reading without further assistance. She believes that the District should be providing tutoring to the Student by a reading specialist after school, so that the Student doesn't miss any time from her classes.

For years, Ms. Richards was using the Great Leaps program with the Student, and kept saying that the Student would eventually "get it." The IEP didn't change much during this time. Then, after they hired Ms. Tinkham, Ms. Richards started using the LIPS program, but she claimed that she completed it in just months. She was told that the Student had mastered the skills, but she saw no evidence of it. The District didn't use benchmarks, so when they claimed that the Student was making progress they had nothing to back that up.

Ms. Polk is the only teacher that makes written material available to the Student through her Kurzweil program, and has the Student use the program in class. Neither Ms. Dunham nor Ms. Ryan has the Student use it. Ms. Dunham says that she reads the material to the class, so the Student doesn't need the computer. The Student tells her that she doesn't like to use the program in class, because it makes her different than the other students. She believes that since the IEP team decided that the program would benefit the Student, they should make sure that the Student uses the program.

She isn't sure what Ms. Arms is doing with the Student. The Student still doesn't know the "home row" when she types; she still henpecks the keys.

With regard to additional time for the Student to complete assignments, she is aware of one instance when an educational technician scribed for the Student so she could finish her social studies test. Since the Student's parents complained about this, it hasn't happened again, to her knowledge. She is not aware of the Student having needed additional time to complete an assignment.

Up until the complaint was filed, she wasn't seeing the Student bring home assignments with graph paper and lined paper, but she has seen it since then.

At the September 2009 IEP team meeting, the District agreed that teachers would provide in-depth progress reports to the parents – not just what the class was working on, but how the Student was doing in the class. The only teachers doing that are Ms. Polk and Ms. Flagg.

She hasn't observed any indication in the Student of the vision issues that the teachers talk about. Ms. Tinkham told them that the optometrist that the District recommended, who evaluated the Student, wasn't reputable. They have an appointment in April to have the Student evaluated by someone else who does vision therapy.

VI. Conclusions

Allegation #1: Failure to provide special education, related services and supplementary aids and services during the period from February 2, 2007 to February 2, 2010 sufficient to enable the Student to advance appropriately toward attaining her annual goals in violation of MUSER §IX.3.A(1)(d)

NO VIOLATION FOUND

MUSER §VI.2.J.(4) provides that one of the major responsibilities of the IEP team is to develop or revise an IEP to provide each identified child with a disability a free appropriate public education. The standard by which a student's educational program is to be measured is that it must offer a program "reasonably calculated" to deliver "educational benefits." *Hendrick Hudson Bd. Of Educ. V. Rowley*, 458 U.S. 176, 207, 102 S. Ct. 3034, 73 L.Ed. 2d 690 (1982). As explained by the Court in *C.G. and B.S. v. Five Town Community Sch. Dist.*, 513 F. 3d 279, 284 (1st Cir. 2008), this obliges a school district to "provide an adequate and appropriate education. The IDEA does not place school systems under a compulsion to afford a disabled child an ideal or an optimal education."

The Student's parents base this allegation on two assertions: that the District selected a reading instruction methodology (Great Leaps) that was not designed to redress the Student's specific disability; and that the Student's lack of progress over the last three years demonstrates that the District either did not offer an appropriate program or did not properly implement the program it developed. Turning to the first contention, while it is true that the specialists with whom the Student's parents consulted recommended different programs than the one the District was then utilizing, emphasizing decoding (Concept Phonics and LIPS) over fluency (Great Leaps), it is also true that the Student had a marked deficit in the area of reading fluency. Furthermore, according to Ms. Richards, she also employed other reading programs during her work with the Student: Assured Reading for Learning, which focused on decoding, and a phonemic awareness program on which she also had received training from Candace Bray.

While professionals might disagree as to the most effective approach to remedy a given student's disability, violations of law are not founded on such differences of opinion. As explained by the Court in *G.D. v. Westmoreland Sch. Dist.*, 930 F.2d 942 (1st Cir. 1991), education provided under the IDEA need not be "the only appropriate choice, or the choice of certain selected experts, or the child's parents' first choice, or even the best choice." *Id.* at

948. The educational program that was being offered by the District cannot be said to have been so plainly inappropriate or unreasonable as to be unlikely to confer educational benefit.

Turning to the Student's parents second contention, when considering the significance of the results achieved in reviewing an educational program, the Court in *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 989 (1st Cir. 1990) stated that "Congress indubitably desired 'effective results' and 'demonstrable improvement' for the Act's beneficiaries. *Burlington II*, 736 F.2d at 788. Hence, actual educational results are relevant to determining the efficiency of educators' policy choices." While evidence of educational progress can be used to validate a program, however, the absence of progress does not similarly invalidate a program. "Where, as here, a school system develops an IEP component in reliance on widely-accepted methodology, an inquiring court ought not to condemn that methodology ex post merely because the disabled child's progress does not meet the parents' or the educators' expectations." *Lessard v. Wilton-Lyndeborough Cooperative Sch. Dist.*, 518 F.3rd 18 (1st Cir. 2008).

