

**Complaint Investigation Report**  
**Parents v. RSU #84**

November 30, 2010

Complaint #11.026C

Complaint Investigator: Jonathan Braff, Esq.

**I. Identifying Information**

Complainants: Parents  
Address  
City, Zip

Respondent: Richard Cote, Superintendent  
31A Houlton Rd.  
Danforth, ME 04424

Director of Special Services: Scott Richardson

Student: Student  
DOB: xx/xx/xxxx

**II. Summary of Complaint Investigation Activities**

The Department of Education received this complaint on October 12, 2010. The Complaint Investigator was appointed on October 13, 2010 and issued a draft allegations report on October 15, 2010. The Complaint Investigator conducted a complaint investigation meeting on October 28, 2010, resulting in a set of stipulations, subsequently amended. On November 2, 2010, the Complaint Investigator received 26 pages of documents and an audio cassette tape from the Complainants, and received a 7-page memorandum and 340 pages of documents from RSU #84 (the "District") on October 28, 2010. Interviews were conducted with the following: Susan Shain, speech therapist for the District; Casey Quint, occupational therapist for the District; Louise Latvis, principal of East Grand School; Jill Plummer, teacher; Mary Bartlett, teacher; Scott Richardson, director of special education for the District; Suanne Lindsey, teacher; Alan Johnson, teacher; Rosalinda Maraya, M.D., pediatrician; and the Student's father.

**III. Preliminary Statement**

The Student is X years old and is currently receiving special education under the eligibility criterion Other Health Impaired. This complaint was filed by the mother and father (the

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

#### **IV. Allegations**

1. Failure to fully and adequately implement the Student’s IEP with respect to provision of a weighted vest by restricting the time the Student is permitted to wear the vest in violation of MUSER §IX.3.B(3);
2. Failure to fully and adequately implement the Student’s IEP with respect to allowing the Student additional time to complete assignments in violation of MUSER §IX.3.B(3);
3. Failure to provide supplementary aids and services in the nature of one-on-one support to enable the Student to advance appropriately toward attaining his annual goals, to be involved in and make progress in the general education curriculum, and to be educated and participate in those activities with other children with disabilities and with non-disabled children in violation of MUSER §IX.3.A(1)(d);
4. Failure to provide supplementary aids and services in the nature of classroom accommodations and modifications (special desk and chair) sufficient to enable the Student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d);
5. Failure to provide related services in the nature of speech therapy so as to enable the Student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d);
6. Failure to provide related services in the nature of physical therapy so as to enable the Student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d);
7. Failure to adequately consider evaluations provided by the Student’s parents in violation of MUSER §V.3.A(1)(a);
8. Failure to develop the IEP in conformity with the determinations of the IEP team regarding frequency of reports to the Student’s parents in violation of MUSER §VI.2.J(4);
9. Failure to respond to the Student’s parents’ request to hold an IEP team meeting to revise the May 2010 IEP by either holding the meeting or else issuing written notice of the District’s refusal to do so in violation of MUSER §IX.3.D(1) and App. 1, 34 CFR §300.503.

#### **V. Stipulations**

1. The Student is limited in the amount of time he is permitted to wear his weighted vest.
2. The provision of a weighted vest appears in the Student’s 9/1/10 IEP, but did not appear in previous IEPs.

3. The provision of a modified desk and chair appears in the Student's 9/1/10 IEP, but did not appear in previous IEPs.
4. The Student was not provided with a modified desk and chair prior to the 9/1/10 IEP, but has since been provided with them.
5. The Student's IEP Team determined to not include speech therapy in the Student's IEP, although those services were requested by the Parents.

## **VI. Summary of Findings**

1. The Student lives in Danforth with the Parents, and is presently attending xx grade at East Grand School. He began receiving special education services under the category Other Health Impaired in xx, based upon a diagnosis of Williams Syndrome.
2. On September 17, 2009, the Parents arranged for a multi-disciplinary evaluation to be performed on the Student at the developmental pediatrics department of Eastern Maine Medical Center ("EMMC"), consisting of speech/language, occupational therapy ("OT") and psychological evaluations.
3. In the speech/language evaluation report by James Marcotte, MA, CCC-SLP, Mr. Marcotte noted that the Student had average range receptive language abilities, and moderately below average expressive language skills, including difficulty with production of later-developing phonemes (l, r, th, v). He further noted that the Student had difficulty with the production of multi-syllable words. The multi-disciplinary team recommended that the Student's IEP Team "consider the possibility of continuing with speech and language services which are presently in place for him."
4. In the OT evaluation report by Leslie Michaud, OTR/L, Ms. Michaud endorsed the continuation of OT services as set forth in the Student's IEP. Ms. Michaud also stated her support for a trial of the Student's use of a weighted vest as a way to "provide organizing feedback to [the Student's] muscles and joints that may make him feel less of a need to do his rocking choice." Ms. Michaud also strongly encouraged the use of "a chair and desk that fit the Student properly."
5. The only reference to support for the Student in the classroom found among the team recommendations in the psychological evaluation report prepared by Dorothy Strom, Ph.D. was the following: "A system of redirection in the classroom should be established that is as unobtrusive as possible."
6. On May 3, 2010, the Student's IEP Team conducted its annual review and determined that OT would be continued with a focus on writing skills at 60 minutes per week, but that the Student no longer needed speech/language services to support him in phonemic awareness and the service would therefore be discontinued. The basis for the latter determination was that the Student had received a standard score of 110 on producing rhyming words, scored 85% in the Earobics program assessment, and answered 100% correctly on his sound discrimination assessment. The team considered continuing speech/language services to

address the Student's mispronunciation of certain words, but decided against this because the speech pathologist did not find that there was an articulation disorder.

