

Complaint Investigation Report
Parent v. RSU #61

April 27, 2011

Complaint #11.062C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Parent
Address
City

Respondent: Patrick Phillips, Superintendent
900 Portland Rd.
Bridgton, ME 04009

Special Services Director: Lisa Caron

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on February 23, 2011. The Complaint Investigator was appointed on February 24, 2011 and issued a draft allegations report and an amended draft allegations report on February 28, 2011. The Complaint Investigator conducted a complaint investigation meeting on March 15, 2011 (rescheduled from the original date of March 8, 2011 at the Complainant's request), resulting in a stipulation. On March 25, 2011, the Complaint Investigator received 41 pages of documents from the Complainant, followed by an additional three pages on March 28, 2011, and received a 7-page memorandum and 82 pages of documents from RSU #61 (the "District") on March 29, 2011. Interviews were conducted with the following: Lisa Caron, special services director for the District; Kevin Geel, IEP Team coordinator for the District; Laura Grace, psychologist for the District; Johanna Bartlett, teacher for the District; Jennifer McMahan, member of a home schooling co-op; and the Student's mother.

III. Preliminary Statement

The Student isxx years old and is currently receiving special education under the eligibility criterion Speech or Language Impairment. This complaint was filed by the parent (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 conduct an evaluation and assessment of the Student in all areas of suspected disability, including autism, in violation of MUSER §V.2.C(4);
2. Failure to use information provided by the Parent when conducting an evaluation of the Student in violation of MUSER §V.2.B(1);
3. Failure to adequately consider input from the Parent regarding needed additional evaluation data in violation of MUSER §V.3.A(2);
4. Failure to ensure that an independent educational evaluation was provided at public expense in violation of MUSER §V.6.B(2).

V. Stipulations

1. In a letter to the Student’s parent dated February 9, 2011, the District reissued the same proposal for additional evaluations that had been offered on December 1, 2010.

VI. Summary of Findings

1. The Student lives in Casco with the Parent and three of his siblings, and is presently attending xx grade at Songo Locks School. The Student received early intervention services through Child Development Services prior to his attending xx: speech/language services for a mild articulation disorder and for mild receptive language delay; and occupational therapy (“OT”) for mild gross motor delay. Upon entering xx in 2006, evaluations were conducted that resulted in an IEP Team determination that the Student was not eligible for special education services. Mid-way through the student’s xx year, the Parent removed the Student from the District and began home instruction for him.

2. In May 2010, the Parent notified the District that she intended to enroll the Student after home schooling him for the previous 2-½ years, and referred the Student for a special education evaluation. In her referral, the Parent stated that the Student “has a history of developmental delays, PDD-NOS, and anxiety...He continues to struggle developmentally and academically and will need testing to ensure the school can support him achieving his academic goals.”

3. An IEP Team was convened on June 2, 2010, and determined to conduct the following evaluations: “academic, intellectual, observation, learning development, speech/language, psychological, occupational therapy, and any additional assessments deemed necessary by the evaluators to complete a comprehensive assessment.” The Parent signed the Consent for Evaluation form at the meeting.

4. On June 8, 2010, Kevin Geel, IEP Team Coordinator for the District, received from Victoria Dalzell, M.D., the Student’s developmental pediatrician, her letter stating that the student had the diagnoses of PDD-NOS, Anxiety Disorder-NOS and Mixed Developmental

Delay. Mr. Geel requested that the Parent provide any updated evaluation that Dr. Dalzell may have done, but the Parent said that the diagnosis was made at a recent office visit and thus there was no evaluation report to provide.

5. A psychological assessment of the Student was conducted by Laura Grace, M.A., CPSP, in September 2010. The report of that assessment, dated October 5, 2010, contains several paragraphs describing the information provided to Ms. Grace by the Parent, by the Student and by the Student's xx grade teacher, Johanna Bartlett. Among the records reviewed by Ms. Grace was a November 29, 2005 report from Dr. Dalzell in which Dr. Dalzell states that the Student "does not appear to meet the criterion for an autistic disorder." Ms. Grace reported her observations of the Student in the classroom, and the results of the following assessments: the Wechsler Intelligence Scale for Children – 4th edition (WISC-IV), the Behavior assessment System for Children – 2nd edition, and the Behavior Rating Inventory of Executive Function.

