

Complaint Investigation Report
Parents v. R.S.U. #73

June 27, 2012

Complaint #12.094C
Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Parents
Address
City

Respondent: Robert Wall, Superintendent
9 Cedar St.
Livermore Falls, ME 04254

Special Services Director: Tina Collins

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on May 16, 2012. The Complaint Investigator was appointed on May 16, 2012 and issued a draft allegations report on May 18, 2012, amended on May 21, 2012. The Complaint Investigator conducted a complaint investigation meeting on May 29, 2012, resulting in a stipulation. On June 5, 2012, the Complaint Investigator received a 5-page memorandum and 61 pages of documents from the Complainants, and received a 9-page memorandum and 92 pages of documents from R.S.U. #73 (the "District"). Interviews were conducted with the following: Wendy Moreau, assistant special education director for the District; Grace Eaton, guidance counselor for the District; Susan Wiles, teacher for the District; Amanda Gage-Croll, teacher for the District; Steve Sweet, teacher for the District; Christina Davis, community case manager; and, the Student's mother.

III. Preliminary Statement

The Student is xx years old and is currently receiving special education under the eligibility criterion Autism. This complaint was filed by the mother and father (the "Parents"), the Student's parents, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to fully and adequately implement the Student's IEP with respect to provision of social skills lunches in violation of MUSER §IX.3.B(3);
2. Failure to provide periodic reports of the progress the Student is making towards his annual goals in violation of MUSER §IX.3.A (1)(c);
3. Failure to fully and adequately implement the Student's IEP with respect to provision of one-step directions (visual and oral) in violation of MUSER §IX.3.B(3);
4. Failure to fully and adequately implement the Student's IEP with respect to provision of sensory breaks in violation of MUSER §IX.3.B(3);
5. Failure to fully and adequately implement the Student's IEP with respect to validating concerns in violation of MUSER §IX.3.B(3);
6. Failure to fully and adequately implement the Student's IEP with respect to provision of visual schedules in violation of MUSER §IX.3.B(3);
7. Failure to fully and adequately implement the Student's IEP with respect to provision of weekly communication from the guidance counselor and specialist teachers in violation of MUSER §IX.3.B(3);
8. Failure to fully and adequately implement the Student's IEP with respect to provision of a private bathroom in violation of MUSER §IX.3.B(3);
9. Failure to fully and adequately implement the Student's IEP with respect to provision of adaptive/social skills physical education in violation of MUSER §IX.3.B(3);
10. Failure to fully and adequately implement the Student's IEP with respect to provision of adult support in music and art from March 6 to April 26, 2012 in violation of MUSER §IX.3.B(3);
11. Failure to fully and adequately implement the Student's IEP with respect to having the Student remain in the special education classroom when there is a substitute teacher in the regular education classroom in violation of MUSER §IX.3.B(3);
12. Failure to ensure that each of the Student's teachers is informed of his or her specific responsibilities related to implementing the Student's IEP and the specific accommodations, modifications and supports that must be provided for the Student in accordance with the IEP in violation of MUSER §IX.3.B (4)(b);
13. Failure to include all necessary members of the IEP team at the March 6, 2012 meeting, specifically the staff member who provides social work services, in violation of MUSER §VI.2.B;
14. Failure to provide a complete and accurate statement of all those actions that the District agreed to take or refused to take during the March 6, 2012 IEP Team meeting, and to explain why the District was refusing to provide one-on-one support to the Student, in the Written Notice of that meeting in violation of MUSER App. 1, 34 CFR §300.503;
15. Failure to provide supplementary aids and services in the nature of lists of school materials and instructions on how to use the lists to enable the Student to advance appropriately toward attaining his annual goals, to be involved in and make

progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d);

16. Failure to develop the IEP in conformity with the determinations of the IEP team on March 6, 2012 regarding provision of testing accommodations for the NWEAs in violation of MUSER §VI.2.J(4);
17. Failure to comply with the mediation agreement of April 23, 2012 by failing to decide whether the Student needed adult support in the regular education classroom, enforceable under MUSER §XVI.3.B(9).

V. **Stipulations**

1. The staff member who provides social work services to the Student was not present at the March 6, 2012 IEP team meeting.

