

**Complaint Investigation Report**  
**Parents v. RSU #61**

June 24, 2011

Complaint #11.076C

Complaint Investigator: Jonathan Braff, Esq.

**I. Identifying Information**

Complainant: Parents  
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 April 13, 2011. The Complaint Investigator was appointed on April 14, 2011 and issued a draft allegations report on April 21, 2011. The Complaint Investigator conducted a complaint investigation meeting on May 16, 2011 (rescheduled from the original date of April 27, 2011 at the Respondent's request). On June 1, 2011, the Complaint Investigator received a 4-page memorandum and 21 pages of documents from the Complainant, followed by an additional memorandum of three pages on June 6, 2011 in response to the submission of the RSU #61 (the "District"), and received an 8-page memorandum and 182 pages of documents from the District on June 1, 2011. Interviews were conducted with the following: Lisa Caron, director of special services for the District; Elizabeth Shane, teacher for the District; Susan Grant, coordinator of special services for the District; Gail Hamilton, special education consultant for the District; Ginny Mujica, speech pathologist for the District; Linda Bennett, school counselor for the District; Bonniejean Wightman, educational specialist for the District; and the Student's mother, (the "Parent").

**III. Preliminary Statement**

The Student is xx years old and is currently receiving special education under the eligibility criterion Autism. This complaint was filed by PARENTS, the Student's 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 direct math instruction by a special education teacher in violation of MUSER §IX.3.B(3);
2. Failure to utilize the IEP Team as the vehicle for determining the extent to which the Student would participate in the regular education environment and in revising the Student's IEP with respect to provision of direct math instruction in violation of MUSER §VI.2.J(4);
3. Failure to fully and adequately implement the Student's IEP with respect to provision of direct instruction (other than math) by a special education teacher in violation of MUSER §IX.3.B(3);
4. Failure to prepare the Student's IEP in conformity with what the IEP Team agreed to at the 1/11/11 meeting in violation of MUSER §VI.2.J(4);
5. Failure to revise the IEP to address lack of expected progress toward the Student's speech/language goal in violation of MUSER §IX.3.D(1)(b)(i);
6. Failure to include goals in the IEP that meet the Student's educational needs by measuring progress using prompts and repetition in violation of MUSER §IX.3.A(1)(b)(ii).

#### **Ancillary Allegations**

1. Failure to amend inaccurate information contained in the IEP at the Parent's request within a reasonable period of time, or else notify the legal guardian of its refusal to do so, in violation of MUSER §XIV.8

#### **V. Summary of Findings**

1. The Student lives in Casco with his twin brother and his parents, and is presently attending xx grade at Stevens Brook School. The Student began receiving special education services from the District in May 2008, after moving with his family from Portland, Maine.
2. The Student's IEP dated January 14, 2010 provides for the following special education services: specially designed instruction (reading) by a special education teacher in special education settings, five 45-minute sessions per week; specially designed instruction (writing) by a special education teacher in regular and special education settings, five 45-minute sessions per week; specially designed instruction (math) by a special education teacher in a special education setting, five 30-minute sessions per week; specially designed instruction (personal management) by a special education teacher in a special education setting, five 15-

minute sessions per week. The IEP also provides that the Student will receive three 30-minute direct speech/language sessions per week.

3. The IEP contains three speech/language goals, including: “Given a picture modeling and cues, [the Student] will use correct syntax and grammar in a short sentence of 3-6 words to describe the picture 7/10 trials.” This same goal was carried over from the Student’s previous IEP dated January 15, 2009. Progress on that goal was reported to have been adequate on March 18, 2009, and limited on May 5, 2009, June 12, 2009 and October 20, 2009. Progress was reported as adequate on December 3, 2009 “with model and repetition.”

4. The Student was reported as making limited progress on the above goal in progress reports for the period January 14, 2010 to March 11, 2010, and then to December 2, 2010. At an IEP Team meeting on January 13, 2010, the speech pathologist, Ms. Lynch, reported that all speech/language goals were measured within the adequate progress range.

5. As of November 23, 2010, the Student’s special education teacher (Ms. Rehill) was placed on leave from her employment with the District, after which the Student’s special education services were provided by a special education teacher (Ms. Hamilton), who was present in the Therapeutic Learning Class (“TLC”) classroom three days per week, and a permanent substitute (Ms. Piland) and an educational technician III (Ms. Wightman), both of whom were supervised by Ms. Hamilton. On April 11, 2011, the District hired another special education teacher to replace Ms. Rehill.