In the section of the Report titled "Summary and Recommendations," Ms. Grace reported that the Student's overall intellectual ability level was in the borderline range, although she felt that "some of the difficulties and weaknesses demonstrated by [the Student] may be due to his limited environmental exposure and that in fact his potential ability is likely greater than shown by this assessment....Results of formal assessments should be interpreted with caution until [the Student] has had a more prolonged exposure to structured academic instruction and ample opportunities to interact socially with his peers." With regard to the socio-emotional assessment, Ms. Grace found a markedly variable pattern between the Parent's reports of the Student's behavior at home and the behavior reported by Ms. Bartlett and observed by Ms. Grace. Ms. Grace stated that it was not uncommon to see a varying pattern of behavior between different environments, likely due to variation in structure, demands and expectations, and that there was not "adequate data to rule out environmental factors as the primary factor responsible for the variability in [the Student's] intellectual, academic, and behavioral functions across time and setting."

6. Among the recommendations contained in Ms. Grace's report were: significant interventions in the school setting to assist the Student in catching up to his peers; and monitoring of the Student's social and emotional adjustment in school, with any indications of anxiety, depression or difficulties with social adjustment resulting in collaboration with the Parent to develop strategies to address such issues.

7. The following additional evaluations of the Student were also conducted in September and October 2010: OT evaluation, academic achievement evaluation; speech/language evaluation and classroom observation.

8. On October 21, 2010, the Student's IEP Team met to review the results of the evaluations and make a determination as to whether the Student was eligible to receive special education services. The Team completed the Speech or Language Impairment Eligibility Form and found that the Student met the criteria for a speech or language impairment. Ms. Grace, who attended the meeting, stated that she did not have enough information or evidence at that time to enable her to "give a diagnostic impression of autism spectrum disorder." The Team

determined that the Student was eligible for special education services under the exceptionality of speech or language impairment, and developed an IEP that provided for 60 minutes per week of speech/language services, 30 minutes per week of direct OT and 30 minutes per week of OT consult services, along with various classroom modifications and accommodations.

9. The Parent requested that a written Statement of Parental Concerns be included in the Written Notice of the meeting. Among those concerns were the following: “[The Student] is diagnosed with PDD-NOS, which is diagnosed when the full set of criteria for autism or Asperger syndrome are not met, and Anxiety”; and “[The Student] is able to make eye contact. It is a myth that children with Autism can never make eye contact.”

10. The Student’s IEP Team met again on November 18, 2010. The Parent stated that she was not in agreement with the Team’s determination regarding the Student’s category of disability, asserting that autism was the appropriate category. Ms. Grace stated that she was not specifically looking for an autism disorder, but she did not see any signs of an autism disorder in her assessment. Ms. Caron asked the Parent what she felt was missing from the Student’s IEP, and the Parent responded that nothing was missing in terms of services to address the Student’s needs, but that the “Autism” box was not checked. The Parent requested that an independent educational evaluation (IEE) be performed because not enough information had been gathered by Ms. Grace in order to diagnose autism. Ms. Caron stated that, as the Team was unable to reach consensus as to the category of disability, she would make the determination to have the category remain as speech or language impairment. She further stated that she would consider the request for an IEE and render a decision within 10 school days.

11. On December 1, 2010, Ms. Caron wrote to the Parent with a proposal to expand the scope of the District’s evaluation to “look specifically at the possible presence of an Autism Spectrum Disorder,” using the Autism spectrum Rating Scales (to be completed by the Parent and a teacher), additional OT evaluation to complete a sensory profile, and observations in at least two different settings within the school environment completed by a board certified behavior analyst. Ms. Caron enclosed a Consent for Evaluation form with the letter, and asked for a reply by December 7, 2010.