VI. **Summary of Findings**

1. The Student lives in Livermore Falls with the Parents, and recently completed xx grade at Livermore Elementary School (the "School"). He began receiving special education services under the category Autism in xx grade.
2. The Student's IEP dated March 12, 2011 states, in Section 4, that the Student was performing at or above grade level in all academic areas. That same section also contains the statement that the Student "requires a sensory break after recess to be able to complete his afternoon academics." The IEP includes one math goal, one OT goal with four short-term objectives, and one school guidance/social worker goal with three short-term objectives. The IEP provides for consultation by a special education teacher 30 minutes per quarter (the Student is placed in the regular education classroom 100% of the time), OT services for 60 minutes per week, and social work services by a guidance counselor for 30 minutes per week. Among the supplementary aids, services and modifications in section 8 of the IEP are the following: validate concerns, as needed; sensory breaks, after recess; visual schedules, daily; one-step direction, daily; and sending the Student to the special education room when a substitute teacher is in the regular education classroom, as needed. Section 10 of the IEP provides that the Student is to have one-on-one support during administration of the NWEA assessments.
3. The Student's IEP Team met on June 13, 2011 to consider planning for the 2011-2012 school year. The Written Notice of that meeting states that the Team determined that the Student would receive support in physical education class, and would also have the opportunity to attend an adaptive physical education class to assist him with practicing his skills. Susan Wiles, a special education teacher at the School, reported that the Student worked well with a substitute teacher in the classroom as long as that teacher provided structure and routine, and that the Student understood that if he was having a problem with the substitute he could leave the classroom and go to her classroom. The Team also discussed testing accommodations, and concluded that the Student did well in a small group setting and didn't require a one-to-one setting.

4. On September 8, 2011, the District provided copies of the Student's IEP to Mr. Sweet, Ms. Poirier, Ms. Gage-Croll and Ms. Gill, each of whom acknowledged in writing that they had been informed of their responsibilities under the Student's IEP and had received a copy of it.

5. The IEP Team met again on December 16, 2011 and determined to give reminders to the physical education teacher and the classroom aide about the Student's adaptive PE class.

6. On March 6, 2012, the IEP Team met to conduct the IEP annual review. The Team consisted of the Parents, Wendy Moreau (assistant special education director for the District), Ms. Wiles, Amanda Gage-Croll (the Student's regular education teacher), Steve Sweet (the Student's PE teacher), Jan Gill (the Student's music teacher), Farrah Poirer (the Student's art teacher), Christina Davis (the Student's community case manager), and Sheila Davis (the Student's community support worker's supervisor). The Written Notice of the meeting states, in section 6, that the Parents asked if the Student could have one-on-one support in the regular education classroom. The Written Notice does not list this item as an action either proposed or refused by the District, and does not provide an explanation why the District was proposing or refusing to grant the Parents' request. The Written Notice does not contain a reference to any determination with regard to accommodations to be provided in connection with the NWEA assessment, although the District's written minutes of the meeting reflect that the Student was to receive one-on-one support for that.

7. The IEP dated March 6, 2012 contains one OT goal with 4 short-term objectives, and one instructional goal. The IEP provides for consultation service by a special education teacher 30 minutes per quarter, OT twice per week for 30 minutes and social work service with a guidance counselor one time per week for 30 minutes. Among the supplementary aids, services and modifications in section 8 of the IEP are the following, all "as needed": validate concerns; sensory breaks; visual schedules; one-step directions (visual and oral); individual bathroom; social skills/PE group; and home/school communication. Section 10 of the IEP provides that the Student is to have an alternate to the district-wide NWEA assessment.

8. The parties participated in mediation on April 23, 2012, resulting in a mediation agreement. The agreement provided, in relevant part, that: the Student would receive adult support in music, art, gym and recess; social goals would be added to the IEP; the Student's teacher would create a daily visual schedule for the Student which included his Thursday dismissal and gym; sensory breaks would be scheduled for morning, afternoon and as needed; the Student would report to the special education classroom on days when there is a substitute in the regular education classroom; and weekly e-mails will be sent to the Parents from the guidance counselor and specialist teachers. The agreement further provided that the District would conduct a two-week period of data collection, after which the IEP Team would meet on May 11, 2012 to decide whether adult support is needed in the regular education classroom.

9. The IEP was amended on April 23, 2012 to: add a behavioral goal; add that the Student will receive adult support during music, PE, art and recess; specify that home/school communication is to be with the regular education teacher; clarify that sensory breaks will be scheduled in the morning, afternoon and as needed; specify "creating and following" a visual

daily schedule; and add that the Student will report to the special education classroom on days when there is a substitute in the regular classroom.

10. The IEP Team met on May 11, 2012 to review the data collected by the District. The District determined to provide adult support during the period from May 14 to June 4, 2012 in order to expand on the data already collected and to provide prompting to the Student if needed. The educational technician (“ed tech”) was to gather data for frequency of certain targeted behaviors (staying focused, interrupting of teacher and monitoring of peer interactions) for both the Student and a “typical peer” in order to compare the frequency of those behaviors in the two students. The additional data would then be reviewed at the June 4, 2012 IEP Team meeting already scheduled. Additionally, the Student’s specialist teachers would provide weekly feedback to the Parents with regard to the Student’s behavior.

