

**Complaint Investigation Report**  
**Parent & Parent v. RSU #75**

June 19, 2011

Complaint #11.081C  
Complaint Investigator: Jonathan Braff, Esq.

**I. Identifying Information**

Complainants: Parent & Parent  
Address  
City

Respondent: J. Michael Wilhelm, Ed. D., Superintendent  
50 Republic Ave.  
Topsham, ME 04086

Special Services Director: Patrick Moore, Ph.D.

Student: Student  
DOB: xx/xx/xxxx

**II. Summary of Complaint Investigation Activities**

The Department of Education received this complaint on April 27, 2011. The Complaint Investigator was appointed on April 28, 2011 and issued a draft allegations report on May 2, 2011. The Complaint Investigator conducted a complaint investigation meeting on May 18, 2011, resulting in a stipulation. On May 25, 2011, the Complaint Investigator received a 9-page memorandum, an audio recording and 76 pages of documents from the Complainants, and a 17-page memorandum and 379 pages of documents from RSU #75 (the "District"). Interviews were conducted with the following: Patrick Moore, Ph.D., special services director for the District; Jennifer Nucci, special education coordinator for the District; Kelly Allen, autism consultant for the District; Jessica Fournier, teacher for the District; Debbie Patterson, speech/language pathologist for the District; Kathy Murphy, physical therapist for the District; Barbara Piccirillo, occupational therapist for the District; Rick Dedek, school principal for the District; and the Student's father.

**III. Preliminary Statement**

The Student is xx years old and is currently receiving special education under the eligibility criterion Other Health Impaired. 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 conduct a reevaluation at least once every 3 years in violation of MUSER §V.1.B(2)(b);
2. Failure to complete an annual review of the Student's October 2009 IEP in violation of MUSER §IX.3.D(1)(a);
3. Failure to have an IEP in effect as of November 2010 in violation of MUSER §IX.3.B(1);
4. Failure to fully and adequately implement the Student's IEP with respect to provision of speech, physical and occupational therapy during the first three weeks of the current school year in violation of MUSER §IX.3.B(3);
5. Failure to fully and adequately implement the Student's IEP with respect to provision of speech therapy for several weeks beyond the first three weeks of the current school year in violation of MUSER §IX.3.B(3);
6. Failure to adequately measure the Student's progress towards his annual goals and to provide periodic reports of that progress in violation of MUSER §IX.3.A (1)(c);
7. Failure to utilize the IEP Team as the vehicle for making decisions regarding the extent to which the Student would participate in the regular education environment and the services needed by the Student in violation of MUSER §VI.2.I;
8. Failure to adequately consider the Student's unique, individualized needs in developing his educational program in violation of MUSER §§II.32 and IX.3.C(1)(d);
9. Failure to provide a free appropriate public education by providing the Student with an abbreviated school day in violation of MUSER §II.11 and 34 CFR §300.101(a).
10. Failure to provide adequate extended school year (ESY) services to the Student and to make the determination of the amount of ESY services to be provided on an individualized basis in violation of MUSER §X.2.A(7);
11. Failure to adequately consider the concerns of the Student's parents as equal participants in the IEP decision making process in violation of MUSER §§VI.2(I) and IX.3.C(1)(b);
12. Failure to provide special education, related services and supplementary aids and services to the Student that are based on peer-reviewed research in violation of MUSER §IX.3.A(1)(d);
13. Failure to provide supports for school personnel with respect to the Student's use of his augmentative communication device sufficient to enable him to advance appropriately toward attaining his annual goals, to be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities, and to be educated and participate in those activities with other children with disabilities and with non-disabled children in violation of MUSER §IX.3.A(1)(d).

**V. Stipulations**

1. The District did not itself perform a reevaluation of the Student from April 2006 until November 2010.

**VI. Summary of Findings**

1. The Student lives in Topsham with the Parents and a younger sibling, and is presently attending xx grade at Woodside Elementary School. He began receiving special education services under the category Autism in xx.
2. At an IEP Team meeting on September 28, 2007, the IEP Team determined that the Student would be reassessed in October 2007 using the Social Communication Emotional Regulation Transactional Support (SCERTS) model as well as PT and OT evaluations. The District also recorded in the Written Notice of that meeting that the Parents would be obtaining a neuropsychological evaluation in the following months. In Section 6 of the Written Notice, the Student's father wrote: "Parent is satisfied with progress of child and services provided by school."
3. The SCERTS assessment was conducted in or around October 2007, with the Student's father being a part of the assessment team, and the neuropsychological evaluation was conducted on February 22, 2008.
4. The Student's IEP dated October 14, 2009 provides for: 120 minutes per week direct speech/language services and 60 minutes per month of consultation services, delivered by a speech/language therapist in the special and general education setting; 180 minutes per month direct physical therapy services and 30 minutes per month consultation services delivered by a physical therapist in the special and general education setting; educational/transactional support throughout the school day delivered by a special education teacher and educational technicians; and augmented communication device consultation with Mark Hammond Associates as needed. Section 9 of the IEP states: "Due to educational needs..., full inclusion in the general education setting is not appropriate for [the Student] at this time. However, targeted and meaningful inclusion opportunities in social and non-academic activities continue to be important to support [the Student]'s growth in the areas of social communication and emotional regulation."
5. Among the short term objectives in the October 14, 2009 IEP are the following:
  - Given appropriate transactional support, [the Student] will increase his social communication skills by:
    - (a) obtaining the attention of another person to notice or look at an object or event of interest; and
    - (b) obtaining the attention of another person to request information about an object or event.

6. The Student's October 14, 2009 IEP provides for ESY services with setting and frequency to be determined. At an IEP Team meeting on June 7, 2010, the Team determined that the Student's ESY services would be delivered at Bowdoin Day Camp on Tuesdays and Wednesdays from July 6 through August 4, 2010, and would include speech therapy and physical therapy. The Written Notice of the meeting recorded that the Student's father was satisfied with the ESY program.

7. During the summer of 2010, the District staff undertook a review of the District's autism and life skills programs, including the IEPs of the students in those programs. Staff members also observed programs at other schools serving those populations, and discussed the research supporting the delivery of services in natural settings rather than clinical settings. The District redesigned their programs so that both of those populations were combined into a single program (the Special Programs Intermediate ("SPI") program), which would include increased opportunities for instruction to be delivered in group settings rather than individual ones. One of those opportunities involved the creation of a social communications group consisting of six students, where some of the speech services for those students would be delivered.

8. Another component of the program was formation of the "lunch bunch," supervised by Ms. Patterson and Ms. Piccirillo, when a group of the students in the program would eat lunch together, separate from the general education population, once per week, to work on functional life skills around the lunch activity as well as social communication skills. The District sent a letter home to parents of the students in the program informing them about it. When the Parents received the letter, they insisted to the District that the Student not participate in the "lunch bunch," and the Student never attended.

9. During the first month of the 2010-2011 school year (August 31 – September 30, 2010), the Student received 150 minutes of direct physical therapy, 30 minutes less than the amount specified in his IEP.

10. At an IEP Team meeting on September 7, 2010, it was reported that the Student had demonstrated an elevated level of dysregulation in the cafeteria, and determined to collect data to determine antecedents and appropriate interventions. The Team also determined that monthly meetings would be held between the Parents and the case manager.

11. At an IEP Team meeting on October 14, 2010, the Team conducted its annual review of the Student's IEP, and reviewed results from a series of assessments (including literacy and numeracy assessments) as well as data from the Student's "program book" and observations done by Ms. Allen and Ms. Fournier. The Team reached consensus on most of the IEP, but determined to reconvene in order to continue to discuss services and to address parental concerns. The Team developed an IEP which was dated October 15, 2010 and which was labeled "Draft." The IEP records the Student's present level of performance with respect to social communication, expressed in percentages (e.g., the Student "follows single step directions using his Vantage correctly 85% of the time to answer 'who' questions and responds to 'where' questions correctly 60% of the time."). All sections of the IEP are completed, with the services in Section 7 the same as in the previous IEP.

12. At the meeting, the Parents presented a list of parental concerns, which was attached to the Written Notice of the meeting. There were a total of 14 numbered concerns (some of them with subparts), including the following: “We are concerned that there be daily communication to us that is detailed and accurate enough for us to be able to (a) know who worked with or supervised [the Student] at any particular time during the day; (b) determine whether [the Student] was safe throughout the day; (c) determine whether [the Student]’s IEP was implemented throughout the day; (d) determine which IEP goals were worked on, and how much time was devoted to instruction and/or therapy; (e) determine the specific nature of any of [the Student]’s behaviors that the school believes interfere with his education (it does not help us when the school staff uses general terms like ‘aggressive’ or ‘emotionally dysregulated’); and (f) determine whether any unusual or unplanned events occurred, so we can judge their impact on whether [the student] was safe and whether his IEP was implemented.”