12. On December 3, 2010, the Parent’s attorney wrote to Ms. Caron asking if she would consider adding “interviewing of collateral contacts” to the additional evaluations. She repeated the request on December 7, 2010, and also asked whether Ms. Grace would continue to be the evaluator, as she “already stated that she had enough information to rule out Autism at the last IEP.” Ms. Caron responded that same day that the District was not looking at its proposal as an IEE but as an expansion of the original evaluation, that Ms. Grace would continue to be the evaluator, and that if the Parent wanted to add the collateral contacts, the District would need to know who was to be contacted and would need releases for those contacts.

13. On December 13, 2010, the Parent’s attorney wrote to Ms. Caron reiterating that the Parent was requesting an IEE and continued to question Ms. Grace’s neutrality. Ms. Caron

responded the same day that the District was entitled to complete its own evaluation with regard to autism before the Parent could request an IEE. The Parent's attorney wrote back that the Parent believed that the original evaluation did not comply with regulatory requirements because of the lack of parental input and insufficient review of data.

14. On February 9, 2011, Ms. Caron again wrote a letter to the Parent restating the proposal that was presented in the December 1, 2011 letter.

15. The District did not file a request for a due process hearing on the issue of the Parent's request for an IEE.

16. During an interview conducted by the Complaint Investigator with Kevin Geel, Mr. Geel stated the following: He is an IEP Team coordinator for the District. Some time in May 2010, he received a phone call from the Parent, who said that she would be enrolling the Student in the District and wanted services to be in place. She told him that the Student had been diagnosed by Dr. Dalzell with PDD-NOS and anxiety disorder. He remembered that when the Student had been in xx in the District, there had been reports of his pulling his hair that seemed consistent with those diagnoses. He told the Parent that she needed to enroll the Student and follow through with a special education referral, which she did.

He facilitated the IEP Team meeting on June 2, 2010. The meeting was basically an opportunity for the Parent to let the Team know her concerns for the Student upon returning to school. The Parent described behaviors of the Student that were characteristic of his diagnoses, that the Student was struggling with language issues (reading and writing) and also had fine motor issues. He checked off everything on the state-mandated consent for evaluation form that he thought would cover the disabilities that the Parent described. The form doesn't have an item labeled "autism," but he checked off intelligence, psychological and learning development testing, and one would expect an autism spectrum disability to show up in the course of those assessments. He also ordered speech/language testing, and language and communication are often impacted by that kind of disorder. There was nothing left to check off that might address the Student's suspected disability. Ms. Grace was not able to be at the meeting, but he included as much of the Parent's presentation as he could in the Written Notice.

He also facilitated the October 21, 2010 meeting to review the evaluation results. The Parent didn't totally disagree with Ms. Grace's evaluation at the meeting – she agreed that many of Ms. Grace's findings were accurate – but she definitely disagreed with parts of it. The Parent felt very strongly that the Student suffers from an autism spectrum disorder, although she also agreed that the impact of this condition on the Student's speech and language was disabling. The Parent did not request an independent educational evaluation, however, until the next meeting on November 18, 2010.

17. During an interview conducted by the Complaint Investigator with Laura Grace, Ms. Grace stated the following: She is a psychological service provider for the District. She had been on maternity leave last year, so did not attend the Student's IEP Team meeting in June 2010. She reviewed the Written Notice from that meeting, as well as the parental consent for evaluation form and the Parent's initial referral, in determining which areas the Student's

psychological evaluation needed to include. She had autism in the back of her mind, because the referral form referenced a diagnosis of PDD-NOS as well as a history of developmental delay. She also did a record review from the Student's file. There was no evaluation report containing the PDD-NOS diagnosis, only a letter from the Student's pediatrician, Dr. Dalzell. She did review an earlier report (2005) from Dr. Dalzell, which stated that the Student "does not appear to meet the criterion for autistic disorder."

She began the evaluation with a classroom observation of the Student, for about 1-¼ hours on September 27, 2010. The beginning of the class day was very chaotic. Considering that the Student had not been in a public school setting for the last 2-½ years, the Student did not stand out. He was able to put his things away, he waited on line, and he interacted with his peers and with the teacher without difficulty. During class sharing time, the Student was no different in mannerism than the other children. With any child on the autism spectrum, she would expect to see difficulties with transition, with people invading his space, with being organized and keeping track of a lot of things and with sharing personal information. In actuality, she wouldn't have been able to identify the Student as the child she was supposed to observe.