7. Shortly after the Parents received the May 2010 IEP, they requested that another IEP Team meeting be convened because they felt that the EMMC reports and their recommendations had not been adequately considered. When the District stated that they had not received those reports and requested that the Parents provide them before such a meeting was held, the Parents refused to do so. The District then refused to convene the meeting.

8. On July 14, 2010, the Parents and the District met outside of an IEP Team meeting and agreed that: 1) The speech therapist would conduct a re-evaluation of the Student; 2) The OT would consider the provision to the Student of a weighted vest and a modified desk and chair; 3) no action would be taken at that time with regard to physical therapy ("PT"); 4) the educational technician in the Student's classroom would monitor the Student and help (along with the teacher) re-direct the Student due to the Student's short attention span; and 5) an IEP Team meeting would be convened before or soon after the start of the school year to include the agreed upon revisions in the Student's IEP.

9. On August 12 and 16, 2010, Susan Shain, MA, CCC-SLP performed a speech/language evaluation on the Student. On the Language Processing Test, the Student scored 106, which placed him at the 68<sup>th</sup> percentile. On the Expressive Language Test, the Student scored 108, which placed him at the 70<sup>th</sup> percentile. On the Goldman-Fristoe Test of Articulation 2, the Student was noted to repeatedly substitute /f/ for the sound /th/ in all positions of words, although the Student was able to pronounce the words correctly when shown the correct tongue placement. Ms. Shain noted other word-specific mispronunciations as well (e.g., "compluter" for "computer" and "tellmermer" for "remember"), which, again, the Student was able to correct when the proper pronunciations were pointed out to him. Ms. Shain reported her conclusion that the Student's mispronunciations were not due to a lack of ability, but to a lack of focus.

10. Ms. Shain concluded that the Student did not qualify for speech/language service because the Student's scores did not satisfy speech/language eligibility criteria set forth in MUSER.

11. The Student's IEP Team met again on September 1, 2010. According to the Written Notice of the meeting, the team determined that: 1) OT services would be continued at 60 minutes per week; 2) speech/language services would be discontinued, noting that Ms. Shain's reevaluation supported that decision; 3) the Student would continue to receive OT, PT and speech/language services from private providers outside of school, and any recommendations from those providers would be presented to the Student's teachers; 4) The Student's modified desk and chair were in place in the Student's classroom; 5) the educational technician assigned to the Student's classroom would be available to assist and redirect the Student and also to work with him individually on an as needed basis; and 6) a home/school notebook would continue to be used as a vehicle for information between teachers (including specials teachers whenever possible) and the Parents.

12. The Student's amended IEP dated September 1, 2010 provided OT services twice weekly at 30 minutes per session. In the section of the IEP titled "Academic, developmental, and functional needs of the child" was written: "[The Student] needs a chair and desk adjusted for his smaller size and needs to be placed in the classroom where there are reduced distractions. He requires sensory integration and a weighted vest will be attempted to assist [the Student] with being more centered and focused." No reference to educational technician support nor to provision of a modified desk and chair or weighted vest appears under the heading "Supplementary aids, services, modifications, and or supports for SAU personnel."

13. The Parents did not request that either the Written Notice or IEP be amended.

14. In an "Activity Guide", authored by Barbara Dudley, MSN, RN, provided to the District with the Student's weighted vest, appears the following guidance: "The recommended time limit is: Maximum of 20 minutes at a time, with a minimum break of 60 minutes between applications." The following also appears as a precaution: "A minimum break of 60 minutes between applications relieves the stress that the weights place on muscles and bones...If weight and time limits are not followed, weights may cause fatigue and may have adverse effects on behavior."

15. The District employed a home/school notebook to facilitate communication between the Parents and the Student's teachers, provided a reading progress report dated September 28, 2010 and, after the Student's father complained that he had not received weekly progress reports from the specials teachers as he believed the District had promised, provided those progress reports on October 8 and 12, 2010.

16. In an entry dated September 22, 2010 in the home/school notebook, the Student's school OT provider, Casey Quint, wrote that the previous week the Student "wore the [weighted] vest for about 20 minutes. He responded well to it. A weighted vest is something to introduce gradually. I assume next week, he could try it in the classroom." In an entry dated September 29, 2010, the Student's teacher, Jill Plummer, wrote that when the Student arrived back at class after OT, "he was wearing the vest. He wore it for about an hour...I will talk to Ms. Quint to get instructions on how often and for how long he should wear it."

17. In an entry dated October 4, 2010 in the home/school notebook, Ms. Plummer wrote: "This morning [the Student] did not keep up with the class when we were doing the comprehension activity. Even with Mrs. Kinney helping him he took about 30 more minutes than the rest of the class to finish it. I had the rest of the class read, but I have to move on in the future so I can stay on schedule. He will have to complete at recess. I talked to Mrs. Latvis to get some ideas of how we could make this easier for him. She helped me and told me about a cueing system I can have with him to make sure he's attending and said that I could modify his work so he won't have to write as much."

18. On October 8, 2010, the Parents notified the District that they were considering home schooling the Student, and discontinued sending the Student to school.