11. Section 8 of the IEP was amended on May 11, 2012 to read as follows: “When [the Student] is upset, validate his concerns to help prevent him from perseverating on that topic/issue; allow use of individual bathroom; the classroom teacher will maintain regular home/school communication as needed; provide single step directions (visual and oral); [the Student] will participate in an extra PE session to focus on social skill development; adult support in the regular classroom until June 4, 2012 for prompting to task and data collection; adult support provided for art, music, and PE for prompting to task, as needed; a daily visual schedule will be accessible to [the Student] in his regular classroom setting; morning and afternoon scheduled sensory breaks; [the Student] will report to the special education classroom on days when there is a substitute in the regular classroom; ...weekly communication about student progress from the guidance counselor and specialist teachers.” Section 10 of the IEP was amended to reflect that the Student would be assessed on the NWEA assessment using standard administration.

12. In response to the Parents’ expressed concern that the Student was not remembering to bring home everything, Ms. Wiles created a plastic container that used visual symbols for the items that the Student needed to remember. The Student’s mother rejected this idea, and the container was never used. Instead, the Student’s mother prepared a list of items to be brought home and taped the list to the Student’s desk.

13. On April 24, 2012, Ms. Moreau sent an e-mail to the Student’s specialist teachers reminding them that they were to send weekly e-mails to the Parents regarding the Student’s progress in their classes. For the 4 weeks from that date until the week when this complaint was filed, Ms. Poirier and Ms. Gill each sent two such reports, Ms. Eaton sent three and Mr. Sweet sent one (although he prepared the other reports, they were not sent to the Parents as a result of miscommunication among the staff).

14. Ms. Eaton’s records reflect that the Student attended social skills lunch groups with her on two out of three weeks in May, 2011, both weeks in June, 2011, four out of five weeks in September, 2011, three weeks in October, 2011 (there was no school on October 7), one week in November, 2011 (the Student was absent on November 4 and Ms. Eaton was on leave from November 7 to the 25th), one week in December 1, 2011 (the Student was absent December 9 and 16, and there was no school on the 23rd), 3 weeks in January, 2012 (the Student was

absent on January 20th), three weeks in February 2012 (the other week was school vacation), and five weeks in March 2012.

15. During an interview conducted by the Complaint Investigator with Susan Wiles, Ms. Wiles stated the following: She is a special education teacher at the School, and has been the Student's case manager over the last two years. She also provides consultation to Ms. Gage-Croll. The Student comes to her classroom each day for his "brain gym" activity, and comes to her class when there is a substitute teacher in the regular education classroom. The Student is very bright, and could be much more independent than he is. Things were going very well for the Student this year until the end of October when the Student was taken off of his medication; things went downhill from there. The Student likes to tell his mother stories about what happens in school. One day he was playing on the playground and threw a toy over the fence. He then said he was going to get it, but the ed tech told him he couldn't, that the janitor would get it. The Student later told his mother that the wind blew the toy over the fence.

The issue with regard to substitute teachers is more the mother's issue than that of the Student. Last year, the Student's mother asked the Student to try staying in the classroom with a substitute. When the Student did that, she would check in on him and he seemed to be doing fine. She is not aware of any incidents that occurred during a time when he was in the class with a substitute. If she knew that a particular substitute was not experienced and able to keep the class under control, she would tell the Student to come to her room. This year, Ms. Gage-Croll was not out much during the beginning of the year, and then maybe 4 or 5 days after that. Whenever there was a substitute in Ms. Gage-Croll's classroom, the Student's mother would bring him to her classroom. She thinks this does not benefit the Student academically, because the Student is performing way above the level of the other students in her special education class, so he misses out academically when he comes to her classroom. Even though he gets materials from the regular class to work on in her classroom, the regular education class is moving on without him.

She is unfamiliar with the behavioral goal that was added to the IEP on April 23, 2012, and didn't know who was responsible for implementing it.

With regard to one-step directions, when the Student is in her classroom, he has no issues with following directions. She puts the materials on his desk and he works on them. When he drifts off, she redirects him. No one needs to help the Student do his work; he knows what to do and it's work he's already learned how to do in the regular education classroom. Ms. Gage-Croll tells her that she tries to be sure to give the Student one-step directions, and gives him frequent reminders to stay on task. She doesn't think the Student needs the directions to be broken down as much as the Student's mother thinks he does.

With regard to sensory breaks, she gave Ms. Gage-Croll several options to offer to the Student when he needed them, such as going for a walk, playing with a sensory object, or sitting in a quiet space. The Student would have at least one of these breaks in the morning and in the afternoon, but there was no scheduled time for them; they would occur when the Student was not engaged in an activity. Ms. Gage-Croll would check in with the Student periodically to ask if he needed a break, and she was managing very well with this system. The Student's

mother didn't like this system, so now the Student has two breaks every day, one right after morning circle and one right after lunch.