13. At an IEP Team meeting on November 19, 2010, the Team determined that the Student would no longer participate in the social communications group, that speech/language services would be delivered solely on an individual basis and be increased to 120 minutes per week, that social work services be added, and that the consultation time for Mark Hammond Associates would be stated. The Student’s IEP was amended to reflect these determinations, though it continued to be labeled “Draft.” The Team also determined that the Student would undergo a comprehensive reevaluation. At the meeting, staff members and the Student’s father described having observed the Student reading a book, something the Student’s father agreed the Student had not been able to do the previous year.

14. There were several more meetings at which the IEP, particularly Section 7, continued to be discussed. The Team determined at each meeting to continue to work from the “Draft” IEP. At a meeting on May 5, 2011, the team determined, at the request of the Parents, that members of the Team would write up brief statements specifying how the Student’s goals are being addressed through academic programming and how they will be addressed through the xxxx program. At a meeting on May 19, 2011, the Team discussed the ESY program and determined that two days of programming was reasonably calculated to address regression and recoupment of the Student’s mastered objectives, and that spreading out that instruction over four half-days would benefit the Student. The Student’s father did not agree with the proposed amount of services, contending that the Student required a full week of services in order to avoid regression.

15. The Student’s father and Dr. Fagan, the Student’s outside speech therapist, were given the opportunity to observe a social communication group speech therapy session on November 3, 2010. Dr. Fagan prepared a report of her observations, which included criticisms of the session based on: lack of sufficient face-to-face interaction between the Student and the therapist; downtime caused by the therapist’s need to move around and collect materials; too many activities in too short a time; too much time while the students were passive; insufficient efforts to record data; and use of vocabulary words that were above the Student’s level.

16. During the 2008-2009 and 2009-2010 school years, although the District's written policy stated that the school day at Woodside Elementary School ended at 3:15, students were actually dismissed from their classrooms at varying times between 3:00 and 3:15. The Student's class, in particular, was dismissed closer to 3:00. In September 2009, the Parents requested that the Student not be dismissed until 3:15, and the District complied with that request. During the 2010-2011 school year, all students at the school have been dismissed at 3:15.

17. During an interview conducted by the Complaint Investigator with Jennifer Nucci, Ms. Nucci stated the following: She is the elementary special education coordinator for the District. Her responsibilities include all six of the elementary schools in the District, where she works with teachers, students and families, supervises staff and administers IEP team meetings. She also participates in program development.

Last year, the District had two separate programs, one for students with autism ("ACE") and a functional like skills program ("FLS"). At the end of the year, she was part of a team of professionals, including therapists, teachers and a behavior consultant, who reviewed these two programs and the IEPs of the students in both of them. They found that the students' IEPs contained certain common goals involving social communication skills and generalization of communication skills, and they all involved discrete-trial training. Each of the students also received full-time 1:1 services from educational technicians, so that they were constantly getting direct instruction throughout the day. The team talked about the difference between the "medical model" and the natural environment approach to delivering these services, and the research that supports the latter. The team discussed how to better incorporate occupational therapy ("OT") and physical therapy ("PT") into daily activities, and how to train the educational technicians so that they would be working throughout each day on the students' goals. They also looked at the speech/language criteria for providing services to children with autism, and found that one of the major themes was to move away from working with students in isolation, where research shows that those students don't learn to generalize the skills being taught. The team also visited and observed at Margaret Murphy Center, where there was a strong emphasis on working with children in groups with a lead instructor and on getting the children to generalize new skills.

The result of these activities was a new program, called Special Programs Intermediate ("SPI"), which had all the students from ACE and FLS in one setting together. Each student still had his or her own educational technician, with a lead teacher making sure that each student's program was being implemented and that the necessary data was being collected. Part of the new program involved delivering some of the students' speech/language services in a group setting, where the students had the opportunity to practice social communication skills and where they could learn to generalize the skills they were learning in their individual speech/language sessions. This generated controversy among some of the parents, as there was some confusion over whether "direct instruction" in the IEP meant individual instruction.

Due to the resistance from parents, the staff met and agreed to quell the controversy, although they were convinced that their methods were educationally sound and research-based and although they believed that they were getting good results from the program. All speech instruction reverted to individual sessions. The only group experiences the students now

participate in are “calendar time,” where they work on weather, days of the week, counting and other basic concepts, and a 15 minute math group, where they work on math goals that the group members have in common. These group activities provide at least some opportunity for social communication. She believes that if the District had done a better job communicating with the parent community before the school year began to explain the new program, there may have been less resistance to it.

The program was designed around all the students’ individual IEPs, and all of the students were working on their individual IEP goals. While it is true that each student in the group setting receives fewer opportunities for direct interaction with the therapist, his or her educational technician is present throughout the session, continuously prompting the student and reinforcing the lessons. She also believes that these students, with assistance from their educational technicians, do benefit from being present when the therapist is interacting with one of the other students. Next year, the students will be going out into the community and using the skills they develop in school. They may have the foundational skills, but they need to use them in natural settings.

The staff has been working very hard on developing the Student’s skills using his Vantage augmentative communication device. All the Student’s goals are now related to use of the Vantage, and the Student is prompted throughout the day to use it. The District brought in speech consultant Mark Hammond to conduct training for staff on the Vantage, and some staff members have done on-line training as well. Both Ms. Fournier and Ms. Patterson are very familiar with the Vantage and have worked with other staff on its use. The Vantage is very important to the Student’s ability to become independent, to be a member of the community.

The Student recently participated in a class trip to the Dairy Queen. In preparation, Ms. Fournier spent time with the Student teaching him how to use the Vantage to communicate with the counter person, and the Student learned how to ask for what he wanted (chocolate ice cream in a cup). When the class got to the Dairy Queen, the Student’s mother joined the group and, when she saw that the Student had the Vantage, asked “Why are you making him use that thing? He can just point.” At the direction of the Student’s mother, the Student pointed to a picture on the wall, which the counter person couldn’t see, and made an unintelligible sound. There was a misunderstanding about what the Student wanted, and it took several exchanges (facilitated by the Student’s mother) before the Student got the cup of ice cream. There seems to be a disconnect between what the Parents say they want to happen in the educational setting, and what they are doing with the Student outside of school.

With regard to the triennial reevaluation, the IEP Team determined to do an OT and PT evaluation, a SCERTS assessment, and to also consider the new neuro-psychological evaluation that the Parents were obtaining (the Student came into the school with a neuro-psychological evaluation). The SCERTS looks at the Student’s social communication, transactional supports and emotional regulation. The assessment team looks at video clips of the Student at school and at home, and completes 50 pages of data. The Student’s father received the training on the assessment, and was a member of the team (along with an OT, PT, autism consultant, speech/language pathologist and behavior consultant) who administered it. The assessment provided a lot of information regarding the Student’s

functioning. It is one of the most intense and proficient assessments one can do of a child with autism.

As part of her duties, she reads every Written Notice and IEP of each of the students at her six schools. The District routinely conducts reevaluations of students at three year intervals, unless the IEP Team discusses it and determines that one is not needed. She recently attended a meeting where the parents of the student had obtained an outside evaluation, everyone agreed to use it for purposes of the triennial evaluation, and agreed that no additional evaluation was needed.

The Student's current IEP is labeled "DRAFT" because the Student's father has not been willing to agree to all the components. The Student's father wants all the services to specify "individual" and not just "direct." The District wants families and schools to be on the same page, with everyone feeling that they are being heard and that what they say has value. They do not consider the IEP completed until the parents agree with it. Sometimes this requires 8 or 9 meetings (the Student's IEP Team has already had 7 meetings to discuss the current IEP).

With regard to extended school year services ("ESY"), an ESY meeting is held for each special education student. The Team looks at the goals in the student's IEP and at whether there is data to show that the student will lose the progress made if the student doesn't continue to work on them over the summer. Where the Team finds that this situation exists, there are two ESY programs currently running in the District, one at the Middle School and one at Bowdoin Day Camp. The camp setting is more for social communication skills and the school setting more for academic work. The Team decides which setting is more appropriate for the student, and decides how many weeks, days and hours the student should participate. Some students go two days a week for a full day, some go five days a week for a half day. Some children go to the school setting some days and the camp setting other days. The Teams always base the decision on what the student requires in order to not regress.

With regard to the District's programming being research-based, the District consults with a reading specialist to make sure the reading programs are keeping up with current research, and the staff reviews math programming with the same goal. Staff members are continually attending professional development events, and the District subscribes to professional journals which are shared among staff. Everyone on the staff has taken SCERTS training, and many have experience working at facilities such as Margaret Murphy Center, the May Center and Woodfords. She personally recently attended a three-day conference on social speech skills, and is taking courses at USM. All this information is used in the design of programs for students.