While the Student's progress did not "meet the parents' or the educators' expectations," progress was nevertheless observed. The District recorded increased scores in subtests of the Woodcock Johnson Reading Mastery test, the GORT-IV, DIBELS and NWEA. Even Ms. Tinkham acknowledged that the Student was making some progress. Anecdotally, many of the Student's teachers this year described improvements in such things as the Student's ability to break words into syllables, the Student's sight word vocabulary and the Student's writing. Taken together, there is a sufficient record of gains to refute the suggestion that the Student has been denied a meaningful educational benefit.

Allegation #2: Failure to revise the IEP during the period from February 2, 2007 to February 2, 2010 to address the Student's lack of expected progress toward the annual goals and in the general education curriculum in violation of MUSER §IX.3.D(1)(b)(i)
NO VIOLATION FOUND

When the Student began xx grade, based on reports of limited progress towards her goals, the Student's IEP team increased her reading instruction from 30 minutes four times per week to 30 minutes five times per week, and also changed from support for writing in the regular education classroom to 30 minutes five times per week direct instruction.

In xx grade, the following services were added: speech/language therapy 60 minutes per week direct, with 30 minutes per month consultation; OT consultation 15 minutes per month (in addition to ongoing direct OT); 30 minutes four times per week support in the regular education classroom; plus additional classroom accommodations (offering multiple choice, fill-in blanks or sentence starters for responses, and providing verbal clues when the Student can't find a word). In the middle of that year, the IEP team met to consider the results of Ms. Tinkham's evaluation, and determined to change the reading program being used with the Student. Direct math instruction was added to the IEP, the OT goals were changed to include learning strategies and auditory training, and the assessments used to measure progress were also changed. In June 2009, ESY services were added to the IEP.

At the start of the current (xx grade) year, direct reading instruction was increased to 40 minutes six times per week, writing instruction was changed to 40 minutes of support in the regular education classroom 5 times per week, keyboarding was added to the OT goals, and the IEP incorporated many of the goals presented by the Student's father.

The above description of the development of the Student's IEPs over the last three years demonstrates that the District was responsive to the Student's struggles in seeking interventions that would produce meaningful results, and refutes any notion of a refusal to change course on the District's part in the face of limited progress. As stated in reference to the previous allegation, the fact that the Student's parents or their educational consultants might have done things differently (even if they would have done them better) does not establish a violation of law.

Allegation #3: Failure to fully and adequately implement the Student's current IEP with respect to provision of reading materials prior to class and ensuring that those materials are capable of being accessed by the Student's assistive technology in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

The Student's father's request for an assistive technology evaluation was promptly and effectively acted upon by the District. The software was obtained, loaded on the Student's laptop, and training offered to the Student, the student's parents and teachers, all without significant delay. Ms. Olsen described her efforts at ensuring that the Student's teachers made their written materials accessible, and the teachers represented that they were doing so. Numerous examples of teachers' e-mails attaching written materials were provided by the District to the complaint investigator.

At the same time, several of the teachers described their classes as requiring only a limited amount of independent reading, and further described the Student as often unwilling to utilize her assistive technology in class. No clear evidence was presented that this was the result of ineffective performance on the part of the District, rather than the Student's reluctance to appear "different" than her peers. While there were clearly some "hiccups" in the process of getting the Kurzweil program up and running and easily accessible to the Student, nothing that was uncovered suggested any real lack of effort or caring on the District's part in correcting those problems.

Allegation #4: Failure to fully and adequately implement the Student's current IEP with respect to provision of specially designed reading instruction in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

There is no question that Ms. Flagg has delivered direct reading instruction to the Student during the current school year, or that she specially designed the reading program for the Student to meet her unique needs. The parents' allegation is based on the fact that Ms. Flagg

is implementing a program (LIPS) for which she was not specifically trained, and on the parents' belief that the reading program is not sufficiently focused on decoding.

Special education law preserves the rights of parents to participate in the development of students' IEPs, but it does not empower parents to dictate to school districts precisely what methods are to be employed, how they are to be employed and by whom. "The IDEA confers primary responsibility upon state and local educational agencies to choose among competing pedagogical methodologies and to select the method most suitable to a particular child's needs." *Lessard v. Wilton-Lyndeborough Cooperative Sch. Dist.*, *supra*. Ms. Flagg is a duly qualified special education teacher, and no evidence was presented that any of the methods she is employing are not within the mainstream of education pedagogy. No evidence was presented that the LIPS program, by its own terms, restricts its use only to those who have received certain training, and no evidence was presented that Ms. Flagg was improperly administering the program. Accordingly, no violation was found.