She is responsible for doing the Student's visual schedule. The Student has had one every day this year. At first, the schedule contained all the block schedule periods. The Student basically knows his schedule, but the visual schedule has been changed six or seven times this year at the request of the Student's mother. The Student's mother asked that the Student's lunch sessions with Ms. Eaton be added to the schedule, and then the Student's adaptive PE class. Then the Student's mother wanted to add things like hanging up his coat, having breakfast and going to morning meeting. She asked Ms. Gage-Croll whether the Student needed that level of detail, and Ms. Gage-Croll reported that the Student was fine without those additional pieces. Now he has two separate strips for the beginning and the end of the day that are added to each day's schedule. She believes that the Student could be more independent if given the opportunity. When the Student is in her classroom, he doesn't have a schedule.

With regard to validating concerns, she does this when appropriate, but hasn't had to do it lately. Around mid-year, the Student sometimes came in from the playground and she could tell that there was something bothering him. She would ask him what it was and would process it with him. She didn't speak with each of the specialist teachers about what validating concerns meant, but she gave each of them the IEP at the beginning of the year and asked them if they had any questions. She doesn't know if the specialist teachers were given the new IEP in March or the amendments in April, but she doesn't think that any of the Student's accommodations changed.

The Student's mother was concerned about the Student using the boys' bathroom, and it was agreed that the Student could use the teachers' bathroom next to it. The Student is reminded every time he goes to the bathroom that he can choose to use the teachers' bathroom, and is asked if he wants to do that. The ed tech tells her that the Student won't go in that bathroom, and always chooses to use the boys' bathroom. She understands that this was meant to be an option for the Student, and staff members haven't been telling the Student he may not use the boys' bathroom.

There is a student in the Student's class that needs support in the specialist classes, so an ed tech was already in those classrooms before March 6, 2012. After March 6th, Ms. Moreau told the ed tech to provide support to the Student as well as his classmate.

When the Student's mother brought up the issue at the March 6th meeting of the Student forgetting to bring things home, she suggested using a plastic bin with pictures taped to it of the things that the Student needs to bring home. The Student's mother didn't want to use it because those plastic bins were used last year when there was a bedbug problem. Instead, the Student's mother has taped a list of items to the Student's desk. She thinks that pictures would be easier for the Student than a list of words.

With regard to the NWEA assessment, she accidentally clicked on the wrong box in the computer program when preparing the March 6, 2012 IEP, so that it said the Student was to have an alternate assessment. All students take the NWEA on an individualized basis. The

decision made at the March 6th meeting was that the Student would take the NWEA like all the other children. When the Student's mother saw that the Student was taking the NWEA with all the other children, she objected because the IEP said it was to be an alternate assessment, but that was an error. She offered to let the Student take the assessment in another room, so now he takes the NWEA like all the other children, just in a different room.

16. During an interview conducted by the Complaint Investigator with Amanda Gage-Croll, Ms. Gage-Croll stated the following: She is a xx grade teacher at the School, and the Student is in her class this year. The year started out very well, with the Student very engaged and very involved in conversations, with only occasional lapses such as shouting out instead of raising his hand. Then the Student stopped taking his medication and his level of attention went down and he became more easily distracted. The Student became worse at following class rules. Nevertheless, the Student continues to succeed academically, performing at or above grade level in all subjects.

In the first couple of weeks of school, she forgot about the Student's adaptive P.E. class. Then a routine was developed and he started attending it regularly. She believes that the Student only missed one or two classes. As to the Student's social lunches, the Student missed them sporadically because he either forgot or didn't want to go. She never felt that the Student was missing an unusual number of those lunches, and Ms. Eaton was good about coming to the classroom to get the Student.

With regard to one-step directions, she uses them for all the students when they are learning a new skill. She asks the Student to repeat back to her what the next step is. Once a routine has been established for a certain activity, she doesn't need to keep doing this for the Student because he knows what to do.

With regard to sensory breaks, when the school year began the IEP said "as needed," so the Student didn't have a break every morning and afternoon. There were times when the Student looked troubled and she asked him if he needed a break. Usually the Student said no, but sometimes he said yes. When the Student's mother said that she wanted the Student to have a break every morning and every afternoon, it was put into his schedule. The Student seems to enjoy them, but she doesn't think he needs them. It's okay for him to have them at this age, but it could become disruptive as the Student gets older; it will take the Student out of his classroom activities. She hasn't seen a difference in the Student, no improvement in his focus and attention, since he began having the regularly scheduled breaks.

She thinks that it's very important to acknowledge students' feelings, and that she is very good at validating their concerns. She has always done that.