18. During an interview conducted by the Complaint Investigator with Kerry Allen, Ms. Allen stated the following: She is the autism consultant for the District, a position that was created just this year. She has a caseload of students, and consults with teachers, conducts observations, and works directly with those students. She also develops strategies to help her students with academics, social skills and emotional regulation. She was the Student's teacher from 2004 until last year, and was the Student's pre-school teacher at the May Center. This year, she is a member of the Student's IEP Team as consultant. At the beginning of the



year, she worked with Ms. Fournier to help make her aware of the Student's needs, where he was last year and where he needed to go. She has been consulting with Ms. Fournier on a regular weekly basis.

The Student's emotional regulation has improved since last year. He has been better able to try new things with fewer meltdowns when he encounters difficulties. The Student has made good progress on all of his academic goals. She also saw lots of growth in the Student's social awareness – his ability to maintain focus and actively participate in a group setting. He has a better understanding of his role and his job in the group. His understanding of language has also improved, and he has been generalizing how to form questions. She has seen lots of growth in the Student's ability to greet peers and to answer spontaneous questions. The Student has been making more use of his Vantage, and needing fewer prompts to use it. He understands that the Vantage is his way of communicating with the teacher and with his peers.

Last year, as the Student's teacher, she had regular monthly meetings with the Student's father and gave him written progress reports with details based on every goal in the IEP. The Student's program is an ABA program, so it is very detailed and data-driven. She doesn't know whether he is getting the same level of detail this year.

When the staff was designing the SPI program, they were trying to develop ways to help the students learn to generalize the skills they were learning in their individual therapy sessions. They wanted to provide opportunities for the students to practice those skills in a natural setting. One of the program elements they came up with was the "lunch bunch," a time when students from the program would eat lunch together once a week in an environment where they could learn tasks such as setting the table, and conduct brief conversations with one another. It was seen as an opportunity to "teach in the moment." In addition, the students were going on to xx next year, and this was seen as an opportunity to prepare them for eating in the lunchroom in that new environment. The District sent letters home to the parents at the beginning of the year explaining about the program, but the parents objected and the District eventually scrapped it. She doesn't think the Student ever participated.

The Student needs to learn how to have a conversation and to develop social skills. Those are his individual needs, not based on just a generalization of his group. The Student has always eaten lunch in the lunch room with his regular education peers, but he is mostly alone. He has his Vantage, but he hasn't been using it.

With regard to ESY, there are specific goals for each of the students in the program. The program is generally designed around getting the students out into the community. In 2009, the Student's father, without discussing it with the IEP Team, decided to enroll the Student at Bowdoin Day Camp, and asked whether the District would supply an educational technician to work with the Student there. She discussed with the Student's father her concerns about the chaotic nature of that setting but, ultimately, the District agreed to design a program there for the Student. She met with the educational technician, gave her materials (data sheets, activities, etc.) and explained the things that the Team wanted the Student to be working on. This is what happens for all the students. The staff of the summer program is given materials, instruction and schedules to make sure they are working on the appropriate goals and

objectives over the summer. For ACE students, a lot of their summer program activities are the same because a lot of their goals are the same, but not all the goals are the same and the expectations for the students vary, as do their behavior plans. The staff works on each student's individual goals within the framework of the program.

SPI is an ABA program which is completely research-based, as is the SCERTS model which the District is using. SCERTS is a team approach to understanding and evaluating students' abilities in social communication and emotional regulation. The District sent a number of staff members for training in the SCERTS model, and they thought it was great. Although it may not have been clearly spelled out, it was her understanding that when the Team determined that the SCERTS assessment would be used for the Student, it represented the Student's triennial reevaluation, along with the neuro-psychological evaluation that the Parents were getting. SCERTS was endorsed by IEP Teams of other students for reevaluation purposes. She is not aware of any policy or practice of disregarding the requirement that triennial evaluations be conducted.

With regard to the Student's Vantage, there is ongoing training for staff in using the device. Staff has had two 3 hour-long trainings with Mark Hammond. As the Student learns new skills, staff has to be trained on how the Vantage can be used in connection with those skills. All the regular educational technicians working with the Student know how to use it. When there are substitute educational technicians, staff members that know how to use the Vantage try and make sure that the substitutes receive some training as well; she herself has modeled its use for substitute educational technicians.

19. During an interview conducted by the Complaint Investigator with Jessica Fournier, Ms. Fournier stated the following: She is the special education teacher for the SPI program. There are a total of seven students in the program, five of whom (including the Student) are actually in the classroom with two others in separate learning spaces. Each student has his or her own educational technician. She is not aware of students not getting their therapies during the first weeks of the school year. Schedules do change during those first weeks, but there is no system in place that results in students not getting their services. The District writes IEPs with service durations stated in terms of months rather than weeks, so although the days and times when services are provided may change, by the month's end the students receive the services they are supposed to.

With regard to sharing information with the Parents about the Student's progress, she hears from the Parents at least 3-5 times per week about their concerns, and she responds to every inquiry. She also sees the Student's mother every morning when the Student's mother brings the Student to the classroom. She sends home daily diaries to give the Parents an idea of what the Student's day was like, so there hopefully will be carry-over into the home. During the first week of school, she set up a schedule of monthly meetings with the Parents to discuss progress on goals and any concerns or questions they might have. The Student's father came to some meetings, but has missed three of them for various reasons. Before the meetings, the Student's father sends her a list of things he might want to talk about or see. As the school year went on, he started coming less, and the meetings became less of a collaborative conversation. She showed the Student's father data records that he asked for, and he said they

didn't mean anything to him. It is very difficult to give the Parents the information they ask for. She doesn't have enough time in her day to add up every minute of time she spends with the Student on each activity.

She keeps data to measure every step of the Student's educational process, including his mistakes. She presents the Student with choices and asks him to select the right one using the Vantage. She records whether his responses are correct or not. When the Student achieves 80% correct three days in a row, they move on to the next task. She also sends home a progress report each trimester – she prints off all of the Student's IEP objectives, and provides the level of accuracy for the last three recorded data points. She provides to the Parents the percentage of accurate responses, and whether the Student is making progress, not making progress or has mastered the objective. This is more information than the other students' parents receive.

The Student has been making enormous progress this year. The Student's learning style makes it difficult to teach both receptive and expressive language skills. The Student's IEP Team discussed this at a meeting and agreed to change the Student's program to emphasize more expressive communication, and this changed the kind of data she was keeping. The Team also discussed that the Student was still struggling with basic math concepts using paper and concrete materials. Part of the process for the IEP Team is to think about whom they expect the Student to be as an adult, so when he wasn't having success generalizing and concretizing mathematical concepts, they decided to teach him functionally how to perform mathematical calculations. Now the Student is using his Vantage to perform these calculations.

Each of the students in the program has his or her own IEP with short-term objectives, and work on those objectives is put into place in the context of the program. Conceptually, however, all the students are working on the same type of skills. Social communication is a deficit for all of those children, and this is something that they need to work on in a group context, not individually. Part of her job is to make sure that, within the group, each student is working on his individual objectives, and that the proper data is being collected (which is different for each student). The class has been broken down into two different groups both for math group and for calendar time, to reflect the students' different needs and abilities. She designs activities that will address the objectives for each student in each group, and although each student may be working on something different, they will come together for certain activities. All during the process, each student has an educational technician dedicated to addressing the student's learning style and collecting data. This is in addition to the individual work each student does during the day.

With regard to ESY services, each student has his own ESY meeting. The Team looks at the Student's learning style, the rate of regression the Student exhibits, which skills have been mastered and where there might be regression over the summer. The Team identifies the goals that the student needs to continue to work on and the amount of time required in order to avoid regression. The team considers the kind of program that would best address those goals, but also takes into account the student's emotional needs. There are no set programs – she has had five meetings so far this spring, resulting in five different programs of different

lengths and number of hours. The Student has been making dramatic progress, mastering skills at a rapid rate, so the expectation is that he will regress at a slower rate. The Team decided how many hours and weeks of ESY services the Student needed on that basis, but also considered that the Student always needs to work on emotional regulation and social skills.

She has worked very hard to give the Parents what they have asked for, but she has found working with them to be a very defeating and counterproductive experience. Recently, a field trip was planned for all xx grade students to an environmental education center. The Parents initially refused to permit the Student to go, but eventually agreed that the Student could go with the SPI class as a separate group, and as long as a bus (and not an individual's car) was the means of transportation for the Student. When the Student showed up, he didn't have his Vantage with him because the Parents said the insurance wouldn't cover it. As a result, the Student couldn't communicate – couldn't ask or answer any questions - during the whole trip.

20. During an interview conducted by the Complaint Investigator with Patrick Moore, Ph.D., Dr. Moore stated the following: He is the Director of Special Services for the District. The District does a lot of program development. Every year, the staff is looking at the different parts of the student population and asking whether the District could be serving them better. The District makes every attempt to involve parents as partners in this process. Recently, there has been a clash between the "medical model" (providers delivering services one-on-one in a clinical setting) and a more ecological model (services embedded in a natural setting). Parents often use outside providers who feed their notion that only the medical model is of value.