19. During an interview conducted by the Complaint Investigator with Susan Shain, Ms. Shain stated the following: She is a speech therapist with the Maine Family Resource Center

and is contracted to the District. Prior to the time the Student came to the school, Child Development Services had determined not to provide speech/language services to him, but the Parents were providing that service privately. When she initially evaluated the Student for speech/language services, the Student didn't qualify. At that time, however, the Student was having trouble with phonemic awareness, which was believed to be affecting his learning to read. She has a background in that area, and the IEP Team decided that she should work with the Student on developing that skill. By the time of the May 3, 2010 IEP Team meeting, the Student was no longer having trouble with reading, and she recommended that speech/language services be discontinued.

The Student does mispronounce some of his words, saying "compluter" for "computer," for example. When he is cued to pronounce it correctly, the Student can do so. The Student's problem is with remembering to pronounce it correctly; he just doesn't think about it. It's not a speech problem. Reminding the Student isn't enough, and she doesn't know why he doesn't change his mispronunciations. The mispronunciations are limited to only a few words, however, and they don't make it hard to understand the Student. There is no intelligibility issue, and it doesn't interfere with the Student's accessing the curriculum. She has never seen or heard about the Student being teased because of his mispronunciations. Some of the Student's pronunciation problems, /f/ for /th/, for example, might be resolved when the Student does more writing, sees the /th/ written, and internalizes the difference between the two phonemes.

The Student also had some difficulty with recalling sentences during her August 2010 evaluation, but the problem again was with remembering and focusing, not with saying a grammatically correct sentence. At the Student's age, he was just learning the rules of forming grammatically correct sentences, and it is not unusual to make errors of grammar or syntax. She doesn't see this as interfering with the Student's communication.

20. During an interview conducted by the Complaint Investigator with Casey Quint, Ms. Quint stated the following: She is an occupational therapist with Houlton Regional Hospital and is contracted to the District. She has worked with the Student for approximately two years, working on visual motor skills, handwriting, sensory processing concerns and attention skills (task completion). She provides strategies to the Student to help him cope and be successful in the classroom.

This year, the Student began wearing a weighted vest. The subject first came up during the August 18, 2010 IEP Team meeting, when the Student's father presented a recommendation that the Student be provided with the vest. The District decided that it was worth a try. She personally agreed that the vest should be tried, although it doesn't work for all students. She ordered it the day after the meeting, and it was available on the first day of school. She first wanted to see how the Student coped with wearing the vest during his OT sessions before he began wearing it in his classroom. This year, she was seeing the Student every other week, and he wore it during seated activities at about three sessions, 10 to 15 minutes at a time.

The Student responded well to the vest, so she gave it to Ms. Plummer, instructing her that the Student should wear it during seated activities once a day for 15 to 30 minutes at a time. She doesn't know how often Ms. Plummer gave the vest to the Student. The plan was to increase

the Student's use of the vest as he tolerated it. If the Student continued to respond positively, she would have recommended that the Student use the vest 20 minutes at a time, whenever he was doing seated activities and started rocking in his seat. There wasn't much time to see how the Student tolerated the vest because the Parents removed him from school. She always introduces the use of the vest gradually with students. The vests are not meant to be worn all day long, only for short periods with breaks in between. To use it all day would defeat its purpose.

The subject of the modified desk and chair first came up at that same August 2010 meeting. The District agreed to order it, and it was available to the Student when he started school this year. The Student seemed to enjoy having them.

She doesn't recall any discussion about additional time for assignments, or about weekly reports going to the Parents.

She has been in the Student's classroom for about 10 minutes twice a week. She hasn't ever observed Ms. Kinney being too busy to help the Student. She has observed interactions between Ms. Kinney and the Student, and Ms. Kinney speaks to the Student calmly, in neutral tones. One time, the Student was upset and started crying because he didn't like how his project was turning out. Ms. Kinney brought the Student into the hall and asked him what he wanted, or if he wanted to go for a walk. She happened to be nearby, so she offered the OT room to Ms. Kinney. Ms. Kinney brought the Student into the room and successfully got the Student calmed down.

Last year, the issue of PT for the Student came up in connection with his toe walking. The Parents said the Student was getting PT on an outpatient basis. She doesn't remember the Parents asking the District to provide it.

21. During an interview conducted by the Complaint Investigator with Louise Latvis, Ms. Latvis stated the following: She is a special education teacher and this year is the principal of East Grand School as well as the resource room teacher. She attended the Student's IEP Team meetings in August and September 2010. She doesn't remember any discussion about PT. The District doesn't usually have any students needing PT, but the District would provide it if it was needed.

The only discussion she remembers about progress reports at the meetings was with regard to a home/school journal. After the school year began, the Student's father spoke to her about getting reports from the specials teachers. He said this was discussed at a meeting in July 2010 with Mr. Cote and Mr. Richardson. She got those reports and sent them to the Parents.

At the August 2010 meeting, they looked at a catalogue picture of a weighted vest and the District said it would order one.

She doesn't remember any discussion at the meetings of providing additional time to the Student to complete assignments. When the Student's father brought this up with her later, she told him he could simply ask the Student's teacher for this accommodation; it didn't have to be in the IEP. She spoke with Ms. Plummer about this, and gave Ms. Plummer suggestions on how to shorten the Student's assignments so he could keep up with the rest of the class.

She also suggested that Ms. Plummer clarify what she wanted from the assignment, and modify the work for the Student so he could keep up. The Parents had asked that Ms. Plummer send some of the Student's work home so he could complete it there, and Ms. Plummer was willing to do that. Ms. Plummer was planning to start to do it but then the Parents removed the Student from school.