The Student has had a visual schedule at the top of his desk for the whole year. He moves an eraser across the strip as the day progresses. The schedule has changed due to requests by the Student's mother. Some of the requests were helpful, such as adding his OT time or social skills lunches. Others, such as a picture of the Student's backpack or breakfast, are part of his established routines. She hasn't seen the Student using the schedule for those parts of his day.

Like every child, the Student forgets to bring things home from time to time. In the spring, the Student's mother started getting upset about this. She doesn't remember the Student's mother asking for a list of things to be provided to the Student, but at some point the Student's mother made a list herself. She has seen the Student checking the list sometimes, but she's not sure that he uses it all the time. The Student is very good about asking for help, and he hasn't asked for help with the list.

With regard to providing reports to the Parents, one time Mr. Sweet put a report about the Student in her mailbox, but she assumed it was her copy of something he had given to the Parents so she didn't send it to them. She personally has had daily communication with the Student's mother; she talks with the Student's mother more than any other parent of her students.

The Student is given the choice to use the teachers' bathroom. The Student has confirmed that he knows he has that choice. As far as she knows, the Student has never chosen to use it. Since the Student's mother insisted that he only use that bathroom, the Student has been pretty good about using it, although there have been a few times he forgot and used the boys' bathroom. She hasn't heard anything about bullying in the bathroom, and never had the feeling that the Student was having a serious problem with the boys' bathroom. All the children say things from time to time like "He splashed me" or "She called me a name." She hasn't noticed any difference in the Student since he started using the teachers' bathroom.

When a substitute was going to be teaching her class, she always told the substitute that the Student had the option of going to Ms. Wiles' class. The Student's mother told her that the Student knew some of the substitutes so he might choose to stay, but he usually left. One time, there was going to be a fun activity so the Student chose to stay even though he didn't know the substitute. When the Student leaves, he misses some things from which he would benefit. She doesn't think that the Student needs to leave; he has seemed okay on those occasions when he stayed.

She believes that the Student is not being given a chance to learn independence. xx grade is a big year for children to gain independence. They have to be allowed to make mistakes. The Student is not at all the neediest child in her class in terms of behavior, forgetfulness or organizational difficulties.

17. During an interview conducted by the Complaint Investigator with Steve Sweet, Mr. Sweet stated the following: He is a P.E. teacher, and has had the Student in his class during each of the last four years. The Student has some social issues, and doesn't understand social interactions. Other students may tease the Student just in fun but he will react defensively, becoming verbally confrontational. Such behaviors are not that unusual.

At the beginning of the school year, he received IEPs of all of his students that have them and he reviewed those IEPs. He doesn't recall getting a new IEP after March 6, 2012.

The Student started the year coming in by himself for an adaptive PE class to work on skills that he would be using during regular PE class. There was another student who had been

expected to participate in that class as well, but that student's parent didn't want her to be involved. Starting after the March 6, 2012 IEP Team meeting, another student began attending that class and the Student has been working on social skills as well during that time. Having another student involved meant that he could work with the Student on being able to compare his performance with that of another student, to be able to compete without emotional outbursts and on basic sportsmanship.

When the Student comes to the adaptive PE class there is an ed tech with him who takes notes and occasionally interacts with the Student. The same ed tech is also in the regular PE class and there the ed tech takes a more active role with the Student, prompting him to focus and processing with him when there is conflict with other students. The Student has maintained regular attendance in the adaptive PE class since March, with only one absence. He doesn't know how many classes the Student missed before that, but he doesn't remember it being a problem.

When he was told that he needed to provide to the Parents weekly reports on the Student, he thought he was supposed to turn the reports into Ms. Gage-Croll or Ms. Moreau, and he did this; he didn't understand that he was expected to provide it directly to the Parents. Ms. Moreau may have thought he was doing that. The last few weeks, he has put the report in an envelope and given it to the Student.

The Student is allowed to take sensory breaks when he needs them. The Student recently did that when he was having a problem with another student.

The Student uses the regular boys' bathroom, and he's not aware of any problem the Student was having with using that bathroom.

He believes that the Student is more functional than his mother gives him credit for. The Student is generally fearful of new things, thinking that he can't do them, and evidences learned helplessness. For instance, the Student thought that he couldn't skip, and was reluctant to even try. He persuaded the Student to try it and the Student discovered that he could do it, and was even skipping backwards.

18. During an interview conducted by the Complaint Investigator with Grace Eaton, Ms. Eaton stated the following: She is a guidance counselor, and is in her 4th year at the School. She has known the Student since he was in xx grade; his IEP has always had guidance services in it. The Student's goals in the area of social skills include using his ears, eyes and mouth - listening, looking and speaking when he needs to. She also works with the Student on character education, including such things as honesty, caring and responsibility. She works with him on sticking to a topic and on manners.