With regard to the SPI program, the staff worked so hard on its development, but they made one mistake: not enough communication in advance with the parents. After the year got underway, the District started holding monthly meetings for all the parents of those students.

This year, the District did 40 initial evaluations and 111 reevaluations. There is no policy or practice of avoiding reevaluations. There is an administrative referral process, overseen by special education coordinators, and a case manager assigned to each student. One of the responsibilities of the coordinators and case managers is to make sure that all evaluation information is up to date, and when a triennial date arrives to make sure that determinations are made by the IEP Team. In this parent population, the parents often obtain outside evaluations, and the District often uses that data to make eligibility determinations and programming decisions. There may not always be sufficiently explicit discussion that these evaluations are being used as the reevaluations.

Up until this year, the practice at Woodside Elementary School was that all students started getting ready to leave at around 3:00. Instruction ended for all students between 3:00 and 3:15. Some classes went outside at 3:05. Announcements started to be made at around 3:05. There was no policy that the Student's school day was to end at 3:00, but there might have been a special education bus that carried students from all over the District which picked up Woodside students at 3:00. The Student was scheduled to ride the regular bus (although usually the Parents picked him up), and the bus was scheduled to leave at 3:15. The reality is

that the students in the SPI program all have 1:1 educational technicians throughout the day, so that instruction happens every minute of the day and they are never without some kind of programmatic intervention. If one were to count the total minutes of the day that these students received direct instruction, it would be greater than for the regular education population. This year, Mr. Dedek decided that every minute of the school day should be used instructionally, so now instruction for every child continues until 3:15.

There is no policy that special education children do not receive services during the first three weeks of school. There are practical considerations that come into play during this time, however. Providers are often itinerants, serving multiple schools. The District decided to adopt a service model from the state of Washington whereby providers spend three weeks providing direct service to students and the fourth week doing observations and consultations. This reduced the amount of travel time for providers and increased the time available for delivering services. As a function of this model, the District measures the frequency of services in IEPs by the month. During the first month of school, the requisite amount of service is being delivered, but may not be according to a fixed schedule. He believes that the daily sheets that were being sent home to the Parents that failed to indicate services being delivered were not always accurate during this time. In general, the level of detail the Parents ask for with regard to reports of the Student's school day are not realistic. IEPs are not detailed lesson plans with a guarantee of a certain person, place and time every day. As the year progresses, things become more predictable.

The "lunch bunch" was not an IEP decision. The IEP decision was to provide Direct speech/language services; "lunch bunch" was the vehicle chosen by the providers to deliver the services working on social communication goals. This is part of the latitude allowed professionals in deciding how to fulfill their responsibilities. The Parents objected to the "lunch bunch," so the Student never participated. When other parents began to object, the program became too much of a distraction and it was abandoned.

With regard to ESY services, the District used to conduct ESY programs at Woodside, where the students had no interactions with non-disabled peers. They found that some of the children were regressing, and decided to have a few of the children receive ESY services at Bowdoin Day Camp. Those children flourished, and the District continued to send children there for ESY, while also establishing two additional ESY programs at the school (one for students who are severely emotionally disturbed and one for students who are autistic) and occasionally sending children to programs elsewhere. The students' programs are of varying lengths and frequencies. Each student's IEP Team looks at which skills the student has mastered and might experience regression without continuing to work on them over the summer. The District provides an educational technician, teacher, speech/language and other providers depending on the skills that are identified, reasonably calculated to prevent regression.

With regard to research-based programming, the District sends staff members to an annual autism conference in Boston, and those staff members share what they learn with the rest of the staff. The District was recently invited to present a workshop at Bates College as part of a weeklong program on autism, on the subject of how a public school does the organizational

development necessary for a successful autism program. There will be parents of students in the program helping to present the workshop.

21. During an interview conducted by the Complaint Investigator with Debbie Patterson, Ms. Patterson stated the following: She is a speech/language pathologist for the District. She has provided speech/language services to the Student since 2004, except for a period when she was teaching a functional life skills class he was not a part of. The Student's skills have increased in the use of his Vantage, and he is more attuned and alert. The Student can now work in front of a mirror, and can imitate speech sounds. He can articulate consonant/vowel sounds (e.g., "toe" or "he"), where he wasn't able to do so fluently before. The Student is now using gestures, speech, signs and his Vantage to communicate. He still needs to work on initiating communication, but this has improved.

The Student received all his speech/language services during the first three weeks of school with no disruptions. When the staff met in June 2010, they made several program decisions. One result was that the Student received ½ hour of language instruction in a social language group daily during the first two weeks, and then added another 15 minutes of individual work in addition during the third week. Starting with the fourth week, she added more individual work and reduced the time in the social language group. The decision to make that change was based partly on the need to respect the Parents' request to spend more time working with the Student on his Vantage, but she feels strongly that life is not just coming to a therapist's office, but is functioning in a peer group, taking turns, etc. Also, scheduling at the beginning of the year is challenging, and by the fourth week she could better work out a schedule.

Each student's program is always individualized, developed so that the student's individual needs are being met, whether in group or individual sessions. Group sessions begin with greetings, something on which the Student needs to work; one of the Student's IEP goals is initiating interactions with peers. Each session was based on a story, followed by questions and answers; answering and understanding "wh" questions, and creating sentences in forming answers are also IEP goals for the Student. The Student's educational technician would be prompting the Student in developing his answer using the Vantage. Although the Student may be getting more "hits" (direct interaction with the therapist) in individual sessions, the question is whether he is going to generalize what he learns there. She sees that generalization happening more in the group setting. She doesn't take the position that there should be no individual work, but she doesn't believe that the reduced individual work during the first three weeks was detrimental to the Student.

The American Speech-Language Hearing Association ("ASHA"), a professional association for speech/language pathologists, has developed a set of guidelines to address the needs of children with autism. It includes the recommendation to provide services in the most naturalistic setting available. The District was providing direct instruction, but in a group setting. These students need assistance in order to attend when another student is being asked questions, but learning to do this is very important for the Student. It is called "joint attention," and is defined in the SCERTS program. The Student has a social skills goal that involves joint attention, and he can't meet that goal when he is receiving individual therapy.

“Lunch bunch” was a programmatic decision. The feeling of the staff was that this group of children will be moving next year to xxxx, and eating in the cafeteria would be one of the inclusive moments for them. That inclusion would not be as facilitated there as it is in Woodside, so the staff wanted to create an opportunity to expose these students to how we sit around a table and have lunch. She and Ms. Piccirillo worked together to create this group. They looked at materials available on social skills, and identified a number of skills to work on, such as using napkins, and not eating food off of the floor. The group would meet once a week, and would not take the place of other speech/language or OT sessions, but would be in addition. They met once, but it never really got off the ground because it didn’t have enough parental support. She has observed the Student in the lunchroom at Woodside. He is very attentive to his eating, but it’s like he has blinders on. She hasn’t seen him engaged in communication or interaction. The Student’s educational technician is in the vicinity, but not right beside him. The regular education lunchroom is not an environment in which to deliver instruction - it is too distracting.

Regarding training on the Vantage, back in 2004 she went to the Parents’ home and did training on the computer. She has had two more trainings since then. In 2008 and 2009 Mr. Hammond came to the school to do training for the staff. Ms. Fournier had training in a previous school. She and Ms. Fournier did training with the Student’s educational technicians. In summer 2009, she attended a technology training focused on how to facilitate education using technology. In summer 2010, she took training in technology and communication. She believes that she has prepared herself to facilitate and contribute to the Student’s well being.

With regard to measuring the Student’s progress, his activities support his goals and objectives, and she keeps a tally of his responses. She has a folder for the Student in which she maintains the Student’s tally sheets. She sends home progress reports each trimester which are very detailed. There is also a letter that goes home to the Parents every day, and she tries to let the Parents know what the Student worked on and how he was doing. She isn’t always able to include her information on the daily sheet, because she has many other students with whom to work. She also attends monthly meetings with the Student’s father, although sometimes she is not able to be there because she has to work with students at other schools.

22. During an interview conducted by the Complaint Investigator with Barbara Piccarillo, Ms. Piccarillo stated the following: She is an OT for the District, working at Woodside, the Middle School and the High School. She has worked with the Student for four years, including some of the summers. She has been working with the Student on penmanship and computer use, and has worked with him on fine motor skills such as cutting, drawing, etc. The Student has been making steady progress. Penmanship was proving very difficult, so they have been focusing more on the computer. The Student likes the fine motor activities, and particularly enjoys cooking group. The Parents wanted her to move away from developing functional skills, even though the staff felt this was more important when looking beyond high school. She believes the Student needs to work on independent living skills, activities of daily living and community living skills.