She was in the Student's class to observe on a couple of occasions, as well as in the music room. The Student did really well in music, but had trouble focusing in his classroom, as did some of the other students. She saw Ms. Plummer give the Student directions. She saw Ms. Kinney support the Student, and never observed her to be unavailable to him. When the Student's father told her that it helps the Student to have directions repeated and broken down into small steps, she spoke with Ms. Kinney about it and Ms. Kinney said that was what she was doing.

The Student always looked happy in the hallways. The District was doing things to try to help him. The Student's father didn't always know what to ask for, but the District was working towards finding the right services for the Student. The Student's father said he wanted a one-on-one educational technician for the Student, for example, but then when this was discussed he said he didn't want an educational technician sitting next to the Student all the time. The Student's father seemed to lose patience with the process.

After the school year had begun, Dr. Maraya called her to talk about the Student. Dr. Maraya said she was concerned that the Student seemed to be under stress and was losing weight. She told Dr. Maraya that the District was trying things to help the Student and was willing to keep trying. Soon afterwards, she got a telephone call from the Student's father, who was very upset because he expected that she would support his view that the District wasn't doing what it should to help the Student. She thinks that some of the Student's stress may have resulted from the Student picking up on the stress the Parents were feeling and what they were expressing about the school. Also, the Parents wanted the Student to be on grade level, but the Student has to work harder than other students in order to do that. She asked the Student's father when the Student gets to do things that are fun.

22. During an interview conducted by the Complaint Investigator with Jill Plummer, Ms. Plummer stated the following: She is a xx grade teacher at East Grand School, and started the year with the Student in her class. There were a total of 10 students in the class. One other student besides the Student was receiving special education services. Ms. Kinney was the educational technician in the classroom to support those two students, as well as the rest of the class. She would provide support to the Student when Ms. Kinney was working with another student and the Student needed help. If both of them were helping other students, she would tell the Student she would be right there, and it never took more than two minutes for her to be able to help the Student. This happened no more than once or twice on any given day.

When she wasn't working with another student, she would listen to what Ms. Kinney was doing, and would step in if Ms. Kinney wasn't using the right approach. This didn't happen more than a few times. Ms. Kinney would also ask her if she wasn't sure what to do. Almost everything Ms. Kinney did was what she should have been doing; she provided good quality instruction. If the Student asked Ms. Kinney to repeat an instruction, Ms. Kinney may have



said to the Student “We just went over that. You should remember that.” Sometimes if the Student was prompted to remember something, he could do it. Ms. Kinney would always, however, repeat an instruction if the Student needed it. Ms. Kinney was very upbeat, giving the Student lots of praise and trying to make him laugh.

The Student might have gotten frustrated with Ms. Kinney’s encouragement, but he would have felt that way with anyone – the Student found the class work difficult. She further believes that there were times that the Student could have done the work but chose not to do it; part of the Student’s problem was behavioral. If the Student had stayed in the school, she would have asked for a simple behavior plan to help the Student stay on task.

She attended the August 18 and September 1, 2010 IEP Team meetings. The Parents told the District that the Student would be getting PT, OT and speech therapy from private providers. The Student’s father might have asked whether PT was something the District could provide, and Mr. Richardson said the District did not have PT as a provided service – only OT and speech.

With regard to speech, she has never had any trouble understanding anything the Student said, and she never observed any of the students having difficulty understanding the Student. Once in a while the Student would mispronounce a word or sound, and she would remind him of the correct pronunciation. The mispronunciations didn’t interfere with the Student’s education, although she never really had a chance to see whether it would affect his writing.

She doesn’t remember any discussion at the meetings of weekly reports to the Parents. The Student’s father asked about monthly consultant reports, but the team pointed out there was already going to be a home/school journal. Specials teachers were supposed to report to her any unusual or challenging situations in their classes so she could write it in the journal. She didn’t get any of those reports.

With regard to the weighted vest, when the Parents asked about the vest in the home/school journal, she showed that to Ms. Quint. Ms. Quint wrote in the journal that the Student was trying out the vest in OT, and she wanted to transition it to the classroom. Ms. Quint brought the vest to her the next day, and instructed her to give it to the Student at a regular time during the day. Ms. Quint suggested that the Student use it during grammar minutes, something that the Student was finding difficult. She let the Student wear it for about an hour. She didn’t know whether he would be wearing it for longer periods later on, but she expected that the Student would be wearing it once or twice a day, to help him calm down when he appeared to be stressed. Some days she forgot to give the vest to the Student, but he mostly wore it every day. The Student probably wore it for 10 days before he stopped coming to school. She asked the Student if he thought it helped him; he didn’t say yes or no, but she believes that it made him feel a little better. There was never a time that the Student asked for the vest and she refused to give it to him. She has seen other students wear a weighted vest, and they didn’t wear it all the time; they removed it after a while.

With regard to giving the Student additional time to complete assignments, she believes this was brought up at the meetings. At that point, she didn’t know enough about the Student to ask the right questions. She knows that the Parents asked that the Student be given extra

time for tests, and that he take them in a separate location. Whenever the class had a test, the Student would go with Ms. Kinney to a location outside the classroom. She doesn't remember whether the IEP provided for extra time for assignments, but she expected that it would.