The social skills lunch group generally includes two students, and those students can invite other students from their class to join them. She also brings other students to the sessions, so there are usually four to six students present. The Student has his lunch group on Fridays. When she knew that she was not going to be able to have the session on a Friday (she or the Student was going to be out), she would try to set it up for another day. At the beginning of

the year, the Student would say he forgot to come to the session. She put a note on the Student's desk to remind him. There may have been times when she forgot as well. At some point, she said something to the Student about having missed too many sessions. She maintains a notebook where she writes in the names of students who come to the sessions, and she prepared a list of dates when the Student attended based upon that notebook. That list shows that very few sessions were missed. She doesn't know why she would have made that comment to the Student, but it's possible that she wrote the Student's name down when he wasn't there.

Before the mediation, she hadn't been asked to prepare written reports on how the Student was doing, but she spoke with the Student's mother when she saw her at school. Since the mediation, she has been e-mailing to the Student's mother every week.

Her not attending the March 6, 2012 meeting was an oversight. She would have been there had she been invited, or at least would have submitted a report. At that meeting, the Student's mother reported that she had not been receiving progress reports on the Student's school guidance goal. This was also an oversight on her part, and when she became aware of it, she completed them.

She is not familiar with the behavioral goal that was added to the Student's IEP on April 23, 2012.

The Student has definitely made gains since xx grade. She saw him in a small group of students recently and he behaved just like the other children.

19. During an interview conducted by the Complaint Investigator with Wendy Moreau, Ms. Moreau stated the following: She is the assistant special education director for the District and assistant principal of the School. She has had involvement with the Student over the last two years. The March 6, 2012 IEP's reference to home/school communication referred to communication by Ms. Gage-Croll. After the mediation, she asked the specialist teachers and Ms. Eaton to send weekly e-mails to the Student's mother. Mr. Sweet said that he didn't like using e-mails for that purpose and that he would prepare written reports instead. She assumed that he was sending them directly to the Parents. One week Ms. Poirier was out and didn't send a report.

The Written Notice from June 13, 2011 stated that the Student's case manager and the PE teacher would work on the scheduling of the adaptive PE class. They hadn't gotten together by the beginning of this year, so the class wasn't scheduled until later. The March 6, 2012 IEP provided that the adaptive PE class would be on an "as needed" basis; after the mediation, it was changed to weekly.

Adult support in the music and art class was not required under the March 6th IEP, but there was an ed tech in those classes who was supporting another student. As a result of the mediation, that ed tech was told to support the Student in those classes as well.

With regard to informing the teachers of the IEP, the teachers did not receive the March 6th IEP or Written Notice. All the Student's specialist teachers were present at the March 6th meeting, however, so they were aware of the determinations that were made. After the mediation, she followed up with any teacher whose program was affected by the agreement regarding their new responsibilities.

She acknowledges that the Advance Written Notice for the March 6th meeting should have included Ms. Eaton, who should have been there to report on the Student's progress. Ms. Eaton was also responsible for working with the Student on the behavioral goal added to the IEP after the mediation.

At the May 11th meeting, they reviewed the data collected by Ms. Gage-Croll and the specialist teachers and decided that there wasn't enough data, and that the data should be compared to data for a typical peer. Now that there were two students for whom data was going to be collected, it was easier to have an ed tech do it. The ed tech had the data chart all laid out for her, so she was well able to also respond to the Student's needs.

20. During an interview conducted by the Complaint Investigator with Christina Davis, Ms. Davis stated the following: She is a community case manager for Care and Comfort, and has worked with the Student for about two years. She works with the family on setting up in-home supports, she monitors the Student's therapy, refers the family to a social skills group in the community and does some advocacy work, helping the Student's mother in dealing with the School. She has observed the Student in his classroom, in art class and at recess.

As the Student's class was getting ready to go out to recess, the students got in a line and she saw the child in front of the Student accidentally hit the Student with his jacket. The Student got upset, and told the teacher that the other student did it on purpose and was being mean to him. Ms. Gage-Croll didn't process the incident with him, but just said "Let's just line up. It's time to go out." The Student continued to mumble about the incident, and outside he was pretty much just walking around by himself. She saw the Student shouting at other students, and when a girl came over to talk with him he refused to interact with her. She didn't see Ms. Gage-Croll process any of this with the Student. Also, the Student went outside without his hat or his mittens, even though it was cold outside and Ms. Gage-Croll had reminded the students to wear them. The Student wasn't the only one outside without his hat and mittens.