Last year, the first three weeks of school were tricky due to her need to conduct kindergarten screening, so this year the District tried to consolidate the screening process. Last year, the Student was on a 90 minute per month program, and she can't say with certainty that the Student received that full amount during September. She believes that the Student got some services, but she has been unable to find her logs that would contain that information. This year, the Student definitely received the full 90 minutes during September, and this was true for most of her students. The District has taken steps to streamline the screening process even more, so next year should be even easier.

Together with Ms. Patterson, she developed the "lunch bunch" program. She believed it was a great way to provide instruction on life skills around meal time while also building social skills. She also thought it was a great start to the transition process into xxxx. The students had been in cooking groups before, but there they worked as a group making one dish. This time, the activity would be more individualized; everyone would make their own lunch. She would embed in the program some of the OT services she was providing to each student individually. She has observed the Student in the lunchroom. He is fairly independent getting his things and cleaning up, but once he sits down he's fairly isolated, not part of conversation with other children. She thought about trying to provide instruction in the lunchroom, but it's very noisy and you can barely hear across the cafeteria table so she decided against it.

Regarding the length of the school day, some buses are there earlier than other buses. She doesn't recall all special education students leaving at 3:00. She personally provided OT services to some of the special education students until 3:15. Teachers often do end of the day's activities with students during the 3 – 3:15 period; it's often called "pack and stack time," with children winding down and getting ready to go home.

The District has become increasingly creative with ESY programming. Beyond the day camp, they have also been incorporating more community outings into the program. Within the ESY programs, there's a variety of things that are going on: some children are working on academic goals in their IEPs, while some are working on gross motor skills or leisure skills. Within the programs, there is a lot of flexibility for what the children participate in depending on their needs, likes and social skills ability. At the camp, the teacher looks at the schedule for the day. If one student really likes chess, the teacher will make sure to not schedule academics during the time when the chess activity is being conducted. Some children find a full day at camp very difficult, so they may only attend the morning session, or have a more relaxed afternoon session.

With regard to progress reports, she provides a lot of work samples on penmanship and typing. The Student's keyboarding program charts his progress automatically. She provides trimester progress reports and also a summer report. This year, they were having monthly meetings with the student's father until he stopped them.

She conducted an OT reevaluation this year, and was also part of the team that did the SCERTS assessment. The team looked at videos of the Student in different settings to assess his OT and emotional regulation needs, and to look at the transactional supports the Student was receiving. They analyzed this as a team, and it was helpful to get everyone's perspective.



She feels it wasn't necessarily understood that this assessment was serving as the triennial reevaluation, so much as it was one more component of the evaluation process. Triennials are generally discussed at IEP Team meetings. The Team discusses whether the student requires one, and requires all of the components of the evaluation or only some of them. She doesn't know of any student where the district intentionally didn't bring up the subject or refused to do one when the parents asked for it.

With regard to the Student's Vantage, whenever she has wanted something put on the device, she has been able to make it happen. When her typing program requires a response, she makes the Student use his Vantage to provide it. She has herself received training on the Vantage, and the educational technician is always there, and it's clear that they know how to use it.

23. During an interview conducted by the Complaint Investigator with Kathy Murphy, Ms. Murphy stated the following: She is the PT at Woodside, and has worked with the Student since he first came to the District. During the first month of school, the Student received above and beyond the amount of PT services required under his IEP. Normally, she has more consultation time during the first two weeks of school to get things up and running, and then focuses on direct instruction in the next two weeks, but the Student received the full amount of both and probably more. He gets group PT, and on Tuesdays he does adapted aquatics. She also sees the Student and two other students from his class for a variety of different activities that address his individual goals.

She is no longer interested in using the medical model for providing services; it is no longer what the research supports. She has been looking at inclusionary gross motor groups for all elementary children. Children learn by watching and participating with their peers. Today, she had a motor group that did sustained walking and movement. She directed the Student to watch what the others were doing, with prompting from his educational technician, to help him prepare to do his activity.

With regard to measuring progress, she has had progress monitoring meetings with the Student's father, and she prepares trimester progress reports and annual progress reports. She uses a gross motor assessment tool that measures a foundational set of skills that have been shown to be academic predictors. Recently, she measured the Student on his active participation in the activity and on his gross motor development, and tracked his ability to sustain movement (the Student has gotten heavy and that is a particular concern). She has worked with the Student for two summers at Bowdoin Day Camp, using hippotherapy and aquatic therapy, and has used a variety of measures to determine his progress.

When the Student comes into a session, she asks "What would you like to do?" and gets him to respond using his Vantage. She tries whenever possible to have him use it to initiate an activity. One of the Student's goals involves working on independence. She has a data collection tool that looks at that, measuring how many prompts he needs.

She was part of the SCERTS assessment team. She recalls that she understood that it was part of his triennial evaluation, providing information that would help develop the Student's IEP and goals. She believes the SCERTS activity was invaluable.

24. During an interview conducted by the Complaint Investigator with Rick Dedek, Mr. Dedek stated the following: He has been the principal of Woodside since 2009. When he came in last year, the school had a written policy that the school day ended at 3:15, but he observed that students were leaving their classrooms between 3:00 and 3:05, and all the students were gone by 3:15. The time when students left seemed to vary more by grade level than anything else, with the youngest children leaving the earliest. Special education students were probably leaving around the same time as first and second graders, but this wasn't very different than when the older children were leaving.

He wanted to maximize the instructional time for students, so this year he asked that no teachers dismiss their students until they heard the 3:15 dismissal bell, with announcements starting after the bell. He also told parents who picked up their students, including the Student's mother, not to come to get their children until 3:15.

25. During an interview conducted by the Complaint Investigator with the Student's father, the Student's father stated the following: When the IEP Team was discussing the SCERTS assessment, he didn't know what a triennial evaluation was or why it was necessary. There was no explicit discussion at the IEP Team meeting of the need for a triennial reevaluation. The Parents got the neuropsychological reevaluation because it had been a while since the Student had been evaluated. He didn't learn of the three-year reevaluation requirement until he later spoke with a lawyer. The SCERTS assessment happened because the company that developed the assessment came to Maine to try and interest schools in using it. Dr. Moore asked him if he would agree to let the District try it out on the Student. He thought it was helpful, but for a limited portion of the Student's educational program. The two areas that it looks at are social communication and emotional regulation, and the Student doesn't have much trouble with the latter. The assessment was used to create goals and objectives, and did lead to one important realization - that the Student was being prompted too much and not being given enough opportunity to initiate social communication.

The evaluations that were done in 2007 and 2008 didn't have the same comprehensive feel that the recent reevaluation did. If the Team had discussed the evaluations that should be performed for the triennial, he would have asked for more academics, such as a literacy evaluation. Also, the SCERTS didn't result in a written report with recommendations; it was used to modify programming, but he hasn't seen any data kept since then on whether the Student has been initiating communication more often.

At the very beginning of the current school year, the Parents were presented with a totally different program for the Student. He asked for and received a very quick IEP Team meeting, but the District wasn't prepared for it with data, goals or objectives. The Team decided to wait until the meeting scheduled for October 14, 2010 to review the IEP. At that meeting, the Team agreed to most of the goals and objectives, but didn't have time to discuss the services. He agreed to let the service amounts be what the District had already established for that year,

which was different than in the previous IEP. They have had six more meetings, but there has still been no consensus on services. He thinks that at some point, the District should have said there was no consensus and then made a final decision. Then the Parents would have had a final document which they could either accept or challenge through due process.

With regard to the first three weeks of the school year, he now believes that the District provided the proper amount of OT services, and does not wish to pursue that. With regard to speech, the issue is whether the language group sessions count towards provision of speech therapy under the IEP; if they do, then the required amount of services were provided. As to PT, he doesn't know where the District got its dates from. The Parents did a FOIA request and received, among other documents, some PT logs. The dates on those logs do not match up with dates provided by the District in this investigation. The logs show three dates in September, totaling 90 minutes of direct therapy and 60 minutes of consultation. He did not include adapted aquatics, because that is a separate service in the IEP. This is a pattern every year. It takes a few weeks to get things set up, and there is no regular provision of services. E-mails supplied to the investigator say that therapies are going to start next week, or that the schedule is not set yet and there will be no therapy until then.

With regard to the social communication group, he believes that speech "therapy" has a particular meaning. For the last six years, it has meant one-on-one therapy sessions, working on specific goals (production of certain sounds, using the Vantage). The group sessions didn't meet that definition. He hasn't seen any evidence that any of the Student's speech/language goals were addressed during the group sessions. The District claims that "direct" instruction in the IEP can be in a group setting, but that's not what he agreed to; he understood that to mean, based on past practice, individual therapy. He agrees that at some point the Student was getting some individual therapy at the same time that he was participating in the group, but all the daily diaries said only group until September 21, 2010. Social language group may very well have value, but it's not what the IEP requires. There are social communication goals in the IEP, but he expects those to be worked on in the classroom, in the hallway, during calendar time and during other group activities.

