

Complaint Investigation Report
Parents v. RSU #61

June 24, 2011

Complaint #11.077C

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 141 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 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 speech/language services 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 receive speech/language services 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 academic instruction by a special education teacher in violation of MUSER §IX.3.B(3);
4. Failure to revise the IEP to address lack of expected progress toward the Student's speech/language and social work goals in violation of MUSER §IX.3.D(1)(b)(i);
5. 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 15-minute sessions per week; specially designed instruction (writing) by a special education teacher in regular and special education settings, five 15-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 two 30-minute direct speech/language sessions per week in regular and special education settings, and two 30-minute social work sessions per week in regular and special education settings.
3. The IEP contains three speech/language goals (including "Given varied activities including stories and social scenarios, instruction and modeling, [the Student] will identify the problem, two perspectives and a solution every 7/10 trials"), and one social work goal (involving self-calming and flexible thinking and behavior in situations where he doesn't get his first choice). The behavior intervention plan attached to the IEP contains two goals (including "[The Student] will self regulate and show predictable mood and behavior by communicating

appropriately during times of disappointment and unpredictability). 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 adequate progress on his social work goal in progress reports during the period January 14, 2010 to March 11, 2010, June 9, 2010, and then to December 2, 2010. On March 11, 2010, the Student’s progress on his speech/language goals was rated as adequate on two and limited on the other; his progress on his speech/language goal on December 2, 2010 was rated as “not applicable.”

5. On December 14 and December 22, 2010, psychological consultant Cheryl Baker conducted observations of the Student in his classroom during a structured math lesson and a less structured holiday activity. Ms. Baker observed the Student in interaction with his peers, collaboratively problem solving, responding to questions (with some affect), and appropriately acknowledging a compliment. Ms. Baker reported that the Student, although having more difficulty with the less structured activity, stayed on task for 25 of 30 minutes and engaged in peer interaction for most of that time. Ms. Baker recommended that the Student practice social interaction skills in supported settings using social stories, skits and games.

6. 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 supervised a permanent substitute (Ms. Piland, who was not certified) and an educational technician III (Ms. Wightman). On April 11, 2011, the District hired another special education teacher to replace Ms. Rehill.

7. At an IEP Team meeting on January 20, 2011, social work progress was reported as adequate, with the Student taking turns and recognizing fair play, although continuing to need instruction when he was stuck or frustrated. Speech/language progress was also reported as adequate, while also reporting that the Student continued to resist leaving the general education setting to attend sessions. The Student’s positive behavior support plan was modified and new goals were developed for the Student.

8. The Student’s IEP dated January 21, 2011 provides for the following special education services: specially designed instruction (reading) by a special education teacher in regular and special education settings, five 30-minute sessions per week; specially designed instruction (writing) by a special education teacher in regular and special education settings, five 30-minute sessions per week; specially designed instruction (math) by a special education teacher in regular and special education settings, five 30-minute sessions per week; specially designed instruction (social skills) by a special education teacher in regular and special education settings, five 20-minute sessions per week; specially designed instruction (daily living) by a special education teacher in regular and special education settings, five 5-minute sessions per week. The IEP also provides that the Student will receive three 30-minute direct

speech/language sessions per week, two 30-minute social work sessions per week, and 30 minutes per week of psychological consult services.

9. The positive behavior support plan attached to the IEP identifies as its target behavior: “Stuck behavior; opposition to what he expects/wants his role/activity to be – any refusal to follow clear teacher directions or daily routine.”

10. The IEP contains four speech/language goals (including: “Given varied social situations and questions related to the situation, [the Student] will a) choose the correct solution or answer b) verbally produce answers every 7/10 trials”), three social skill goals (including one addressing appropriate interrupting, one addressing acknowledging greetings, and one involving turn taking and reciprocity in conversation) and two social work goals (including practicing the social skills of recognizing feelings and greeting and joining peers).

11. On March 4, 2011, the Parent’s attorney wrote to the District and requested that the Written Notice of the January 20, 2011 meeting be amended to clarify statements provided in Section 3 of the Notice regarding the attorney’s comments and the Parent’s position regarding the Student’s refusal to attend speech/language or social work sessions. The District placed those requests to amend in the Student’s file.