At the beginning of the year, there were a lot of team building activities, and not so much academics. She wasn't sure at that point how much modification of assignments the Student needed. At the point that the class had just started really getting involved with academics, she saw that the Student was having difficulty with the morning class work and with some reading activities and was having trouble keeping up. She asked Ms. Latvis for advice, but she never really had a chance to try the strategies Ms. Latvis suggested. The Student missed some time at school due to illness and then the Parents pulled him out of school.

23. During an interview conducted by the Complaint Investigator with Mary Bartlett, Ms. Bartlett stated the following: She is a xx grade teacher at East Grand School and had the Student in her class during the 2009-2010 school year. In addition to the Student, there was one other special education student in the class. Ms. Kinney was the educational technician for the classroom during that year. The Student needed someone there to support him and help him focus only at certain times – during writing activities, for example. She never had the impression that the Student wasn't getting the support he needed. Either Ms. Kinney or she was able to help the Student stay focused or to explain directions. She believes that Ms. Kinney provided the appropriate kind of support to the Student. She doesn't remember receiving any complaints from the Parents regarding Ms. Kinney or regarding support for the Student in general.

It took the Student longer to copy things and to complete grammar assignments, and the Student was given extra time when he needed it. She doesn't recall this being in the Student's IEP.

She was present during the May 3, 2010 IEP Team meeting. She remembers the Parents requesting the provision of a weighted vest either at that meeting or at some earlier informal meeting. She doesn't remember the District's response to the request. She doesn't remember any discussion of a modified desk and chair, or any discussion about PT.

24. During an interview conducted by the Complaint Investigator with Scott Richardson, Mr. Richardson stated the following: He is the director of special services for the District. At the annual review meeting on May 3, 2010, there was a discussion about why speech services were being discontinued. The Parents didn't make a big deal about it at the time. After the IEP was provided to the Parents, The Student's father met with him and was very upset, particularly about the termination of speech services. The Student's father said something about doctors saying that the Student had to have speech services, and he told the Student's father he didn't have a report that said that. That was the first time he understood that there were outside evaluation reports that he had not seen.

Soon afterwards, the superintendent at the time (Mr. Dobbins) told him that the Student's father had requested another IEP Team meeting to review the evaluation reports. After

consulting with the DOE, he called the Student's father and said that if there was to be another meeting, the Student's father would have to provide him with a copy of the reports. The Student's father refused to do so, saying that he had already been given the reports, and that if they were provided again he would just lose them, too. Mr. Dobbins then called the Parents and told them that no meeting would be scheduled until the reports were provided. The first time he was able to read the reports was in connection with the mediation held in June 2010.

The first time the issues of the weighted vest and modified desk and chair came up was at the meeting on July 14, 2010 involving Mr. Cote. This was also when the Student's father requested weekly reports from the specials teachers. He told the Student's father that the specials classes only met once a week, and that there was no need for a report to go out after every class. It was agreed that the specials teachers would use the home/school journal to communicate with the Parents if anything happened they should know about.

He doesn't recall any discussion about providing extra time for the Student to complete assignments. The Student's attention has always been an issue, although it has improved. He knew that the Student needed the support of an educational technician to keep him on task. When the Student's father requested that a one-on-one educational technician be provided, the Team determined that the Student's needs were not sufficiently severe to warrant it; the educational technician dedicated to the Student's classroom provided sufficient support. He was in the Student's classroom on many occasions and saw Ms. Kinney go over to the Student and assist him. He also often saw the Student doing what he was supposed to be doing without support. The Student has good days and bad days; he doesn't need constant support during all activities. The Student was making academic progress, so the program appeared to be working.

The subject of PT never came up until the July 14, 2010 meeting. He was aware that the Student was receiving PT privately based on concerns about his toe walking, but it was never something the school was asked to provide. If it had been, he would have first requested a PT evaluation. Even when the Student had the multidisciplinary evaluation at EMMC, it didn't include a PT component.

25. During an interview conducted by the Complaint Investigator with Suanne Lindsey, Ms. Lindsey stated the following: She is a certified teacher who serves as a substitute teacher at East Grand School. She substituted for Ms. Kinney in the Student's class approximately three times this year before the Student was removed from the school. She sat between the Student and the other special education student so she could provide support to them both. If Ms. Plummer was busy, she would also help out another student who had a question.

She had to direct the Student to remain on task every 10 to 15 minutes. The Student was able to do the work, but needed to be kept on task. The Student had no negative behaviors, just the constant need to have his attention directed to the task before him. She was able to do whatever the Student needed, but that was partly because the other student didn't need as much direction as did the Student. She believes that the Student would do better with a one-on-one educational technician.

26. During an interview conducted by the Complaint Investigator with Maurice House, Mr. House stated the following: He rents a home to the Parents. He formerly was a teacher for 13 years, and has helped the Parents understand the special education process. He attended the IEP Team meeting on May 3, 2010 and September 1, 2010. He has suffered injuries to the head, and has difficulty with the time sequences of his memories. He is certain that he was present when the issue of PT for the Student was brought up, although he cannot recall at which meeting that occurred. Mr. Richardson's response was that this was only a suggestion from a doctor, and the District wasn't required to follow that suggestion. He also recalls that the issue of a modified desk and chair was raised at a meeting, and the District's response was to place cushions on the Student's chair instead. The Student then had an accident in which he fell off of the chair and hurt his head.

He further recalls the issue of providing extra time for the Student to complete assignments was discussed at one of the meetings, and he thought that the District had accepted this suggestion.