6. At an IEP Team meeting on January 11, 2011, the Student’s IEP Team reviewed results of the Student’s reevaluation, including administration of the Wechsler Individual Achievement Test – 3<sup>rd</sup> edition (WIAT-III), on which the Student scored below average in reading comprehension (based on a XX grade reading level – the Student’s instructional level), average in numerical operations but below average in math problem solving, and average in spelling but below average in sentence composition. The speech pathologist, Ms. Mujica, reported that the Student scored in the mildly impaired range for receptive vocabulary, and slightly below average on expressive vocabulary, representing a relative strength for him. On the CELF assessment, the Student’s scores fell in the severe range of impairment for both receptive and expressive language, and he had trouble creating grammatically correct sentences compared to his peers. When a speech/language evaluation was administered to the Student in 2<sup>nd</sup> grade, the Student had scored in the moderately low range for receptive vocabulary and the low average range for expressive vocabulary.

7. At the January 11, 2011 meeting, Ms. Shane, the Student’s regular education classroom teacher, reported that she had for a time provided the Student’s specialized math instruction in her classroom in order to re-teach the concepts covered during that day. Ms. Shane also reported that the Student had been making good progress in her class with math. There were a total of 10 occasions when Ms. Shane delivered the Student’s specialized math instruction.

8. The Student’s IEP dated January 12, 2011 provided for the following special education services: specially designed instruction (reading) by a special education teacher in special education settings, two 30-minute sessions per day; specially designed instruction

(unspecified) by a special education teacher in regular and special education settings, one 30-minute session per day; specially designed instruction (consult) by a special education teacher in regular and special education settings, one 40-minute session per day; specially designed instruction (social skills/daily living skills/CSI) by a special education teacher in regular and special education settings, one 20-minute session per day. The IEP also provides that the Student will receive three 30-minute direct speech/language sessions per week, and 30 minutes per week of speech/language consult services.

9. The IEP contains five speech/language goals, including these two: “Given varied grammar activities, modeling and examples, [the Student] will a) choose target syntax structures [she/he, his/hers, have/has...] b) produce target syntax structures accurately in picture describing task given cues, every 7/10 trials;” and “Given varied activities encompassing pictures, stories, examples and modeling, [the Student] will verbally or in writing formulate grammatically correct sentences using the following [if, and, because, instead...] every 7/10 trials.”

10. In a progress report rating the Student’s progress during the period January 12, 2011 to March 14, 2011, the Student was reported as making adequate progress on the above two speech/language goals.

11. On March 4, 2011, the Parent’s attorney wrote to the District and requested that the Written Notice of the January 11, 2011 meeting be amended to clarify the statement provided in Section 6 of the Notice regarding the parent’s position as to the provision of specialized math instruction. The attorney wrote a second letter on March 21, 2011, further clarifying the Parent’s position regarding the provision of math and writing direct instruction, and noting a discrepancy between the services which the Student was to receive as recorded in the Written Notice and as listed in the IEP. The requests to amend were placed in the Student’s file.

12. During an interview conducted by the Complaint Investigator with Ginny Mujica, Ms. Mujica stated the following: She is a speech pathologist for the District, and has been working with the Student since he entered the District. With regard to measurement of progress, there are several ways of doing this. The goal is always for a student to be able to provide information as independently as possible, but if she doesn’t think that a student is capable of this, she will use cues to help elicit the information. She decides whether to do minimal cueing (“Check that again.”), moderate cueing (“This is the part you have to think about.”) or maximum cueing (providing a partial answer). Repetition of questions is built in to progress assessment due to the nature of the Student’s disability; the Student has great difficulty with processing language and holding it in his memory. The Student may know the information but requires repetition in order to access it, and if the question is whether the student knows the information this is an appropriate assessment technique. If, however, the assessment is to measure progress regarding the Student’s memory, then she wouldn’t use repetition. It depends what she is trying to measure. Also, when using a formal assessment, she always follows the directions in the manual (i.e., she will not use cueing or repetition if it is not allowed under the directions in the manual).