12. The Student was reported as making limited progress on his two social work goals in a progress report during the period January 12, 2011 to March 14, 2011, and adequate progress on his speech/language goals.

13. On four occasions in October, 2010, the Student initially refused to attend his speech/language therapy sessions, but agreed to attend when accompanied by TLC staff. During the month of November, the Student refused to attend and was allowed to remain in the regular education classroom on each of the eight dates sessions were held, plus one session in December and four in January. No speech/language therapy services were delivered on those dates.

14. In conversations between the Parent and Ms. Shane, and between the Parent and Ms. Mujica, to discuss the Student’s refusals to attend speech/language therapy, the Parent said that she did not want the Student to be forced to leave the regular education classroom and there was discussion of whether the Student’s speech/language therapy might be delivered in his classroom. As a result of these conversations, the Parent had the understanding that the Student would continue to receive speech/language therapy in the classroom, while Ms. Mujica had the understanding that she was not to interfere if the Student refused to attend his speech/language therapy sessions.

15. 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 the 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).

With regard to the Student's speech/language goal "Given varied activities including stories and social scenarios, instruction and modeling, [the Student] will identify the problem, two perspectives and a solution every 7/10 trials," the Student was having trouble verbally expressing his responses due to his expressive language deficits. In the current IEP, she changed the structure of the goal to having him recognize among a set of possible choices, rather than verbalize. This goal involves inferential thinking, and that is a skill that the Student will need to keep working on throughout his schooling; she expects it to continue to be in his IEP on an ongoing basis. She wants to tie work on this goal to what the Student is doing in his everyday life; trying to work into his speech instruction things with which the Student is having trouble that week.

The Student began the year making only limited progress on this goal, not as much as she hoped (limited progress represents achieving between 25 and 50% of the goal). The Student was having trouble when the social situations were presented in story form, because it involved a greater amount of information, and he has difficulty processing language. She shortened the presentation to just a few sentences. Since January 2011, the Student has been making adequate progress (50 – 75% of the goal), and is near meeting the goal (more than 75%). As an example, she gave him a scenario where a friend's pet had died, and asked him to choose among several things he might say to the friend. Initially, the Student had no idea he was supposed to say anything. They worked on what kind of things would be appropriate in that situation, and now he can identify the appropriate response. If she doesn't ask the Student to choose from among a group of possible responses, if she just asks the Student to verbalize a response, the Student will still need cueing. In general, this year the Student's expressive language has improved, and his ability to be flexible in social situations. The time he needs to respond appropriately has been shortened.

The Student has always had difficulty with attending speech/language sessions. In the past, the Parent told her that if she ever had difficulty getting the Student to come to a session, she should get the Parent on the phone and the Parent would get the Student to come. It's a positive thing that the Student is having real success in the regular education classroom, and this is making him reluctant to leave the class to attend speech/language sessions. This year, even when she was able to get the Student to attend sessions, the Student was sometimes reluctant to engage with her. When he began to outright refuse to attend, she again called the Parent. The Parent said that the Student was doing really well in the class, and she wanted him to stay there. She told the Parent that the Student really needed to come to speech therapy. The Parent suggested that she deliver speech therapy to the Student in his classroom, and she told the Parent that she couldn't do that. The Parent ended by saying that she really

wanted the Student to stay in the classroom, so she decided that she would come to the Student's classroom each time he was scheduled for a session, and if he refused to come, she would simply note it in her records.

When the Student is in the classroom, he's working on skills that involve what's happening in the classroom at that moment. When a student has a lot of language gaps, and is slightly below the grade level of his peers, it means that she won't be able to address all of the Student's needs while he is in the classroom. For example, the Student's class was doing a unit on volcanoes, and built model volcanoes to demonstrate. Some of the students built a little village at the base of the volcano that would be destroyed, and the Student didn't understand why the people didn't just build a fence around the village to keep the lava out; his level of thinking and inferential reasoning is below that of his peers. She needed to work with him outside of the class to discuss it.

After the IEP Team reviewed her evaluation of the Student in January 2011, the Parent changed her mind about making the Student attend speech/language sessions. The Team revised the Student's behavior plan to address his refusals, and the Parent also agreed to tell the Student he must attend. The Student has been attending regularly since then.