The next day, she administered the WISC-IV to the Student. Again, the Student did relatively well with this for a student who had been out of public school for a while. The Student had lower scores in working memory and processing speed. Typically, for a student with PDD-NOS, one would expect to see language deficits in areas such as verbal expression and definitions. She didn't observe any of that with the Student.

When the testing was finished, the Student went back to the classroom and discovered that he had missed an unplanned indoor recess. The following day, the Student's teacher told her that the Student was upset about missing that activity. When she saw the Student to continue with testing, she said "I'm sorry you missed recess. I didn't know it was happening." The Student replied "Its okay; no big deal." She would have expected that a child with PDD-NOS wouldn't have been able to verbalize his feelings, or would have evidenced continuing distress. The Student also told her that he loved recess and played tag most of the time. She heard nothing from the teacher about the Student having difficulty with his peers at recess, again, contrary to what one would expect from a child with PDD-NOS.

She spoke with the Parent for about 30-45 minutes on September 22, 2010. She rarely speaks with a parent for more than 45 minutes. During the interview, the Parent described the Student as: having difficulty understanding directions (she said he was very concrete, rigid and inflexible); experiencing social anxiety; sometimes having a hard time with buttons, with brushing his teeth and with riding a bike; and having certain sensory issues, such as the Student sometimes needing to feel physical pressure. Although problems of this nature often accompany PDD-NOS, they are not limited to that diagnosis. The Parent described the Student's home instruction experience, and said that she took the Student out of school in xx when the Student began to regress and started pulling out his hair. The Parent discussed family history. She gave the Parent a full opportunity to discuss her concerns, and didn't limit the conversation in any way. At the end, she told the Parent how to contact her if she had any additional concerns; the Parent didn't contact her again.

Her consideration of the PDD-NOS diagnosis was a fairly involved process. She considered that Dr. Dalzell, in her 2005 report, had no concerns in that regard. PDD-NOS, or any autism spectrum disorder, is pervasive across all environments and across time (starting with three years of age). The more recent letter from Dr. Dalzell which referenced PDD-NOS also referenced mixed developmental delay, and the latter diagnosis is generally reserved for very young children. She questioned whether that diagnosis was appropriate for a nine year old. The Student had average cognitive skills, comparable to his peers, with broad cognitive functioning slightly above average. The Student was meeting all standards in language and math, and was happy in his peer group interactions. The Student had age-appropriate social pragmatics, and this would be very unusual for a child with an autism spectrum disorder.

From the Parent's description of the Student, she would have expected a noisy environment like the cafeteria to cause problems for the Student, yet the Student chose to eat lunch there and seemed to enjoy the experience. The special education teacher who observed the Student reported no behaviors that were different than his peers. The Student's 2007 speech/language evaluation found average social language skills with no signs of difficulty with pragmatic language. The 2007 OT evaluation reported no concerns with fine motor skills, although it noted rigid behaviors around following rules. From all of the foregoing, plus her own classroom observation and testing experience with the Student, the Student did not appear to be a child on the autism spectrum. Although the Student appeared to like structure, this alone didn't lead to a different conclusion.

If she had seen signs or symptoms of PDD-NOS, she would have asked the classroom teacher and the Parent to complete checklists for this purpose (there are several she uses), done further assessments (such as the NEPSY 2d ed.) and would have asked someone else with appropriate training to observe the Student. She didn't discuss with Ms. Caron whether she would have been the one to do any further evaluation of the Student, but she wouldn't have objected to having someone else do it; there are other psychologists in the District and, in the past, the District has gotten another psychologist involved when a parent has questioned the results of an evaluation.

The cognitive testing results showed a drastic decrease compared to the testing done before the Student began home instruction. His academics, fine motor skills and cognitive skills all decreased since xx. The Parent was also reporting social-emotional behaviors drastically different than what was being observed in the school environment. As the Student had not been in a standard classroom environment for 2-½ years, she felt that she couldn't make a definitive assessment until the Student had more exposure to a standard classroom environment. She is not sure that the home instruction provided the structure and routine that the Student appears to need in order to learn. Every student has his own learning style, and while she is not at all opposed to home instruction, it may not have been the best setting for the Student.