The Student’s speech has a lot of varied sentence structure. If I say to him “One of your classmates was absent today,” he might respond “Unfortunately, yes.” He says “Let me shut

the door for you.” Other times, however, he can’t form a simple sentence. The Student struggles a lot with verb tenses and plurals.

The Student is good at following a pattern. If she sets up a basic phrase, and then adds different completing phrases after, the student will grasp the pattern because that’s all she is targeting during that day’s lesson. The next day, if she returns to the same pattern, the Student will still have it. If the Student tries to apply that pattern to something that is happening in the classroom, however, he may not be able to use it successfully. The Student needs very structured situations. He is starting to generalize somewhat, but is not consistent with it. She has changed the way she is measuring the Student’s progress by targeting one structure at a time, so the Student can demonstrate what he has learned. If she mixes up the structures, then the Student’s retrieval problems interfere with his ability to demonstrate his knowledge. For example, she worked on past tense by using sentences that always end with the word “yesterday.” The Student learned to recognize that if a sentence ended in that word, it required use of the past tense. If she presents a sentence that calls for the past tense but doesn’t end in that word, the Student may not recognize it.

There has been a decrease in the Student’s unintelligible speech, although he still has it to some degree. The only evaluation done on the Student before this year looked only at vocabulary, so there is no real baseline for comparison. Just the fact that the Student this year could take the test is a sign of progress; three years ago he couldn’t do it. There is a lot of variety in his spontaneous speech, but it’s not always grammatically correct. In terms of the message – the conceptual content – the Student has made tremendous gains. This will continue as the student gets older.

With regard to social speech, the Student is still pretty much not responding to other students in his class. The Student has stereotypic behaviors (he licks his hand and touches his face), and this makes him stand out as different. The Student is now much better at doing an internal dialogue rather than talking to himself out loud. The Student is better at sitting still, better at working in a small group, and attends better. This is still a struggle for him, one can see him working at it, but he is much better.

13. During an interview conducted by the Complaint Investigator with Elizabeth Shane, Ms. Shane stated the following: She is the xx grade regular education teacher at Stevens Brook Elementary School, and the Student was in her class this year. After Ms. Rehill went out on leave, for about 10 days, she was delivering to the Student his specialized math instruction in her regular education class. In the transition of a teacher leaving and a new teacher starting, she felt that she was the teacher most qualified to do so. The alternative was for the Student to get the instruction from an educational technician under Ms. Hamilton’s supervision, and they were floundering a little bit initially. She also felt that she was a more experienced math teacher than the educational technician. She taught xx grade for 20 years, and xx grade for the last 6 years; she is a highly qualified teacher. The Student had been doing really well in her class. It was also a transition time in the school year (between Thanksgiving and Christmas), a difficult time for many children, and she felt that keeping him in her class was the least disruptive alternative. After the 10 days, she was told that she was violating the IEP, and she discontinued doing it.

During that period, the Student always got a modified math program, and always had educational technician support. The Student can only absorb so much information at one time. While Ms. Rehill was at the school, she had regular meetings with her and discussed the Student's math program with her. In early December, the Parent called her to talk about Ms. Rehill's leaving. The Parent said she was really worried about her boys, and asked her to watch over them. She told her that she was keeping the Student in her class for his additional math time, and the Parent didn't object. It was too short a time to be able to say whether the Student made progress in math, but she is confident that the Student didn't regress.

She has seen huge improvement in the Student's speech this year. The Student gets more words in to explain what he's trying to say, and has a bigger vocabulary. He still speaks too quickly when he is anxious, and she has to slow him down, but he is able to communicate. The Student has also gotten better with his peers. The other students are very patient with him, and they ask him to repeat if they can't understand, which he does very amicably.

14. During an interview conducted by the Complaint Investigator with Susan Grant, Ms. Grant stated the following: She is a coordinator of special services for the District. She facilitates meetings, takes minutes, and monitors implementation of IEPs. Starting this year, she was coordinator for the School. After Ms. Rehill left, the District eventually hired Ms. Iba, but in the meantime, Ms. Hamilton was responsible for instruction in the TLC program, along with educational technicians under her supervision. Ms. Hamilton was modeling for the Educational technicians, and also delivering some of the instruction herself. The educational technicians were all level II or III. Ms. Hamilton was officially working three days per week, but at the beginning while she was getting the program up and running, she was in more often. She was in Ms. Hamilton's classroom during the interim period, and the students were receiving the instruction they were supposed to get.