27. During an interview conducted by the Complaint Investigator with Alan Johnson, Mr. Johnson stated the following: He taught high school science in the District from 2008 to 2010. He is a good friend of Mr. House, and through him became a social acquaintance of the Parents and the Student. He never observed the Student at school, and his information about the Student comes from the Parents, who used to talk to him about their concerns regarding the Student's program at school. He never attended any of the Student's IEP Team meetings. The Parents expressed concerns that the Student's disabling condition was not being addressed, and that conditions of the Student's IEP were not being met.

28. During an interview conducted by the Complaint Investigator with Rosalinda Maraya, M.D., Dr. Maraya stated the following: She is a pediatrician and has had the Student as a patient since 2003. The Parents have used her as a sounding board for their concerns about the Student's school program. The Student's father said that he wants a one-on-one educational technician for the Student; she is not able to say whether or not the Student requires this. With regard to PT, the Student is doing well on his gross motor skills, and was discharged from PT because he doesn't need it anymore. The Student requires OT for his handwriting. Regarding speech therapy, she has reviewed speech/language evaluations that said the Student needed speech therapy for his mispronunciations. When she speaks with the Student, the Student communicates very well, and she understands him perfectly. She spoke with Ms. Latvis, who said that the school was doing the best it can, and wants to work with the Parents. The Student's father says that he is going to transfer the Student to another district.

29. During an interview conducted by the Complaint Investigator with the Student's father, the Student's father stated the following: The matter of a weighted vest was first brought up with the District at the IEP team meeting in October 2009. The Student needs the vest for self-soothing; it will help him to stop rocking in his seat, which will decrease the negative interactions with other students. Ms. Michaud, in her report, recommended the vest, but Mr.

Richardson simply dismissed the recommendation, saying the District didn't have to follow recommendations.

The District claimed at that meeting that they didn't have any of the EMMC reports. When the evaluations were performed, he signed an authorization at EMMC for them to send a copy of the evaluation reports directly to the District. Mr. Richardson told him that the District never received them, and that someone at EMMC told him they were never sent. He spoke to someone there, however, who confirmed that they were sent. He only gave another copy to the District in June 2010.

The District agreed to purchase the vest in September, and it was available to the Student starting about two weeks after school began. The Parents were told that the Student would initially wear the vest for 20 minutes per day, with the time gradually increasing until the Student was wearing it for the entire day. The Student started with 20 minutes per day, and the time was increased to 30 minutes per day, but not more than that. The Student said he only wore it during math. When he asked why the Student's use of the vest was being restricted, he was told he needed to discuss this with Ms. Quint. Before he could do that, the Parents decided to remove the Student from his school.

The Parents first requested that the District purchase a modified desk and chair for the Student at the May 3, 2010 IEP Team meeting. Again, it was recommended by Dr. Michaud and, again, the District claimed that it never received her report. As with the weighted vest, the District originally refused to provide the desk and chair, saying they didn't have to follow recommendations. Because the District didn't purchase the desk and chair in May, the Student fell out of his chair because it was too big and he ended up in the emergency room. The District agreed on September 1, 2010 to provide the desk and chair, and it was in his classroom in September.

The IEP Team agreed at the September 1, 2010 meeting that the Student's assignments would be modified to give him extra time to complete them. He believed that this was written in the Written Notice. The Student's teacher modified the Student's spelling tests, so that the Student finished  $\frac{1}{2}$  of it on one day and the rest on another day. The Student's other assignments were not modified, however. The only extra time the Student was given was during his recess time. The Student was kept in during recess at least 3 or 4 times.

The IEP Team also agreed at the September 1, 2010 meeting that the Parents would receive weekly reports from specials teachers. The Student had complained about being picked on, and the Parents wanted these reports so they could monitor the situation. Someone at the school assured him that the Written Notice referenced this agreement. The Parents didn't receive any reports from specials teachers until, in October, he complained about it.

Ms. Kinney provides support to all four of the children with special needs in the Student's classroom, including the Student. Ms. Kinney does not give the Student the support he needs. If the Student has a 3-page assignment, by the time he gets to the second page, he will forget the instructions he read on the first page. If he asks Ms. Kinney for help, she'll tell him he should be able to remember what it said. Ms. Kinney has missed several days this year, and

the substitute, Ms. Lindsey, was able to give the Student the support he needed. The Student's pediatrician told him that the Student should have his own educational technician, but if Ms. Kinney understood the Student's disability and provided the kind of support he needs, that would be enough.

According to Mr. Marcotte and Dr. Mayala, the Student should be receiving speech therapy because the Student mispronounces words. The Student also has trouble with sound blends, such as pronouncing "th" like "v." The Student can pronounce the words or sounds correctly if he's guided, but then he forgets. This problem is part of the developmental delay caused by the Student's disability. The District provided speech therapy for two years, but it was aimed at reading skills – phonemic awareness. They didn't help the Student with these pronunciation issues.

One aspect of the Student's disability is idiopathic toe walking. The Student needs physical therapy for this, otherwise he eventually may need to have his Achilles tendons cut and stretched. When the Parents requested that PT be added to the Student's IEP, the response was that the District doesn't have a physical therapist, and they don't have to follow specialists' suggestions.

After the May 3, 2010 IEP Team meeting, when the Parents received the IEP, they thought that it was too vague and didn't fully address the Student's needs. On June 1, 2010 they asked for another IEP Team meeting to amend the IEP. Mr. Richardson said he wouldn't have the meeting. Then they asked (former) superintendent Mr. Dobbins, and he also said no.