18. During an interview conducted by the Complaint Investigator with Johanna Bartlett, Ms. Bartlett stated the following: She is a xx grade teacher at Songo Locks School, and the Student has been in her class from the start of the current school year. During the first few months of the year, she observed that the Student was making friends in the class; there was a

peer group with whom he played regularly on the playground. The Student was able to work out disputes with other students (who should go first, for example). It takes a full month until all the class procedures are put into place, and many students need extra help during this period until they get the procedures down. The Student was within the range of the other students in the class with regard to his adaptation to the new classroom procedures.

During October, the Students were taking the NECAP assessments. The Parent asked her to look for signs of stress in the Student, such as head rubbing or hair pulling. She did observe during this period that the Student appeared tired, and on one occasion did a little head rubbing. This behavior stopped as soon as the NECAPS were finished.

She did quickly recognize that there were likely to be concerns with regards to the Student's reading and math skills, and she made a Title I referral at the beginning of the year. Even if she hadn't been aware that the Parent had made a special education referral, she would have made the Title I referral, but no other referrals, based on her own observations.

19. During an interview conducted by the Complaint Investigator with Jennifer McMahon, Ms. McMahon stated the following: She became acquainted with the Student about four years ago, when the Parent joined a home schooling co-op of which she was a member. The Parent and the Student remained in the co-op until last year, when the co-op was discontinued. During that time, she saw the Student for a few hours per week. The Student was extremely bright, but was easily distracted. He played easily with the other children. He liked rules, and he didn't like it when other children didn't follow the rules. He was never a behavior problem, but sometimes he would become overloaded and would stop participating. This would happen if the room got too noisy and the Student got over-stimulated. He had his good days and his bad days.

20. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: Before the Student entered xx, he was receiving services through CDS. After the Student began xx, the District discontinued services to him, and he began displaying high anxiety, with regressive behaviors and pulling his hair. That led her to remove the Student from public school and begin to home instruct him. When she decided that she needed to return the Student to public school, she knew that it was very important that services be in place for the Student, to avoid the same kind of distress that the Student experienced in xx. She wanted the Student to have a positive view of returning to the public school environment.

On the referral form she filed with the District, she referenced the Student's diagnosis of PDD-NOS, and said he needed to have services in place. She provided the letter from Dr. Dalzell containing the diagnosis. In the past, Dr. Dalzell had agreed to use the diagnosis "rule out PDD-NOS" in response to both her resistance to having that label attached to the Student, and to the fact that the Student didn't fit the traditional presentation for that diagnosis. She now, however, finally realized that it was important to accept that diagnosis, so that everyone involved in working with the Student could be on the same page and have something to work from in deciding what services the Student required.

At the June 2, 2010 IEP team meeting, she didn't request specific assessments; she is a parent and doesn't know what tools are available for considering an autism spectrum disorder. The Team said that they would be doing a full range of assessments. When the Team said there would be an OT evaluation, she assumed it would include a sensory profile. She told the Team about the Student's sensory issues – his response to overstimulation was one of her biggest concerns.

Ms. Grace never met with her. Ms. Grace called her during the evaluation process to let her know that she would be interviewing the Student, asking her to tell the Student that this was going to happen. She told Ms. Grace some of her concerns, but the conversation was more a description of what the assessment would be like. Ms. Grace didn't ask her anything about what the Student's home instruction had been like. In her report, Ms. Grace said that she believed many of the Student's issues were the result of his having been home schooled, when really they were issues he has had from birth. Ms. Grace's statements about this subject were unfair given that Ms. Grace had never asked her about what the academic expectations had been for the Student's home instruction.

Ms. Grace also never spoke with Dr. Dalzell, who is familiar with the history of the Student's struggles. Dr. Dalzell knows about the Student's auditory processing issues, for example; she knows what things have been tried with the Student and whether they have been successful or unsuccessful. Interviewing Dr. Dalzell would have let Ms. Grace understand the Student in a more comprehensive way.