When the Student is in the regular education classroom, one of the educational technicians (usually Ms. Piland) is with him. She observed the Student receiving his specialized math instruction in that classroom. Ms. Shane did the introduction to the math lesson, and then Ms. Piland did the reteaching, walking the Student back through it piece by piece. The Student was able to grasp the lesson and was smiling, indicating that he felt good about it.

She acknowledges that Section 7 of the January 11, 2011 IEP doesn't match up with the determinations listed in the Written Notice. She believes that the third line of special education services was intended to reference writing instruction, and that the omission of math instruction was simply a clerical error. She doesn't believe that there was any shortfall in the delivery of services, however. The mix-up likely is the result of the tenor of the meeting. It was very difficult for Ms. Caron, who was chairing the meeting, to contain the meeting and have it follow a logical structure. The input from the Parent was very disrespectful, and if she had been chairing the meeting she would have closed the meeting. The Parent and her attorney went into the meeting with the attitude that the children were being poorly taught and the IEP violated.

At staff meetings, she has consistently heard that the Student is making progress. The Student has worked especially well with Ms. Piland. By the end of the year, he was taking a more

active role in his education, and was able to negotiate with Ms. Piland what he was going to do versus what she was going to do. He has been willing and able to try what he needs to try.

15. During an interview conducted by the Complaint Investigator with Gail Hamilton, Ms. Hamilton stated the following: She is a special education teacher in the District, and was in the TLC classroom from the end of November 2010 until April 2011. She used to be the TLC teacher, before moving to a consulting role on a part-time basis. When she took over from Ms. Rehill, she remained working three days per week. She supervised the educational technicians for the program on those three days; on the other two days, Ms. Wightman, and educational technician III who was familiar with all the students in the program, took over. When she was in the classroom, she was supervising, providing support and input to the educational technicians, and also providing some of the direct instruction. She had a lot of consult time with Ms. Wightman, and they collaborated on student issues and student work. She did not develop lesson plans; she provided support to the educational technicians with the behavioral and instructional needs they had with individual students. When she returned to the classroom after one of her off-days, she would go over things that had occurred on that day with the educational technicians.

There was an educational technician III working with the Student who left in mid-January, and the District shifted staff so that a substitute took over for that educational technician for two weeks, and then another substitute after that, until the District was able to hire a permanent replacement. She was providing primary coaching to these substitutes, and Ms. Wightman was also supporting them. The Student generally had materials that he was working on for his different academic goals, and she would coach the substitutes on how to use them with the Student. She thought both of the substitutes were very good at homing in on what the Student needed and in carrying out her directions.

The Student had been making adequate progress on his reading goals in the January 2010 IEP, and limited progress on his writing and math goals. During the first period under the January 2011 IEP, the Student made limited progress on his reading goal, adequate progress on one math goal and limited progress on the other, and adequate progress on his social skills and daily living skills. The staff was also trying to work with the Student on reducing his stereotypic behaviors, and made limited progress in that regard. The Student made really good progress with being able to accept change, and she believes he is now close to meeting that goal.

The Student currently has a goal to reduce the number of prompts required for him to attend to task, and to increase his use of attention strategies. She designed a data sheet to be used by the person working with the Student in order to collect data and record progress. On other goals, she rated the Student's progress based on the work done by the Student over the period. For example, on the Student's reading fluency, she observed that the Student was not hurrying his words as he used to, and could read five words smoothed together.

16. During an interview conducted by the Complaint Investigator with Christina Piland, Ms. Piland stated the following: She is a permanent substitute for the District, working in the TLC program. She is not credentialed. She had worked with the Student from time to time before,

but starting in November, 2010, she worked every morning with the Student and his brother from arrival until noon, focused for academics on math, science and social studies. She stepped out of that role for a period (January 20 – February 9, 2011), and then returned until April 2011. Just recently, she has resumed working with the Student when his educational technician took a leave of absence.