He went to the monthly meetings that were set up this year (although he had to miss some of them), but he wasn't given real data. The IEP objectives say "The Student will do  $x$  80% of the time..." but they can't tell him with what percentage the Student is doing  $x$  now. It's all very general discussion of progress. He's been shown some data collection charts, but he isn't able to read them. He wants summaries of the data, matched to the specific goals. He knows the District has some data on the academic goals, and there is some PT data, but he hasn't seen any for the social goals. This is the data that the Parents are looking for. At one meeting, Ms. Patterson admitted that she hadn't been collecting data on the Student's initiation of communication, and then she collected some and brought it to the next meeting. He doesn't believe that the Student is making progress on initiating communication or on using his Vantage. At home, the Student uses the Vantage mostly to play games with him. He has been told by people at school that when someone says "Hi" to the Student, he waves and may say "Hi" in return, but that he never initiates contact.

At the beginning of this year, the Parents were surprised to learn of the new program design. They received a schedule of the Student's new day and it was not individualized, but was the schedule for the entire class with no therapies on it. There were some big changes on it, especially the social communications group, the lunch bunch and other group activities. The Parents' concern with the lunch bunch was that it was a more restrictive environment. They believed that the Student would derive more social communication benefit from eating with his non-disabled peers, as he had been doing. He thinks that the students in the SPI program are not good role models for each other. The regular education students in the lunchroom will come up to the Student and talk to him, and the Student can watch their interactions. The Student is supposed to have his educational technician with him in the lunchroom to help him learn social communication skills. If the educational technicians are not part of the lunch bunch, then he doesn't know who will be collecting data. He wonders whether the lunch bunch was a way of giving the educational technicians the 15 minute break they are supposed to receive so they can eat their lunch.

He also believes that the social communications group was initiated as a cost saving measure. Ms. Patterson used to be only at Woodside, but is now also at the Middle School, so it seems that the District is trying to stretch her a little bit. At the beginning of the year, he asked Dr. Moore to provide information about Ms. Patterson's workload – how many students were on her caseload and how many hours of instruction she was providing. He wanted to know whether group instruction was a genuine recommendation or was a way to cut costs. He knows that the District has had trouble in the past with hiring speech therapists. Dr. Moore refused to provide this information, and this unwillingness made him suspicious.

He doesn't know whether the Parents' position would have been different if the group approach had first been discussed at an IEP Team meeting. He is not sure that the providers can adequately address the individual goals of six different students at the same time. He doesn't see how the Student can have many opportunities to initiate conversation in a group of six, though maybe it would work with a smaller group or with regular education students throughout the day. He believes that the District designed the program first and then fit the students into it. When Dr. Fagan observed the social communications group, she said that some of the vocabulary was well above that of the Student's. He hasn't seen any documentation that the District staff sat down and discussed the individual students' goals and how they could be addressed in a group context, or how long the group session would need to be in order for each student to get what he needs. He thinks that it was only when the Parents challenged the program that the District went back and rationalized their decision.

The staff members' recommendations change with changes in the overall programming. At the beginning of the year, Ms. Patterson wanted to continue with the new programmatic elements, but after parents complained, now she wants to go back to what was in place before. He would have preferred for her to say, in response to his questioning whether six was too big a group, that she would look into it, rather than just caving in. At a recent meeting, several providers said that certain things were going to change next year when the Student was in xxxx, because "that's how they do things at xxxx." This is not programming based on the Student's individual needs, but on how things are done at the school generally.

Up until September 2009, when the Parents requested that the Student stay at school for the full day (until 3:15), on those days when he picked up the Student after school (he did this about twice a month), first the Student came out and then his younger sister came out later. The Student came out earlier than any of the regular education students. The students' dismissals seemed haphazard, with announcements starting before 3:15. The Student and the special education buses were always out by 3:00, and the Student's sister (who was then in xx grade) came out at 3:10 – 3:15. It seemed like 2:45 – 3:00 for the special education students was the equivalent of 3:00 – 3:15 for the regular education students. He agrees that this year all the students are being dismissed at 3:15.

With regard to ESY services, he had never been to an IEP Team meeting to discuss summer programming until he asked for special programming before last summer. In prior years, he had simply been told of what the ESY program consisted. It was 5 or 6 weeks in the middle of summer, usually on Tuesdays and Wednesdays. His experience was that the District said "This is our summer program, and the Student qualifies." He believed at the time that there must have been some state-mandated number of days and hours for all summer programs. Last year, the Parents decided that the Student needed a little more from his summer program, so he approached the District about having the Student attend Bowdoin Day Camp. The District agreed to pay to have an educational technician provide the same number of hours she would have provided in the District's program. There was never really a discussion about the amount of time the program would run, but they did discuss the services that would be provided. The year before, when he found out that the PT and OT therapist were involved in the program, he asked why the Student wasn't getting those services, and they were added to the Student's program. This year, the Team actually talked about the amount of time as well as the services and goals to be worked on. There was a parent meeting this April where Dr. Moore was explaining that the District was going to start planning the students' ESY programs individually, and one of the parents asked "But it's still going to be 12 hours a week, right?" He hasn't heard of any student getting anything other than the standard 12 hours, although maybe sometimes the District offers less than that.

He doesn't believe that his concerns have been considered by the IEP Team. In listening to the recordings of the meetings, he couldn't find any time when a question or comment from him resulted in any change to what the District was recommending. Instead, the District explains away his question or comment, but sticks to their position. Dr. Moore always says he has to let the professionals decide which methods they're going to use. When he went to observe the social communications group, and then reported to the Team that the Student was staring into space most of the time, he was told that this was just a function of being in a group. He has the feeling that the staff makes up their minds before the meeting and just tries to justify and defend their decisions – Dr. Moore and the staff know best and their judgment wins. Although this year the group speech did change, that did not happen at an IEP Team meeting. The same with the lunch bunch – the District put it into place, and then the Parents reacted.

He didn't have any real problems with the goals and objectives for this year's IEP; the issue was whether the services were being specified sufficiently in the IEP, e.g., how much was individual and how much was group. He wants the IEP to be more specific regarding what

the program looks like, rather than “10 hours of instruction and we’ll let the professionals decide how to deliver them.” Dr. Moore said he wasn’t willing to put anything into the IEP that he didn’t have to, on the basis that he could then get into trouble if he couldn’t provide it. When he asked whether a speech group of six was appropriate rather than a group of two or three, and asked what this decision was based on, he was told that it was a matter of professional judgment and a matter of his putting trust in those professionals.

He wants the District’s decisions to be based on good research and good science. He asked to see research regarding the effect of the size of the group when delivering group speech. Of the articles the District provided, two of them involved individual therapy sessions and one involved a group of three, although three times the amount of service was provided in that case. It is true that they all supported the basic position that delivery of speech services in the natural environment could be as effective as individual sessions, but they were also from 1987 – 1992. Autism research is a dynamic field, and there should be more recent research available than that. He also isn’t convinced that the staff actually looked at those articles when designing the program.

It is true that there is research to support the ABA approach, but he doesn’t think that the District follows the program. ABA requires 25 hours per week of instruction, and the Student gets 610 minutes (about 10 hours). SCERTS seems like a good program, but there needs to be hard research to prove that it actually provides benefits to the students. When the Maine DOE and DHHS did a review of the science literature on autism a few years ago and rated various intervention programs, they said ABA was well-supported in the literature, but that SCERTS was insufficiently supported. Also, as with ABA, the District is not really following the SCERTS protocol, which has fairly specific guidelines for data and transactional support. He hasn’t seen this data, or other evaluations described in the SCERTS manual. He wants to know that staff members are going to seminars where recent research is being discussed and are reading journal articles. The District cites the fact that staff members went to observe at Margaret Murphy to support their position that their programming decisions are research-based, but the fact that another institution does something is not evidence that it is supported by research.

The Student’s use of the Vantage has been a long-standing issue. PECS has a lot of peer reviewed research to support it, and the Vantage is basically an electronic version of PECS. There are scientifically supported teaching methods using that system to increase vocabulary and for initiating communication, but he doesn’t believe that the District staff has received the training they need to provide this education. The training by Mr. Hammond was at the Parents’ request, and was provided free of charge through the manufacturer. The Student’s current teacher was not at that training, and neither were the current educational technicians. He reviewed the staff resumes supplied as part of this investigation, and none of them showed any coursework or certification in augmentative communication devices. There have been a few instances when a staff member has messed up the Vantage while trying to program it, and an instance when the staff couldn’t find the word “yellow.” The Parents have let the District borrow the Vantage periodically so they can work with the educational technicians, and sometimes a staff member calls the Parents to ask for help with the Vantage. He thinks that the Student could be making better progress with initiating communication if the staff had

more training. Nothing in the FOIA documents shows any training for educational technicians. He has asked that training be spelled out in the IEP, but the District has only been willing to state "Training as necessary."