This result is fully consistent with the ruling of the First Circuit in the second go-round of *Lessard v. Wilton-Lyndeborough Cooperative Sch. Dist.*, 592 F. 3d 267 (1st Cir. 2010), where the parents asserted that the school district had failed to provide the LIPS program as recommended by their psychologist consultant because the instructor the school district proposed to administer the program did not have the requisite experience (according to that psychologist). Conceding for the sake of argument that the student in question would have benefitted even more if the psychologist's recommendations had been followed in full, the Court observed that this was not the test. In finding in favor of the school district, the Court noted that the school district had agreed to substantially modify the student's IEP, and had made a good faith effort to implement the educational strategies proposed by the parents.

Allegation #5: Failure to fully and adequately implement the Student's current IEP with respect to provision of a type-to-learn program in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

The evidence presented was that the Student had completed the first two lessons and had begun lesson three in the Type to Learn program, with the annual goal being the completion of lesson three. It is therefore irrelevant that Ms. Arms is using OT time to work on other goals. Furthermore, despite the Student's father's contention that he had never been told that instruction in the program would be delivered by the OT provider, the Written Notice is clear that Type to Learn was to be added as an OT goal.

Allegation #6: Failure to fully and adequately implement the Student's current IEP with respect to provision of additional time to the Student to complete her schoolwork in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

The only evidence presented with regard to a failure to provide this accommodation was a single instance when an instructor scribed test answers for the Student because time was running out. The parents expressed their dissatisfaction with that manner of proceeding, and it apparently was not repeated. All other evidence was that the Student rarely required extra time, and was provided it if she did. The single instance, subsequently corrected, does not constitute a failure to implement, and there is therefore no violation.

Allegation #7: Failure to fully and adequately implement the Student's current IEP with respect to provision of modified paper in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

The District provided the complaint investigator with a considerable number of worksheets and tests that were designed to help the Student organize her math computation or English writing, and would constitute "modified paper" as referenced in the Student's IEP. At least some of them were dated from early in the year – prior to the filing of this complaint. There may have been instances, as described by the parents, when the modified paper was not provided, although this may also have been the result of the Student not bringing home paper that was available to her. In any event, without more from the parents to document a substantial failure to comply with this accommodation, no violation will be found. It is further noted that the Student's teachers described to the complaint investigator work folders that contained additional examples of the Student's use of modified paper, and that would be available to the Student's parents if they chose to come to the classroom and examine them. It appears in general that the Student's parents did not take full advantage of the opportunity to visit the Student's classrooms and review the materials and discuss the programs that were being used in the Student's schooling, and they are encouraged to do so in the future.

Allegation #8: Failure to fully and adequately implement the Student's current IEP with respect to provision by the occupational therapist of writing strategies in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

The OT goals in the Student's IEP (other than the Type to Learn goal discussed above) are as follows: a) [The Student] will demonstrate appropriate spacing of letters and digits in classwork given modified paper and strategies for improved success in all subjects; b) [The Student] will improve her auditory/visual memory and short term memory skills by completing 2 samples of 'Fine Tuning-Auditory-Visual Training program' worksheets with 85% accuracy, in a timely manner, as observed by OT X3 sessions by 5/2010; and c) [The Student] will consistently demonstrate the use of strategies/techniques to facilitate success in academic with minimal verbal prompting by 5/2010.

The Student's father's issue with the implementation of these goals is that it was not explained to him what the "strategies" referenced in the first and third of the above goals would be, so he doesn't know if the Student has been working on them. Indeed, it is difficult to know what was intended for the third of the above goals simply by reading it, and

clarification in future IEPs would help resolve the uncertainty. In any event, Ms. Arms states that she has been using the Handwriting without Tears and Print Tool Resource programs with the Student, and that the Student has been making satisfactory progress with them. No evidence was presented that Ms. Arms would not have shared this information with the Student's parents if they had requested it.

The Student's father's concern that Ms. Arms has such a limited amount of time to work with the Student is puzzling as the time allotted appears to have been largely a function of the father's reluctance to agree to provision of any OT services at all.

Allegation #9: Failure to fully and adequately implement the Student's current IEP with respect to provision of periodic reports on the progress the Student is making toward meeting the annual speech/ language goals in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

The Student's IEP requires that periodic reports of the student's progress towards her speech/language goals be sent home with her report card. It is undisputed that this did not happen with regard to one of the two speech goals (and perhaps both) when the first trimester report cards were sent. No evidence was presented that would suggest that this represented intentional behavior on the part of the District. It is also undisputed that the Student's parents did not complain of this oversight other than in the context of this complaint, and that once the District became aware of the oversight, the information was provided. Such minimal, and unintentional, non-compliance does not constitute a violation of special education law.

Although the Student's parents assert that the IEP team made a determination that progress reports would be provided on a bi-weekly basis, such determination does not appear in the Written Notice for the September 2009 meeting. Neither did either parent request that the Written Notice be amended, pursuant to MUSER §XIV.8, to reflect that determination. The District was not obligated to do more than what was set forth in the Written Notice, as subsequently incorporated into the IEP.

VII. Corrective Action Plan

None required.