The Student has a lot of potential. The Student's test scores on the Teacher Assessment of Spoken Language ("TASL"), which controls for the role played by memory, showed real gains, especially in comprehension and grammatical structure. Inferential reasoning was still low, however. The Parent doesn't always understand that a score of 85 three years ago and a score of 85 today marks real progress. 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. The Student has potential to close the gap in inferential reasoning and integrative skills, but there will always be a deficit. The Student is now better at recognizing and correcting grammatical errors, but his spontaneous speech will always have ungrammatical elements. Even author Temple Grandin writes that she still struggles with language.

She has observed the Student several times in the regular education classroom. He fits right in, and his classmates are very fond of him. He is looking at and modeling the behavior of his classmates. Last year, the Student was more rigid, but this year is more willing to try things; he wants to do what the other students are doing.

16. 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. She observed the Student's reluctance to go to his speech/language sessions with Ms. Mujica. She offered to call the Parent, but Ms. Mujica said she would do it. After Ms. Mujica made that call, Ms. Mujica told her that she told the Parent that she would find other ways to deliver the services, including going into the classroom. That was the Parent's understanding, too. The Parent told her that the Student just wants to be like everybody else, and asked her whether the Student could get his speech/language services in the classroom. She has seen that happen with other students.

The reason for the Student's refusal to attend his speech/language sessions was that they happened right when the rest of the class were getting ready to go to social studies. The Student enjoys social studies, and wanted to go with the rest of the class. After the IEP Team meeting, they switched the schedule so the Student could go to speech before the class went to social studies.

She has seen growth in the Student's speech this year. The Student was already speaking in complete sentences, but his vocabulary has expanded. Among the issues for the Student are body language and eye contact, the ability to communicate that he is enjoying the conversation. He is very easy to understand, although he doesn't sound quite like other xx graders. The Student expresses his opinions, but one sometimes has to ask clarifying questions. The Student will respond to her until she achieves an understanding. At the beginning of the year the Student sat by himself (or with his brother and/or his educational technician) in the lunchroom, but he now sits with other students. The Student is also starting to understand humor. It is difficult for him, but she sees him trying to tease and joke with other students, although they don't always get that this is what he is trying to do.

17. 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.

On one occasion, she had a conversation with Ms. Mujica, who said she had just spoken with the Parent about the Student not coming to speech sessions. She said that the Parent was fine with the Student not attending, and didn't want the staff to push him. This was later confirmed by Ms. Bennett. She told Ms. Mujica that she needed to get this in writing. She never heard any discussion about speech instruction being provided in the classroom.

At staff meetings, she has consistently heard that the Student is making progress (other than with respect to speech/language when the Student was not attending). At the beginning of the year, she saw the Student as a fairly timid boy, but he got used to the setting and the expectations of the classroom, and he became more comfortable. Now, the Student is right in the mix of students in the classroom. He raises his hand and participates in class discussion. Initially, the Student needed far more staff coaching, but this decreased over time as the Student became more independent.

18. 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. Whiteman (an educational technician III who was familiar with all the students in the program) took over. Ms. Wightman had been working directly with the Student on writing and some on reading before Ms. Rehill left, and she continued to do that afterwards. 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. Whiteman, 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.

The Student had been making adequate progress on his reading and writing goals in the January 2010 IEP. During the first period under the January 2011 IEP, the Student made adequate progress on his math and reading goals. Since March, the Student has been in a group working with one of the Lindamood Bell reading programs. He made limited progress when reading to himself (although he has recently been doing better) and was meeting his goal when being read to. With regard to social language skills, she saw a lot of progress. The Student was working with two lists – one a list of appropriate ways to interrupt, and the other a list of idioms. Initially, when the Student was practicing in these areas, he had to refer to the lists, but he often no longer needs to do that.

19. 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. Wightman 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.

20. 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. Sessions are in a group context, either in her room or co-taught with Ms. Mujica. The Student has made progress over that time. The Student used to get “stuck,” and would turn his back and refuse to comply with a request. This behavior would last for five minutes or more. Now, there are fewer incidents of this “stuck” behavior, and when it happens, it generally lasts for only a minute or so. Progress has been slow and steady, with occasional setbacks. The Student is a tough student to whom to teach social skills. He is a strong curious learner, but he’s hard to guide because he wants things his way. He wants to bend the world to his way of thinking.