When she did her observation in the art room on April 25, 2012, there was an ed tech present. There were 4 other children at the Student's table, and while the teacher was giving instructions to the class, the Student and others at his table were having a pencil fight which lasted about 5 minutes. The ed tech was at another table assisting a different student. Finally, the Student hit his pencil so hard it flew across the room. When the Student got up to retrieve it, the teacher directed him to return to his seat. The Student did not get any different directions than the rest of the class. The Student completed most of the assignment, but needed a lot of prompting. The ed tech would prompt the Student to get to work and then would leave to attend to the other student. Five minutes later she would be back again telling the Student to get back to work. Whenever the other student was having difficulties she would leave the Student. The teacher told the students that they were not to take the project

home with them, but at the end the Student folded it up and put it in his pocket. When the teacher asked what he was doing, the Student said he was taking it home and the teacher said okay. She believes that the Student understood that he was not supposed to bring it home at that point, but he might not have understood that when the direction was given initially. The teacher was not using one-step directions, and the Student often gets the first part of directions but stops processing after the first steps. There was no other part of the project that the Student didn't understand.

On May 3, 2012 she was in the classroom for about one hour during a math activity. The Student was sitting on the floor in front of the teacher, and was doing a fair amount of interrupting (approximately six times in 10-15 minutes). The teacher initially addressed the class generally, saying "you shouldn't be interrupting," but eventually addressed the Student directly to ask him to stop interrupting. The Student seemed to understand the directions, which were fairly precise and basically one-step. The Student had a partner for the activity, and the teacher came over to them to check that they were both doing the work. When she left, the Student did the work while the other student copied the answers onto her paper. The other student then suggested that they start looking in the teacher's desk, and they both started pulling things out of the drawers. After that, they were drawing on the floor with pencils, and then they had a conversation about throwing up during which the other student said that she felt like throwing up and was going to throw up on the Student. The Student told the teacher that the other student was going to throw up on him, and the teacher said to the other student "We don't talk about that" and sent her back to her desk. The Student was upset that he had gotten the other student in trouble, and kept saying "I'm sorry" to her. The teacher told the Student that the other student needed her space, but the Student kept saying "I'm sorry" to her. Later, he was still mumbling to himself "I said I was sorry." Processing with the Student is very important and it needs to happen right at the time of the incident. Otherwise, it can grow into a huge problem, and it becomes very hard to figure out what actually happened as the Student creates his own stories.

She didn't observe a single instance of either the teacher or the ed tech validating the Student's concerns during any of her observations.

She attended the June 11, 2011 IEP Team meeting, and she recalls that the discussion about adaptive PE was based on concerns that the Student was often telling other students in PE class how to do things, and was having trouble with rules and participating in games. The District offered the adaptive PE class as a place where the Student could work on those social skills. It was also agreed that the Student would have adult support in the PE class.

At the March 6th meeting, the discussion about NWEA was that the Student would continue to get the same accommodations – one-on-one support, extra time and breaks. There was no discussion about his not needing accommodations for that assessment until the June 4th meeting.

After the mediation, the Student's mother gave the School a list of what she wanted to be added to the Student's visual schedule. She wanted a different schedule for each day. Before that, there was be a PEC that said "OT, Tuesday and Thursday" instead of a strip for Tuesday

that included OT and one for Wednesday that did not. When she did her observation on May 3rd, many of the things on the list were still not in the schedule.

21. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: Ms. Eaton told her towards the end of March 2012 that she had commented to the Student that they should change the day of the social lunch sessions because he's missing too many. Towards the beginning of the year, both Ms. Gage-Croll and the Student would tell her that the Student had forgotten to attend. This probably happened 5 to 10 times in the beginning of the year. Ms. Gage-Croll knows that forgetting things is an issue for the Student.

She noticed by the time of the March 6th IEP Team meeting that Ms. Eaton had not completed any progress reports. When Ms. Eaton did them later, they were marked "adequate progress."

She doesn't believe that the Student is being given one-step directions based on her own classroom observations and those of Ms. Davis and the community support worker's supervisor. When the Student is told to "get your stuff together" at the end of the day, that is not a one-step direction. He doesn't know all the things he needs to do. At home, when it's time for the Student to get ready for bed, she doesn't say "It's time to get ready for bed." She says "Go brush your teeth," and then "Put on your pajamas," and then "Go to the bathroom." More often than not, the Student comes home without his homework, without his reading book or his reading log, or without his water bottle. When the Student was bringing his lunch to school, he would come home having eaten only his cupcake and his drink, and he would be hungry. She then gave him a list every day of what he should eat and in what order. After that, he would come home with at least some of his sandwich and some other things eaten.