Whenever she was with the Student in the regular education classroom, Ms. Shane was there, and in the TLC classroom, either Ms. Hamilton or Ms. Whiteman was there. Before Ms. Hamilton had gotten the math program up and running, she would start the math work in Ms. Shane's classroom, get the materials and instruction from Ms. Shane, and then continue working with the Student using those materials. Once Ms. Hamilton set up the program, Ms. Hamilton explained and demonstrated the program to her, so she knew how to do it when Ms. Hamilton wasn't herself providing the instruction. Ms. Hamilton always provided her with materials to use with the Student; when Ms. Hamilton wasn't there, she left the materials and instructions for her in a folder (unless Ms. Whiteman was providing the direct instruction that day, which happened on occasion). She never introduced any new instruction on her own.

The program was focused on teaching the students to look for certain words in word programs that indicated which operation was to be used. By the time she finished in April, the Student could look at a problem and determine which operation to use by finding one of those key words.

She has observed that the Student has gotten much better with his pronouns and verb tenses. He has started saying "yes, ma'am" to her instead of "yes, sir." The Student used to always ask for help before trying something himself; now he will try first before asking. It also takes fewer cues to remind the Student how to do something.

17. During an interview conducted by the Complaint Investigator with Linda Bennett, Ms. Bennett stated the following: She is a special education counselor, and has provided social work services to the Student since he came to the District. With regard to prompts and repetitions, she rates progress as adequate when the Student has learned something, but only demonstrates it after being prompted. When the Student can do it independently, which is always what she's ultimately looking for, then the goal has been met. Repetition is partly a function of the routines of her sessions.

The Student used to cry often, but she hasn't seen that in a long time. The Student is now much more likely to use words to communicate, and over a longer time. The Student is also much more a part of the classroom group. He stays on topic and is part of the conversation, whereas he used to space out if the topic was not something of interest to him. He has gotten better with interrupting others. In a group, the Student has learned to keep track of turns, though when it is not his turn, the Student's mind tends to drift. The Student is basically nice and likes being with people, and the other students know that about him.

18. During an interview conducted by the Complaint Investigator with Bonniejean Wightman, Ms. Wightman stated the following: She is an educational specialist III for the District, and has been working with the Student since he started xx grade. She supports the

Student in the classroom, and provides the Student with math instruction. After Ms. Rehill left, she continued with that work plus she was spending more time in the TLC classroom overseeing the program - supporting the substitute teachers who were instructing the Student. Both she and Ms. Hamilton (on the days Ms. Hamilton was there) were available as resources if the substitutes had any questions. The substitutes would come in and the materials and instructions for that day's lessons, all designed around the Student's goals, would be laid out in a folder on the table. There were regular weekly meetings with Ms. Hamilton, herself and the substitutes, as well as other meetings whenever the need arose.

She has assessment materials for measuring the Student's progress, and does daily data collections. Data is charted on a daily basis, and she could see that the Student made progress during that period.

She recently attended the xx` grade graduation ceremony. Each of the students had to get up and make a presentation. The Student was very pleased and proud of himself.

19. During an interview conducted by the Complaint Investigator with Lisa Caron, Ms. Caron stated the following: She is director of specialized services for the District. In December 2010, she received a records request from the Parent's attorney. She called the Parent to ask what that was about, and the Parent said that she found out from her children that Ms. Rehill was no longer teaching the TLC class, and was angry that she hadn't been told that by the District. She explained to the Parent that she had wanted to notify all the parents at once, and that she was waiting for the District to make a decision about Ms. Rehill. She told the Parent that in the meantime Ms. Hamilton was teaching the class three days a week, and a substitute teaching the other two days.

At around the same time, she learned from the school principal that Ms. Shane had been keeping the Student in her classroom during the time he was scheduled for math instruction in the TLC classroom. Although she understood Ms. Shane's motivation, she recognized that this was in conflict with the Student's IEP, and she asked the principal to direct Ms. Shane to discontinue that practice.

When she received the requests from the Parent's attorney to amend the records, she placed the requests in the Student's file and she believes that she sent an e-mail to the attorney confirming that she had done so as that is her usual practice.

20. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: She got a letter from the District that told her about Ms. Rehill leaving the school. She called Ms. Caron and asked who was teaching the children in the TLC class in Ms. Rehill's absence. Ms. Caron wouldn't tell her, saying only that the District could put anyone in there that they wanted. She asked Ms. Shane, whom she trusted, to "keep an eye out for her boys." That meant that she wanted Ms. Shane to keep tabs on them, but they never talked about keeping the student out of the TLC classroom. She called her attorney, and the attorney asked for an IEP Team meeting. At the meeting was when she found out that the Student hadn't been getting math in the TLC room. This had gone on for about one month, from when Ms. Rehill went out until the meeting right before the winter break. The math

work the Student was getting from Ms. Shane was different than what he got from Ms. Rehill. The Student was trying hard, but he couldn't do the work. Ms. Hamilton told her that the Student was not progressing in math.