In sessions, the Student used to choose a game to play and, if the other students wanted a different game, he would be unwilling to compromise. In measuring progress, she looked at how long it took for the Student to reach a place where he could compromise and accept a less favorable alternative. The Student came to understand that the time that passed while he was unwilling to compromise was time lost to playing something. He also learned some strategies, such as finding another student who might be willing to play the game he chose, or making an agreement that he would play the other student’s choice this time, but get his choice the next time.

With respect to the Student’s goal about learning style, she has spoken with the Student in general about special needs and learning disabilities, and about how to ask for help, but she has not personalized it. She wants to talk to the Student about his autism, and she wants the Parent to be present for that conversation. The Parent initially would not agree to this. Now the Parent has said okay, but has so far cancelled all the sessions set up for this to take place. For that reason, she rated the Student’s progress on this goal as limited through March 2011. The other part of the goal involves compromise and handling disappointment, and the Student has learned strategies to help him with this, such as identifying the resource people he can go to for help with this. For that reason, even though she hasn’t been able to move ahead on the other part of the goal, she has rated progress as adequate for this period.

The Student has also made adequate progress on his other social work goal. The Student had been resistant to learning that, even though he doesn’t have to stare, he needs to at least glance at people when greeting them. That way people can tell whether or not he is joining the group. The last few sessions, however, the Student has demonstrated that he has gotten it. He has gotten better at greeting and joining a group. In sessions, they practice more formal greetings and goodbyes, but he can use more informal gestures (smiles, waves) outside of the sessions. She has seen the Student use both types of greetings outside of sessions. On the goal of recognizing other people’s feelings, the Student has also improved the accuracy of his responses.

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. When the Student can walk into the group and spontaneously greet and glance at the other students, then that goal has been met. If he doesn't, she may say "Let's have a round of greetings." If the Student can do it appropriately, that is adequate progress. If she has to say "Let's try that again," before the Student demonstrates the behavior, that would constitute limited progress.

If a particular approach doesn't seem to be working, she will try and change things up. She has many different materials she can use to teach a lesson. She also changes the rewards she uses to try and make the lesson more effective. Sometimes Ms. Mujica will have a better way of putting things because she knows the receptive language aspect, and is also good at using visuals. Co-teaching has been very helpful.

The Student has a tendency to stubbornly insist on doing what he wants to do. He refused to attend speech sessions because he wanted to be left alone in the regular classroom; he loved Ms. Shane and was quite successful this year. She discussed this problem with the Parent, and the Parent asked whether the goal wasn't for the Student to be in the regular classroom, suggesting that the staff let him stay there. The Parent said she had spoken with Ms. Shane, who had suggested that maybe he could get his speech sessions in the classroom. She told the Parent that she wasn't sure how that would work. She herself knew that it would be unlikely for that approach to work. During this time, the Student was also refusing to come to social work sessions, but she changed the schedule so that she could work with the Student together with his brother during lunch. That way, the Student didn't have to miss any academics. At the January 2011 IEP Team meeting, the Parent heard Ms. Mujica's report and realized that the Student really did need speech therapy, so the Team changed the Student's behavior plan to address his refusal behavior.

21. 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 in the morning and reading and writing instruction in the afternoon. 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, and began to cry because he was going to miss his teachers.

22. 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.

23. 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. After Ms. Rehill left, the students in the TLC class were being instructed by aides.

With regard to speech therapy, she got a call from Ms. Shane that the Student really didn't want to leave social studies to go to speech therapy, that he was doing really well in the class and she hated to see him go out. Ms. Shane told her that the Student could get his speech in the classroom instead, and she said that would be okay with her. She never talked to Ms. Mujica about it at all. The Student has not gotten speech for 1 – 1 ½ years.

There has been no improvement in the Student's speech. He talks in a gruff voice, using very short sentences. She observed the Student on the playground, and he spent the whole time playing by himself until his brother came over. She has seen no improvement in the Student's ability to make eye contact. She has seen no change in the Student's ability to compromise when he doesn't get what he wants. The only sign of improvement she saw this year was when she went to assemblies and she saw other students talk to the Student.