The school principal, Ms. Latvis, has been trying to help them, but she says she can't do what they ask for because it's not in the IEP (modified assignments, for example).

## **VII. Conclusions**

**Allegation #1:** Failure to fully and adequately implement the Student's IEP with respect to provision of a weighted vest by restricting the time the Student is permitted to wear the vest in violation of MUSER §IX.3.B(3)

**NO VIOLATION FOUND**

The Parents assert that the District failed to meet its obligation to provide the weighted vest by restricting the times that the Student was permitted to wear it. The Parents expected that the Student would be allowed to wear the vest for the full day. As indicated in the guide provided with the vest, however, the vest is intended to be used only for short intervals, separated by longer breaks between intervals.

While the District could be said to have moved somewhat slowly towards making the vest fully available to the Student (the Student was only wearing the vest once per day, and Ms. Quint didn't make the vest available to the Student in the classroom until the Parents complained), it was nevertheless reasonable to introduce the device gradually, with the shared understanding that its use would increase. This plan was outlined by Ms. Quint at the

September 1, 2010 IEP Team meeting. There was also some faulty communication between Ms. Quint and Ms. Plummer (Ms. Quint said she told Ms. Plummer to allow the vest to be worn for 15-30 minutes, but Ms. Plummer's understanding was that the Student could wear the vest for 1 hour at a time, contrary to the supplier's directions), however, these misunderstandings, and the aforesaid delay, do not amount to more than a "minor discrepancy" between the services provided and the services required by the IEP, and therefore do not constitute a "material failure" to implement required in order to find a violation. *Van Duyn v. Baker School Dist.*, 502 F. 3d 811 (9<sup>th</sup> Cir. 2007). See also *Mr. and Mrs. C v. Maine S.A.D. No. 6*, 49 IDELR 36 (D.Me. 2007).

**Allegation #2:** Failure to fully and adequately implement the Student's IEP with respect to allowing the Student additional time to complete assignments in violation of MUSER §IX.3.B(3)

**Allegation #8:** Failure to develop the IEP in conformity with the determinations of the IEP team regarding frequency of reports to the Student's parents in violation of MUSER §VI.2.J(4)

**NO VIOLATION FOUND**

The Student's IEP makes no reference to provision of extra time to complete assignments, nor does either of the Written Notices of meetings in preparation for the current school year. No discussion of the subject was heard on the audiotape of the August 15, 2010 and September 1, 2010 meetings submitted by the Parents. Neither was this subject one of the components of the agreement reached between the Parents and the District on July 14, 2010. Furthermore, there were several indications in the materials reviewed during this complaint investigation that the Student was being provided with additional time to complete his assignments. Indeed, the evidence suggested that the District was being responsive to the Student's needs: attempts were underway, between Ms. Plummer and Ms. Latvis, to modify the Student's assignments so as to enable the Student to complete them in less time; and Ms. Plummer had agreed to allow the Student to complete some of his work at home. What broke down was the ability of the Parents to continue to work with the District on these improvements.

Similarly, there is no reference in any IEP or Written Notice from the relevant time period (or on the audiotape) to provision of periodic reports to the Parents, other than the references to the home/school notebook which was utilized. When the Parents complained in October that they had not received reports from specials teachers (which were to have been included in the notebook "whenever possible"), the District provided them.

**Allegation #3:** Failure to provide supplementary aids and services in the nature of one-on-one support to enable the Student to advance appropriately toward attaining his annual goals, to be involved in and make progress in the general education curriculum, and to be educated and participate in those activities with other children with disabilities and with non-disabled children in violation of MUSER §IX.3.A(1)(d)

**NO VIOLATION FOUND**

There was no indication during this investigation that the support provided to the Student from the educational technician in the classroom was inadequate to enable the Student to meaningfully benefit from his education. Ms. Lindsey, while at the same time expressing her opinion that the Student needed one-on-one support, said that she was fully able to give the Student the support he needed when she substituted as the educational technician for the class.

The Student's father conceded that the issue for him was not really quantitative but qualitative – he believed that Ms. Kinney was not providing the right kind of support. Specifically, he related the Student's account of Ms. Kinney asking him to try to remember recently given instructions. According to Ms. Plummer, however, the Student was sometimes able to access information in his memory when prompted to do so, making Ms. Kinney's initial response to the Student's request to have the instructions repeated seem reasonable.

It is also significant that the same educational technician, Ms. Kinney, was in the Student's classroom during his 1<sup>st</sup> grade year, without eliciting any complaints from the Parents. In fact, on the audiotape, the Student's father is heard to express surprise that the provision of one-on-one support was (he asserted) one of the recommendations from the team at EMMC, saying "Last year Ms. Kinney and Ms. Bartlett dealt with [the Student's support needs] just fine." In sum, the District's determination that the Student's condition was not so severe as to necessitate provision of a one-on-one educational technician was a reasonable one. Mr. Richardson's comment on this subject, heard on the audiotape, that the District is not bound to adopt all the evaluators' recommendations, is a correct statement of the law.

**Allegation #4:** Failure to provide supplementary aids and services in the nature of classroom accommodations and modifications (special desk and chair) sufficient to enable the Student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d)

**NO VIOLATION FOUND**

It is unclear when the subject of a modified desk and chair was first brought to the District's attention. This item was one of the recommendations found in the EMMC reports which, as discussed elsewhere, the District had not had the opportunity to review until June 2010. At the July 14, 2010 meeting, the District agreed to consider these supplementary aids and, at the IEP Team meeting of September 1, 2010, a determination was made that they would be provided. The IEP amendment developed on that date references these items in discussing the Student's needs, although the items do not appear (as they should have) as supplementary aids and services. Regardless, each of the items was provided to the Student in the current school year.