After Ms. Rehill left, the students in the TLC class were being instructed by aides. The Student is a worrier; he needs to know everything that is going to happen in advance. He started to regress – he lost sleep, he talked to himself, he cried and tried to get out of going to school. It took about two months for her to be able to turn that around. She was getting daily reports saying that the Student was having a hard time, but had turned it around. She didn't know what that meant.

The Student has not progressed at all with his language. He still answers his own questions, speaks in short sentences, and most people can't understand him. With regard to how progress is measured, it's all about how you ask the Student. You can't just ask a question. Sometimes you have to repeat it, or you have to use different words or approach it differently. He might know the answer, but you have to ask the right way to get it out of him.

**VI. Conclusions**

**Allegation #1:** Failure to fully and adequately implement the Student's IEP with respect to provision of direct math instruction by a special education teacher in violation of MUSER §IX.3.B(3)

**Allegation #2:** Failure to utilize the IEP Team as the vehicle for determining the extent to which the Student would participate in the regular education environment and in revising the Student's IEP with respect to provision of direct math instruction in violation of MUSER §VI.2.J(4)

**NO VIOLATION FOUND**

Ms. Caron herself recognized that Ms. Shane's decision to herself provide the specially designed instruction in math in derogation of the Student's IEP constituted a violation of law, and she properly had the practice discontinued. Even as an interim measure, a departure from the IEP of that nature required either the Parent's agreement or an IEP Team decision. While perhaps edging close to the line, however, the provision of only 10 math lessons in that setting represented a "minor discrepancy" rather than a "material failure" to implement the IEP which would warrant a finding of violation. *See 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).* Neither was there evidence that the Student suffered educational harm as a result of those 10 lessons.

**Allegation #3:** Failure to fully and adequately implement the Student's IEP with respect to provision of direct instruction (other than math) by a special education teacher in violation of MUSER §IX.3.B(3)

**VIOLATION FOUND**

The Student's IEP specifies that the person responsible for delivering the specially designed instruction which the Student is to receive shall be a special education teacher. MUSER §X.1 permits that instruction to be delivered by an educational technician II or III, in collaboration (level II) or consultation (level III) with the classroom teacher. The classroom teacher must supervise the technician by meeting with the technician, for level II, "on a regular basis, whenever possible on a daily basis," and for level III "whenever possible on a twice weekly basis."

Here, after Ms. Rehill was placed on leave, the classroom teacher became Ms. Hamilton, a duly certified special education teacher, with instruction being delivered by educational technicians II and III, but also by Ms. Piland. Ms. Piland, a substitute, was not a credentialed instructor. The fact that Ms. Piland may have been supervised by both Ms. Hamilton and Ms. Wightman does not make this practice conform to regulation. Furthermore, this practice continued for several months, so that it was more than a minor discrepancy.

When, after 30 days, the District had still not hired a regular replacement for Ms. Rehill so that all of the Student's instruction could be delivered by either a teacher or educational technician, the District had a duty, pursuant to MUSER §IX.3.B (3), to convene an IEP Team meeting to discuss alternative service options and to consider any amendments necessary to the IEP to address the failure to implement. A meeting was held, but it was to review the results of the Student's evaluation and conduct the annual review of the IEP. A statement of parental concerns attached to the Written Notice of the meeting lists the following concern: "The parent is concerned about the lack of direct instruction starting when the TLC instructor went on leave." There is no indication that this concern was actually addressed during the meeting.

**Allegation #4:** Failure to prepare the Student's IEP in conformity with what the IEP Team agreed to at the 1/11/11 meeting in violation of MUSER §VI.2.J(4)

**Ancillary Allegation #1:** Failure to amend inaccurate information contained in the IEP at the Parent's request within a reasonable period of time, or else notify the legal guardian of its refusal to do so, in violation of MUSER §XIV.8

**VIOLATION FOUND**

Ms. Grant conceded that Section 7 of the January 11, 2011 IEP did not conform to the determinations recorded in the Written Notice of the meeting where the IEP was developed. This appeared to be the result of clerical error, and there was no indication that the services which were identified at the IEP Team meeting were not delivered as intended by the IEP Team.