During the first two months of the current school year, the Student started to pull at his hair and scratch the back of his neck at home. Ms. Bartlett said that she noticed the same behavior at school, and they agreed to give the Student the option of leaving the classroom. She talked about this at the IEP Team meeting, but it wasn't recorded in the Written Notice; her attorney submitted an additional statement that she asked to be incorporated into the Written Notice.

At the October 21, 2010 meeting, she did not agree with Ms. Grace's evaluation. She thought Ms. Grace was overlooking the driving issues for the Student – the developmental and sensory issues – and was making it all about the Student's home instruction. Ms. Grace kept explaining the evaluation results in terms of the Student's having been out of school. She felt that there was a bias on Ms. Grace's part against home instruction, and Ms. Grace wasn't basing her conclusions on what was known from the Student's history. Home instruction was not the issue for the Student; all her other children have been home instructed and the Student is the only one who has struggled.

She agrees with the Team that the Student has a speech/language issue, but that is not the whole picture. It is not true that she simply wants the "autism" box checked on the Student's IEP; she believes that if the Student is in the "speech/language" category of disability, it will be easier for the District to remove his services, like they did when the Student was in xx. PDD-NOS is a lifelong condition. She believes that in providing to the Student the services the District is currently providing (what the Student is working on in OT and speech/language therapy), the District is in fact treating him for PDD-NOS; they just refuse to acknowledge it.

She requested the IEE because she believes that the District, in the initial evaluation, didn't get all the information necessary to provide a complete picture of who the Student is. She believes the district needs someone to gather all the information and look at the Student from a fresh perspective.

VII. Conclusions

Allegation #1: Failure to conduct an evaluation and assessment of the Student in all areas of suspected disability, including autism, in violation of MUSER §V.2.C(4)

Allegation #3: Failure to adequately consider input from the Parent regarding needed additional evaluation data in violation of MUSER §V.3.A(2)

Allegation #2: Failure to use information provided by the Parent when conducting an evaluation of the Student in violation of MUSER §V.2.B(1)

NO VIOLATION FOUND

MUSER §V.2.C(4) requires that an IEP Team, when determining to conduct the evaluation of a student in order to make an eligibility determination and develop the student's educational program, assess the student "in all areas of suspected disability." MUSER §V.3.A(2) further requires that the Team consider input from the student's parent when deciding what additional data is required to make these determinations. Finally, MUSER §V.2.B(1) requires that information provided by the parent be considered as one of the assessment tools and strategies utilized by the Team in conducting the evaluation.

When the Student's IEP Team met on June 2, 2010, the Parent was given a full opportunity to describe her concerns regarding the Student, and she shared with the Team the Student's history with regard to developmental delays and PDD-NOS. The Parent also submitted Dr. Dalzell's letter referencing her diagnosis of the Student with PDD-NOS, Anxiety Disorder-NOS and Mixed Developmental Delay. The Team fully considered the Parent's input in determining to conduct the following broad range of assessments of the Student: academic, intellectual, observation, learning development, speech/language, psychological, occupational therapy, and "any additional assessments deemed necessary by the evaluators to complete a comprehensive assessment." This array was clearly sufficiently comprehensive to take into account the Student's history of developmental delay and his PDD-NOS diagnosis.

The task of performing the psychological assessment fell to Ms. Grace. As described in the DOE-mandated Parental Consent for Evaluation form, a psychological assessment "is designed to assess personality and/or behavioral functioning." In conducting the assessment, Ms. Grace was fully aware of the PDD-NOS diagnosis, although the only prior psychological evaluation in the Student's file (from 2005) contained a finding that the Student "does not appear to meet the criterion for autistic disorder," and contained a diagnosis of "rule out PDD-NOS." Ms. Grace herself observed the Student in the classroom, as well as during her testing sessions, and considered the observation reports of his classroom teacher, Ms. Bartlett. Ms. Grace also reviewed previous OT and speech/language evaluations in the Student's file, neither of which reflected concerns that strongly supported a PDD-NOS diagnosis. Ms. Grace carefully considered all this information, and concluded that the Student did not appear to be a child on the autism spectrum. She therefore did not pursue further testing in regards to that

diagnosis. The scope of Ms. Grace's inquiry satisfied the requirement that the Student be assessed in all areas of suspected disability.