VI. Conclusions

Allegation #1: Failure to fully and adequately implement the Student's IEP with respect to provision of speech/language services 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 receive speech/language services in violation of MUSER §VI.2.J(4)

NO VIOLATION FOUND

In late October 2010, when the Student was resisting efforts to get him to leave his classroom in order to attend speech/language therapy sessions, there were conversations on the subject

among the Parent, Ms. Shane, Ms. Mujica and Ms. Bennett. The result of the several conversations was that the Parent and Ms. Shane had one understanding (that speech/language therapy would be delivered in the classroom so that the Student wouldn't have to leave), while Ms. Mujica and Ms. Bennett had another (that Ms. Mujica would continue to offer the sessions as before, but would not force the Student to leave the classroom). Once the miscommunication became apparent, at the January 20, 2011 meeting, the IEP Team took steps to address the problem by changing the Student's schedule, modifying the Student's behavior plan and by the Parent agreeing to support the message that the Student had to attend the sessions. As a result, the Student again began attending the sessions. Although a total of 13 sessions were missed, there was not a failure to implement the IEP, in that the services continued to be scheduled and offered.

It is clear that some form of written communication between staff and the Parent reflecting the purported understanding would have brought the miscommunication to light sooner. As Ms. Mujica continued to offer the service, however, there was technically no change to the IEP or refusal to provide a service which would have triggered the obligation to issue Written Notice. Although not legally required, written communication to the Parent confirming the decision would have been best practice. Just as importantly, although again not legally required,¹ an IEP Team meeting to have the Team review together the problem with getting the Student to attend speech/therapy sessions would have been best practice, as evidenced by the improvement achieved once the Team considered the issue on January 20, 2011. The Team had previously determined that the Student needed the service, and student behavior that was preventing the service from being delivered deserved the Team's attention.

Allegation #3: Failure to fully and adequately implement the Student's IEP with respect to provision of direct academic instruction 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.

¹ MUSER §IX.3.D(1)(a) requires that the IEP Team review the IEP not less frequently than annually. At some point, where there has been a significant negative change in a student's performance under the IEP, the duty to review arises even though less than a year has passed since the last meeting. As the January 2011 meeting occurred roughly two months after the Student's non-attendance began, the duty was met.

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 primarily to review the results of the Student's evaluation and conduct the annual review of the IEP. Among the parental concerns that were addressed during the meeting, however, was the lack of direct instruction in the TLC classroom after Ms. Rehill left. The District responded by noting that Ms. Hamilton was placed in charge of the classroom two days after Ms. Rehill left, and that the District believed there was no adverse effect from the change in personnel in that classroom.

Allegation #4: Failure to revise the IEP to address lack of expected progress toward the Student's speech/language and social work goals in violation of MUSER §IX.3.D(1)(b)(i)
NO VIOLATION FOUND

The Student's progress towards his speech/language and social work goals has been reported, for the most part, as adequate. While it may be that many of the goals have not yet been met, the test is whether the Student has made progress. Some of the Student's goals can be anticipated to continue for some time, due to the nature of the Student's disability.

The reports of the Student's teachers and providers support the reports of progress. Ms. Shane reported growth in the student's speech capabilities, noting specifically an expansion of vocabulary. She also described a change at lunch time, where the Student now sits with other students, and the beginnings of an attempt to use humor in social situations. Ms. Grant observed the Student participating in class discussions, and a decreased need for staff coaching. Ms. Bennett reported improvement with greetings and eye contact, and that instances of "stuck" behavior were fewer and of briefer duration. During Ms. Baker's formal observation of the Student, she saw him engage in collaborative problem solving, respond to questions with some affect, and appropriately acknowledge a compliment. Ms. Baker also reported that the Student stayed on task for 25 of 30 minutes and engaged in peer interaction for most of that time.

Beyond the matter of whether or not progress was being made, the fact is that the IEP was revised with regard to the Student's speech/language and social work goals. The January 2011 IEP, in comparison to the January 2010 IEP, adds one additional speech/language and social work goal each, and modifies goals that are carried over.

Allegation #5: 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 checklists/data collection, work completion, staff observation"), 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 and memory impairments may interfere with the student's ability to understand what is being requested. The staff has directly related the extent to which such prompting or repetition was necessary to the rating of progress (less prompting = more progress).

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

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 Written Notice 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 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.

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, 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.