The Student is making progress this year with some of his math, writing, typing and reading. He has seen the Student be able to recognize a word. He is not claiming that the Student hasn't learned anything, but he thinks that the Student is capable of a lot more. The Student seems to know where a lot of words are on his Vantage, although the Student also receives private speech services focusing on the Vantage. The Student knows the Vantage better than he does. The Student can count, and can do some spelling on his Vantage. On some of his academics, the Student's education has been better this year than previous years, but he thinks it could have been better still. He thinks that Ms. Fournier started the year really interested in the Student and was trying to do what's right, but that she got a lot of pressure from the District. At meetings, Ms. Fournier looks at Dr. Moore before she says things. OT and PT have been okay this year, although the Student has lost some ground on some of his motor skills while improving on others. He doesn't see any gains in the social communications area, however.

## **VII. Conclusions**

**Allegation #1:** Failure to conduct a reevaluation at least once every 3 years in violation of MUSER §V.1.B(2)(b)

**VIOLATION FOUND**

MUSER §V.1.B(2)(b) requires that a reevaluation of each special education student be conducted at least once every three years, unless the district and the parent agree that it is unnecessary. The District has stipulated that it did not itself perform a reevaluation of the Student from April 2006 until November 2010. Although the neuropsychological evaluation obtained by the Parents in February 2008 was utilized by the Team for programming purposes, and the District conducted the SCERTS assessment, along with an OT and PT reevaluation, in October 2007, it seems fairly clear that there was no discussion by the IEP Team regarding whether these measures satisfied the triennial reevaluation requirement. As the Parents were not aware of the requirement, they could not have consented to that determination.

At the same time, it is also clear that those measures did provide useful data to inform the Student's programming, so that the harm to the Student from this procedural violation is not readily apparent.

**Allegation #2:** Failure to complete an annual review of the Student's October 2009 IEP in violation of MUSER §IX.3.D(1)(a)

**Allegation #3:** Failure to have an IEP in effect as of November 2010 in violation of MUSER §IX.3.B(1)

**NO VIOLATION FOUND**

These allegations are based on the fact that the IEP Team was unable to complete their review of the Student's IEP during the October 14, 2010 meeting, and therefore determined to carry over some of the previous year's IEP into the new "Draft" IEP. Given that the annual review was not completed as a result of the Team's willingness to address the Student's father's concerns at length along with the District's wish to achieve consensus before ending the discussion, it is surprising that the Parents would make such a complaint. Nevertheless, the October 14, 2010 meeting resulted in an IEP, completely filled out and dated October 15, 2010, which was the reference point for providing the Student's program for the balance of the school year. When the IEP Team is conducting its annual review at the time of the previous IEP's expiration, the District is obligated to have an IEP at the end of that meeting that will be in effect for the following year, though it may be amended thereafter. The procedure that the District followed here satisfies the regulatory requirement.

At the same time, however curious the position taken by the Parents ("The District shouldn't have continued to discuss the issues with me"), there is some merit to the preference expressed by the Student's father that at some point the District declare that there is no consensus and that therefore the District will make the decision, just as a means of achieving finality and certainty. Likewise, the Department discourages the use of the label "Draft" to describe an IEP that is actually in effect, as it connotes otherwise (that the IEP is proposed, but not in effect).

**Allegation #4:** Failure to fully and adequately implement the Student's IEP with respect to provision of speech, physical and occupational therapy during the first three weeks of the current school year in violation of MUSER §IX.3.B(3)

**NO VIOLATION FOUND**

After the Parents received the documents produced by the District for this investigation, the Student's father was satisfied that the Student had received the required number of minutes of OT services. He further clarified that the issue with respect to speech/language services was whether the delivery of services in a group setting satisfied the IEP requirement, which will be addressed below. The remaining category is PT services, and although Ms. Murphy was certain that she had provided the full amount of direct services (180 minutes per month) during the first month of the school year, the dates provided by the District when such services were delivered between August 31, 2010 and September 30, 2010 show that direct services did not begin until September 14, 2011, and amounted to five 30-minute sessions (the District counted 180 minutes in its submitted document by including October 1, 2010 as part of the first month for PT, although it included August 31, 2010 as part of the first month for speech therapy). Thus, there was a shortfall of 30 minutes for direct PT services for the Student during the first month of school.

The case law on the issue of implementation failure states a requirement that, in order for there to be an IDEA violation, there must be a "material failure" to implement, which requires more than a "minor discrepancy" between the services provided and the services required by the IEP. *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). The provision of five out of the



six sessions required during the month, particularly as there is no allegation of an ongoing failure to implement after that first month, is a minor discrepancy, and is therefore not deemed a violation of law.

**Allegation #5:** Failure to fully and adequately implement the Student's IEP with respect to provision of speech therapy for several weeks beyond the first three weeks of the current school year in violation of MUSER §IX.3.B(3)

**NO VIOLATION FOUND**

As indicated above, the issue underlying this allegation is whether the provision of speech/language services to the Student in a group context, rather than one-on-one with the therapist, satisfies the IEP requirement of direct speech services. While the Parents reasonably anticipated that the Student would be receiving his services in individual sessions, based on their experience in prior years, the IEP does not impose that requirement. The use of the term "direct" in the context of IEP services is meant to distinguish the nature of the services being provided from consultation services. In other words, "direct services" connotes interaction between the provider and the student, rather than between the provider and other staff members.

The decision of the method by which the provider delivers the direct services is a matter left to the provider's professional judgment. Special education law preserves the rights of parents to participate in the development of students' IEPs, but it does not empower parents to dictate to school districts precisely what methods are to be employed, how they are to be employed or by whom. "The IDEA confers primary responsibility upon state and local educational agencies to choose among competing pedagogical methodologies and to select the method most suitable to a particular child's needs." *Lessard v. Wilton-Lyndeborough Cooperative Sch. Dist.*, 518 F.3<sup>rd</sup> 18 (1<sup>st</sup> Cir. 2008).

Despite the Parents' challenge to the validity of the District's decision to provide speech services to the Student in a group setting, where the Student's speech goals include initiating social communication and obtaining the attention of other persons, and particularly where the Student had been working on those skills previously in a clinical setting and was observed to not be successfully generalizing the skills, the District's decision was reasonable. It may be that Dr. Fagan's criticisms of the group sessions had some merit, and if, after a reasonable period of time, it was found that the Student was not making adequate progress towards his goals, the District would be obligated to revise the Student's program. Due to the Parent's strenuous objections, however, the Student's participation in the group was cut short, before any meaningful assessment of its efficacy could be made.

**Allegation #7:** Failure to utilize the IEP Team as the vehicle for making decisions regarding the extent to which the Student would participate in the regular education environment and the services needed by the Student in violation of MUSER §VI.2.I

**Allegation #8:** Failure to adequately consider the Student's unique, individualized needs in developing his educational program in violation of MUSER §§II.32 and IX.3.C(1)(d)

**NO VIOLATION FOUND**

This allegation concerns the District's development of the SPI program, with its emphasis on group instruction. The program was based, in part, on the recognition that there was substantial overlap in the individual students' needs and goals with respect to social communication, and provided a framework within which those individual needs and goals could be addressed. The Parents do not claim that the Student has some particularized need for one-on-one instruction in a clinical setting, but rather they believe it is a superior method for delivering those services. As stated previously, special education law leaves to the District the decision of where, by whom and by what method the Student was to receive his speech/language therapy; it was not an IEP Team decision. Likewise, the decision as to which other students would attend the Student's classes was not an IEP Team decision, absent a particularized issue that suggested that the Student could not receive FAPE under the existing conditions.

The issue of the "lunch bunch," which took the Student out of the regular education environment for lunch once a week, was also an educationally supported decision as to a method by which the Student would receive OT and speech/language instruction. The Student's IEP does not require that the Student eat lunch in the regular lunchroom every day. Rather, it says that "targeted and meaningful inclusion opportunities in social and non-academic activities continue to be important to support [the Student]'s growth in the areas of social communication and emotional regulation." Lunch out of the regular lunchroom one in five days does not contravene that provision.

**Allegation #6:** Failure to adequately measure the Student's progress towards his annual goals and to provide periodic reports of that progress in violation of MUSER §IX.3.A (1)(c)

**NO VIOLATION FOUND**

MUSER §IX.3.A (1)(c) provides that a student's IEP must include a description of how the student's progress toward meeting the IEP goals will be measured and when periodic reports of progress will be provided to the student's parents. The Student's IEPs state that progress will be measured through various means (including data collection on SCERTS model assessment, observation, literacy and mathematics assessments and the American Red Cross skill sheet), and will be reported three times per year, coinciding with release of report cards. In addition to those trimester progress reports, the Parents also received daily diary sheets and annual progress reports. The IEPs themselves, in Section 4, provide very specific information regarding the Student's skill levels (e.g., "[The Student] is able to identify the emotional state of others when given pictures or live models for 60% of the time"; "[The Student] identifies 24 out of 26 letter sounds correctly"). The District also established regular monthly meetings with the Student's father to share information about progress. At those meetings, they showed the Student's father the data sheets that were being maintained on the Student.