**Allegation #5:** Failure to provide related services in the nature of speech therapy so as to enable the Student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d)



**NO VIOLATION FOUND**

Speech/language services were being provided to the Student during the 2009-2010 school year to address a deficit in phonemic awareness. By the end of that year, Ms. Shain reported that such deficit had been corrected, and no information to the contrary was revealed by this investigation. Instead, the speech issue that the Parents assert warrants the provision of services is the Student's tendency to mispronounce certain words and phonemes.

There was no dispute that this is not a problem of articulation – the Student can pronounce the words and sounds correctly when reminded, he just forgets to do so. Furthermore, none of those interviewed, including the Student's pediatrician, reported any problem understanding the Student, nor did anyone report that the Student's speech was ever the subject of teasing by other students. Even the report of Mr. Marcotte, which the Parents describe as recommending speech services, suggests that the District "consider the possibility of continuing with speech and language services" - hardly a strong endorsement. There was no indication that the Student's mispronunciations interfered in any meaningful way with his ability to access his education, and the IEP Team acted reasonably in determining to discontinue these services.

Note should be taken, however, that Ms. Shain incorrectly believed that the Student needed to meet the eligibility criteria for speech in order to receive services. Once a child is found eligible under any of the categories, then the child is entitled to receive a related service, such as speech, whenever the IEP team finds that the related service is necessary to enable the child to access the child's specially designed instruction. That did not appear to be the case for the Student at this time, but the IEP Team should continue to monitor the Student's speech development and any impact it may have on the Student's progress towards his goals.

**Allegation #6:** Failure to provide related services in the nature of physical therapy so as to enable the Student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d)

**NO VIOLATION FOUND**

The only documented instances in which the subject of physical therapy came up in discussions of the Student's program between the Parents and the District were on July 14, 2010, when it was agreed that no action would be taken on the issue at that time, and at the September 1, 2010 IEP Team meeting, when it was noted that the Student would receive PT from a private provider. The audiotape of the meeting does not support the assertion that Mr. Richardson declared that the District would not provide the service; rather, no such request was made.

**Allegation #7:** Failure to adequately consider evaluations provided by the Student's parents in violation of MUSER §V.3.A(1)(a)

**NO VIOLATION FOUND**

The basis for this allegation is the Parents' assertion that a group of evaluation reports that the Parents authorized EMMC to send to the District on September 17, 2009 were not considered by the District. The District, for its part, claims to not have had the opportunity to review those reports until June 2010. What is not in dispute is that when the District initially said that it didn't have them, and requested that the Parents provide them to the District again, the Parents refused, saying that the District would likely just lose them again. Obviously, this is not the spirit of collaboration between parents and school districts upon which the IEP process is centered. The Parents may choose to withhold reports for whatever reasons they choose, but they cannot fault the District for not considering reports that the District does not have.

**Allegation #9:** Failure to respond to the Student's parents' request to hold an IEP team meeting to revise the May 2010 IEP by either holding the meeting or else issuing written notice of the District's refusal to do so in violation of MUSER §IX.3.D(1) and App. 1, 34 CFR §300.503

**NO VIOLATION FOUND**

The issue that led the District to decline to hold an IEP Team meeting was the Parents' refusal to provide the EMMC reports to the District. As the District's supposed failure to adequately consider the reports was a central topic for the requested meeting, the District's position in this regard was quite reasonable. Although the District did not issue a Written Notice explaining the decision to not hold the meeting, the obligation to provide notice under 34 CFR §300.503 pertains to a refusal to "initiate or to change the identification, evaluation, or educational placement of [a] child, or the provision of...a FAPE" to the child. A decision to not hold an IEP Team meeting does not fall into any of these categories.

**Ancillary Allegation #1:** Failure to develop the IEP in conformity with the determinations of the IEP team regarding provision of a weighted vest, modified desk and chair, educational technician support and untimed tests in violation of MUSER §VI.2.J(4)

**VIOLATION FOUND**

At the October 1, 2010 IEP Team meeting, the Team determined that the Student would be provided with a weighted vest and a modified desk and chair, and that the classroom educational technician would be utilized to keep the Student on task. Although not included in the Written Notice of the meeting, the audiotape made by the Student's father of the meeting discloses that the Team also agreed that, in order to address the Student's heightened anxiety, the Student would not be required to take timed tests.

The first three items are referenced in the section of the Student's IEP titled "Academic, developmental, and functional needs of the child," however, no reference to educational technician support, provision of a modified desk and chair or weighted vest appears under the heading "Supplementary aids, services, modifications, and or supports for SAU personnel." These items are all important elements of the Student's program, and should have been recorded under that section to document that the District was obligated to provide them.

Similarly, the relief from timed testing is a modification that should also have been listed in that section.

**VIII. Corrective Action Plan**

The District shall issue a memorandum to all special education staff regarding the necessity for including within Sections 7 and 8 of the IEP all those services, aids and modifications to be provided to a student to address the student's needs identified in Section 3. The District will submit a copy of the written memorandum, together with a list of the names and job titles of all those to whom the memorandum is issued, to the Due Process Office and the Parents.