In the course of the evaluation, Ms. Grace interviewed the Parent, and obtained from the Parent a description of the Student's issues and history. Although Ms. Grace considered the information provided by the Parent regarding the Student's inflexibility, social anxiety, fine motor problems and sensory issues, she failed to find evidence of these things, to any significant degree, in the school environment. Consideration of a parent's input does not dictate that the evaluator agree with the parent's conclusions.

The Parent's chief complaint in regard to her input not being considered appears to be based on her feeling that Ms. Grace should have asked her more about the Student's home instruction program before drawing conclusions that certain of the Student's deficits were the result of his having been home schooled. Ms. Grace's conclusions in this regard, however, were in relation to the Student's academic and intellectual levels, and appear unrelated to her finding that no further investigation was warranted regarding the possibility of an autism spectrum disorder. There is no reason to believe that Ms. Grace's soliciting of such information from the Parent would have resulted in any different finding regarding the presence or absence of such disorder, or the need to investigate the matter further.

Allegation #4: Failure to ensure that an independent educational evaluation was provided at public expense in violation of MUSER §V.6.B(2)
VIOLATION FOUND

MUSER §V.6.B(1) provides that, if a parent disagrees with an evaluation obtained by a district, the parent has the right to an IEE at public expense. MUSER §V.6.B(2) further provides that if a parent requests an IEE, the district must, "without unnecessary delay," either provide that IEE at public expense or else request a due process hearing to show that its evaluation is appropriate.

It was apparent to Mr. Geel that the Parent disagreed with Ms. Grace's evaluation, at least in significant respects. Of most relevance to this investigation, the Parent disagreed with Ms. Grace's conclusion that the Student "does not appear to meet the criterion for autistic disorder." At the November 18, 2010 meeting, the Parent requested an IEE. Ms. Caron appropriately attempted to resolve the matter by offering to conduct further assessments to look specifically at the autism diagnosis, but those negotiations broke down over the issue of whether Ms. Grace would continue to be the person responsible for conducting the evaluation. At that point, the District had two choices available to it: pay for the parent to have an IEE, or else request a due process hearing. The District did neither, not even at the point that the Parent filed her request for a complaint investigation.

The District takes the position in this investigation that an IEE would not be appropriate in this context, because the Parent is requesting an evaluation using autism-related assessment tools that the District had not itself employed. In other words, to paraphrase, you can't have another evaluation of something that wasn't evaluated in the first place. This investigation has determined, however, that the District conducted a comprehensive evaluation in all areas

of suspected disability, and that the Parent disagreed with the results of the evaluation. Under the terms of MUSER §V.6.B, therefore, the District was required to either provide the IEE or else address any argument that Ms. Grace's evaluation was appropriate to a hearing officer in the context of a due process hearing.

VIII. Corrective Action Plan

The District shall proceed, without unnecessary delay, to provide the IEE requested by the Parent, after which the District shall convene the Student's IEP Team to consider the results of the IEE. The District will submit documentation of its compliance with this Corrective Action Plan, including the Written Notice of the IEP Team meeting at which the IEE is considered, and a copy of the IEE report, to the Due Process Office, the Parent and the Parent's attorney.

IX. Recommendations

The Department wishes to remind the District that, pursuant to 20-A M.R.S.A. §5001-A.3.A(4)(b), a parent who is providing home instruction to a student must, each year, file with the residential school district a letter of intention to continue providing home instruction, accompanied by one of several forms of documentation as to the progress being made by the student. It did not appear from the information collected during this investigation that the latter information was requested and obtained by the Student's IEP Team when it was considering the Student's eligibility (See MUSER §IV.2.C (The child find process shall include obtaining data on each child, through multiple measures..., and parent information, regarding the child's academic and functional performance...)). An IEP Team, when determining the eligibility of a student who has been receiving home instruction for one year or more, should review any materials filed by the parent in compliance with the statute, and should request any other information, including results of assessments, relating to the home instruction program from the student's parent that could assist the Team in making the determination.