Among the documents submitted by the District for this investigation was a quarterly progress report from Mark Hammond Associates, the Student's private speech provider. The report is

in a chart format, with each objective separately listed and numerical data summaries provided. For example, objective #3 is “[The Student] will express pronouns and auxiliary verbs in structured tasks with 80% accuracy over three consecutive sessions as measured by clinician data.” The progress report states “[The Student] averages 55% accuracy for pairing up pronouns...with auxiliary verbs. This data currently only reflects the pronouns ‘he’ and ‘she’ thus far.” The Parents prefer this format, and the Student’s father has requested that the District adopt it. There is, however, no regulatory requirement for any particular format for provision of information regarding student progress.

The progress report provided to the Parents by Ms. Patterson on March 25, 2011, while not in chart format, provides meaningful information regarding the Student’s progress. For the goal “Given appropriate transactional supports, [the Student] will increase his expressive language skills by initiating the use of his Vantage...throughout his school day in a functional manner to make requests, ask and answer questions and comment on his environment...40 [60, 80]% of the time for 4/5 opportunities,” and its corresponding objective “Given appropriate transactional supports, [the Student] will use his Vantage to create verb phrases with pronouns...and auxiliary verbs...in response to questions and comments throughout this day...”, Ms. Patterson wrote the following: “Most of our work has focused on feeling icons and using the sentence ‘I am \_\_\_\_\_’ and he is using that sentence correctly 88% of the time.”

In its totality, both the quality and quantity of information being collected by the District and provided to the Parents satisfies the regulatory requirement.

**Allegation #9:** Failure to provide a free appropriate public education by providing the Student with an abbreviated school day in violation of MUSER §II.11 and 34 CFR §300.101(a)

**NO VIOLATION FOUND**

The time period covered by this investigation during which the Student was being dismissed at roughly 3:00 rather than 3:15 was April 2009 through September 2009 (excluding the summer break), approximately three months. It is not possible to say by what amount, if any, the total amount of instructional time experienced by the Student during that period was less than for other children, who were dismissed at different times and had different activities occurring in their classroom during the 3:00 – 3:15 time period, and less so the extent to which any such shortfall deprived the Student of a FAPE.

There was in any event no specific, programmatic decision made with regard to the Student that he should have a shorter school day. Rather, it appeared to be a function of bus transportation schedules and a general school culture that treated dismissal time as a flexible concept. Mr. Dedek recognized the need for improvement in this regard, and instituted a policy of uniformity for dismissal times for all students, thus correcting whatever negative impacts the previous practice may have had.

**Allegation #10:** Failure to provide adequate extended school year (ESY) services to the Student and to make the determination of the amount of ESY services to be provided on an individualized basis in violation of MUSER §X.2.A(7)

**NO VIOLATION FOUND**

No evidence was presented in this investigation to support the contention that the Student experienced significant regression of skills learned during the school year due to an insufficient amount of ESY services during the summer. While it is true that the District ran a summer program over a set number of weeks with a set number of hours per week, and determined to provide the Student with ESY for the full duration of the program, there was nothing to suggest that such a determination was not appropriate for the Student. The District is not required to develop 15 different ESY programs for 15 different students who are determined to require those services. The requirement is to individually consider each student's needs and make a determination that the services being provided will adequately enable that student to retain the skills the student mastered during the previous school year.

Indeed, at the May 19, 2011 IEP Team meeting, the District made explicit its reasoning in support of its programming for the Student, and further individualized the program by providing it over four half days per week rather than two whole days. The ESY determination was also expressly made at the IEP Team meeting of June 7, 2010, including the specific determination to provide speech/language services and PT as part of the Student's ESY services.

**Allegation #11:** Failure to adequately consider the concerns of the Student's parents as equal participants in the IEP decision making process in violation of MUSER §§VI.2(I) and IX.3.C(1)(b)

**NO VIOLATION FOUND**

As noted above, special education law does not empower parents to dictate to school districts precisely what methods are to be employed, how they are to be employed and by whom. It is abundantly clear that the District provided ample opportunity to the Student's father to express his concerns about the method by which speech/language services were being delivered to the Student. The Student's father believes that his concerns weren't considered because the District continued to defend its decisions, but the IDEA does not require that school districts be persuaded by parents, only that they listen and consider.

Furthermore, there were many instances when the District did alter its position in response to parental concerns. The District agreed to not include the Student in the "lunch bunch," and then to not include the Student in the social communications group. The District agreed to change the listing for consultation with Mark Hammond Associates from "as needed" to specific time parameters. The District also agreed to have the Student receive ESY services at the day camp, and to include speech/language therapy and PT in the program. The District made efforts to meet the Parents' needs for additional information regarding the Student's progress, providing them with more than was routinely provided to other parents. The District held no fewer than eight IEP Team meetings regarding the October 2010 IEP in order

to provide the Student's father with the opportunity to express his concerns, and even the Student's father recognized that perhaps the District had reached the point where it would be preferable to end the discussion and proceed to make a decision.

**Allegation #12:** Failure to provide special education, related services and supplementary aids and services to the Student that are based on peer-reviewed research in violation of MUSER §IX.3.A(1)(d)  
**NO VIOLATION FOUND**

MUSER §IX.3.A(1)(d) states that the services to be provided to a special education student are to be "based on peer-reviewed research to the extent practicable." The focus of this allegation, as with many of the other allegations in this investigation, is the delivery of speech/language services in a group setting rather than individually – the "medical model" versus the "ecological model." The staff members who participated in the design of the SPI program and its natural environment, group-based settings, collectively consulted ASHA guidelines, attended autism conferences in Boston, attended a three-day conference on social speech skills, and visited a highly regarded private institution for educating children with special needs. These various sources all supported the move away from the delivery of services in traditional, clinical settings towards delivering services in more natural environments.

The District provided to the parents of the students in those groups several journal articles that support the general proposition that students are more successful at generalizing the skills they learn in therapy when delivered in more natural settings. The article "Analog Language Teaching Versus Natural Language Teaching: Generalization and Retention of Language Learning for Adults with Autism and Mental Retardation," *Journal of Autism and Development Disorders*, Vol. 21, No. 4 (1991), defines "natural language teaching" as "instructional approaches that stress language teaching as an incidental part of interactions arising from training students in the appropriate use of materials in functional tasks and contexts." The article cites to numerous other articles that support the advantages of natural language teaching, and concludes based on its own study that "because natural language teaching has many strengths, few drawbacks, and produces equal generalization and retention under disadvantageous conditions, it is strongly supported as preferable for people with autism and mental retardation."

The Student's father notes correctly that this article is the only one of the four whose research design featured delivery of services in a group context, and that it is 20 years old, but nothing was uncovered in this investigation to suggest either that the principles espoused in the other articles are inapplicable to a group context or that research has swung in some other direction. The fact is that the District employees took steps to inform themselves regarding current practices and recommendations in their fields, and used that information to inform their decision making. The law requires no more.

**Allegation #13:** Failure to provide supports for school personnel with respect to the Student's use of his augmentative communication device sufficient to enable him to advance appropriately toward attaining his annual goals, to be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities, and to be educated and participate in those activities with other children with disabilities and with non-disabled children in violation of MUSER §IX.3.A(1)(d)

**NO VIOLATION FOUND**

The interviews of the various District employees above detail the efforts of the District to provide training to staff members who are educating the Student. Ms. Patterson, particularly, in addition to three trainings specifically tied to the Vantage, has also attended trainings on education and technology and communication and technology. Undoubtedly, still more could have been done, but perfection or optimization is not the standard. There was sufficient evidence that the Student is making good progress in the use of his Vantage, and that staff members, including educational technicians, are using the device and educating the Student to use the device.

### **VIII. Corrective Action Plan**

The District shall issue a memorandum to all special education administrative staff and case managers reminding them of the necessity for having each IEP Team meet and expressly discuss and make decisions regarding the need of the student for a reevaluation at least once every three years. The District will submit a copy of the written memorandum, together with a list of the names and job titles of all those to whom the memorandum is issued, to the Due Process Office and the Parents.

### **IX. Recommendations**

At the IEP Team meeting to conduct the annual review of an IEP, it is the chairperson's obligation, whenever the Team is unable to reach consensus, to make the necessary determinations that will result in the new IEP for the forthcoming year. Even where the Team also determines that there will be a future meeting in order to continue the discussion about one or more elements of the IEP (and that latter determination should be recorded in the Written Notice of the meeting), the IEP that results from the annual review is not a "draft" IEP. To label it so suggests that it is not fully in effect, which would be contrary to law. The Department strongly recommends that SAUs avoid the use of "draft" for anything other than a proposed IEP which is not to be given effect in its present form.