The Parent's attorney, in requesting that the IEP be amended, accurately noted the discrepancy between the IEP and the Written Notice. It appears that the District did not take the time to carefully read the request, but simply placed it in the Student's file. MUSER §XIV.8 provides that a parent who believes that information contained in a child's education records (which would include a Written Notice) is inaccurate or misleading may request that the school district amend those records. Upon the district's receipt of that request, the district

must either amend the information within a reasonable time, or inform the parent that it refuses to do so, advising the parent of the right to a hearing on the matter. Here, the District neither amended the IEP or Written Notice as requested nor advised the Parent that it would not do so. Instead, the request to amend was simply placed in the Student's file, with the Parent being advised of that action. This could easily result in someone looking in the file at a later date, finding and reviewing the IEP or Written Notice, and not being aware that something misleading or inaccurate in it had been amended. That result does not comport with the intent of this regulation.

**Allegation #5:** Failure to revise the IEP to address lack of expected progress toward the Student's speech/language goal in violation of MUSER §IX.3.D(1)(b)(i)  
**NO VIOLATION FOUND**

The Student's progress reports indicate that the Student made limited progress towards his speech/language goals in 2010, but adequate progress in 2011. The January 14, 2010 IEP contains three speech/language goals, while the January 12, 2011 IEP contains five, and the goals from the previous IEP are modified. The 2011 IEP also adds 30 minutes per week of speech/language consult services. Ms. Mujica described how she has modified her method of instruction to teach to the Student's strong recognition of patterns (helping the Student link "yesterday" with the past tense, for example). Ms. Mujica noted gains in the intelligibility of the Student's speech (while conceding that this remains an area that needs continued work), and in the conceptual content of the Student's speech. Ms. Shane reported a "huge improvement" in the Student's speech this year, with the student using more words and a bigger vocabulary.

The above record describes a speech/language program that responded to limited gains by modifying goals and methodology, with the result that progress improved. Language will no doubt always be a weakness for the Student due to the nature of his disability, but no basis was found for this allegation.

**Allegation #6:** Failure to include goals in the IEP that meet the Student's educational needs by measuring progress using prompts and repetition in violation of MUSER §IX.3.A(1)(b)(ii)  
**NO VIOLATION FOUND**

There is no requirement in the special education regulations that a student's IEP expressly indicate, in Section 5 under the heading "How goal will be measured," that assessment of progress may be obtained by either repetition of the question or task, or by prompting or cueing. The language that appears in the Student's IEP with regard to measuring progress on his speech/language goals ("as measured by worksheet completion, checklist, or other data kept"), for example, provided sufficient information to the Parent as to the basis for reports of progress. As explained by the providers, the goal for the Student is always independent use of the skill, but in order to determine whether the Student has learned the skill (though not yet being able to initiate it independently), it may be necessary to repeat a request or to provide

cues. This is particularly so for a student with autism, as the profound language impairment may interfere with the student's ability to understand what is being requested. The extent to which such prompting or repetition was necessary is directly related to the rating of progress (less prompting = more progress).

Curiously, the Parent, during her interview, spoke of the need for just such methods when asking questions of the Student – the Student might know something, but one has to ask in the right way or repeat the question in order to discover that he knows it.

## **VII. Corrective Action Plan**

As there was no indication that the delivery of instruction by non-qualified teachers resulted in loss of educational benefit to the Student, compensatory education will not be awarded. The District shall issue a memorandum to all special education staff regarding the legal requirement that specially designed instruction is to be delivered only by a special education teacher, or by educational technicians (level II or III) with appropriate supervision. The memorandum shall also advise staff: of the requirement to convene an IEP Team meeting whenever there is an inability to provide services specified in an IEP for more than 30 days; of the need to carefully check IEPs against the determinations recorded in the Written Notice; to review requests to amend a written notice to make sure that they do not reference actual errors in documentation; and of the legal obligation to respond to a request to amend educational records by either amending the records or else notifying the party making the request that the request was being denied and of the party's right to a hearing on the matter. 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, the Parent and the Parent's attorney.