With regard to sensory breaks, she acknowledges that before the mediation the District was following the IEP, which said "as needed." Checking in with the Student is not good enough, however, because the Student doesn't know he needs to take a break until he is escalated and it's gone beyond where the break will be helpful. This was supposed to change after mediation, but when she spoke with Ms. Gage-Croll on May 30, 2012 and asked whether the Student was getting his regular breaks, she said no. They started the next day, and his breaks also got added to the Student's visual schedule.

With regard to validating concerns, the Student has reported several times that when he goes to talk to a teacher about something that is bothering him, he is told "Not now," or "I can't deal with that." This is one of the reasons the Student needs support in the classroom.

She has been telling the staff for over a year that the Student's visual schedule needs to include all his activities, but she comes into the classroom and it's still not complete. She doesn't understand why it's so hard to do. After mediation, she sent a list of everything that needed to be on the schedule, but when she saw it on April 27, 2012 the schedule still didn't have the activities at the start of the day, his social lunch sessions or his sensory breaks. She can't specifically say that the Student was having trouble with the morning routine, but even if the Student knows a routine, he still does better with the routine in front of him. She tries very hard to make his day as predictable as possible. At home, the Student's section 28

worker sits down with him before every session to make a schedule of what they are going to do. It makes the Student feel successful when he can predict what he's going to do and check the activities off as he does them. She believes that the Student needs to start now with the most support possible in order to teach him what he needs before moving towards independence later. Proceeding in this way, the Student has just recently learned to brush his own teeth.

At the March 6th meeting, Ms. Gill reported that everything was horrible and that she wasn't sure that the Student belonged in a public school. This was a big shock to her. The comments on the Student's report card didn't make this clear – his grade in music was "Satisfactory." She was similarly surprised when Mr. Sweet reported that the Student was having three or four problems with other students during every class. When she started getting the weekly reports she found it very helpful. After two weeks when she wasn't getting a report from Mr. Sweet, she spoke to Ms. Moreau who told her that she would look into it.

At the March 6th meeting, she said that the Student reported being bullied in the bathroom (she acknowledges that the Student's reports may be exaggerated or fabricated or may be the result of a misinterpretation on his part). She was told that there was a teacher's bathroom the Student could use. When that went into the IEP, then the Student needed to get into the routine of doing it. If he's consistently reminded, he will get into the habit. The Student doesn't ever want to do anything that is not the same as it always has been. Staff members should be telling him "No, you can only use the other bathroom." The goal is that eventually he will return to using the regular bathroom, but for now she would like at least this part of his day to not involve social conflict. Also, it's the one place where there's no adult supervision and no one to help him understand what may have just happened. There have been no recent reports by the Student of problems in the bathroom.

At the IEP Team meeting in June 2011, the team discussed the Student's having difficulty in PE. The team said let's give the Student adult support in PE, and give him adaptive PE along with other children so as to provide an opportunity for him to work on social skills. The adaptive PE class didn't get started right at the beginning of the year; she's not sure when it finally started. Both the Student and Ms. Gage-Croll told her on at least 10 occasions combined that the Student forgot to go or she forgot to send him to the adaptive PE class. Then, at the March 6th meeting, Mr. Sweet said that the Student was the only one in the class, and that it wasn't very beneficial to have him in the class by himself. Mr. Sweet said that there was at least one or two other students in the Student's class with the same issues, and suggested that they be put in the same class. The Team thought that was a great idea.

With regard to provision of adult support in music and art, both Ms. Gill and Ms. Poirier sent her e-mails on April 27, 2012 in which they stated that for the first time they had an ed tech in the room to work with the Student. Ms. Gill said that it was very helpful.

She agrees that the Student can sometimes stay in the classroom with a substitute and be successful, but around November or December 2011, she spoke with one of the substitutes who told her that the Student had not had a good day in her class. When she picked up the Student at the end of that day he was very upset, so she decided that from then on he should

always go to Ms. Wiles' class when there is a substitute. Ms. Gage-Croll said that was fine, and she also told the Student the new rule. Despite that, the Student was still allowed to remain in the regular classroom with a substitute. She may have told the Student to go to Ms. Wiles' class and he didn't listen. She doesn't know how many times this happened. There were fewer days with substitutes this year than last year. The Student needs to be somewhere where he knows what is expected of him.

In mid-May 2012, she spoke with Ms. Gage-Croll about how the Student's sensory breaks were no longer on an "as needed" basis, and she didn't know anything about that. Ms. Gage-Croll told her that she hadn't seen a new IEP. Ms. Gage-Croll sent her an e-mail on May 30, 2012 saying that she double checked the most recent IEP and it said sensory breaks "as needed," but it actually said "scheduled in the morning and afternoon, and as needed."

After she got the Written Notice of the March 6th meeting, she and Ms. Davis wrote a long list of things that were missing from the Notice, but she didn't send it to anyone at the District. She requested a copy of the minutes and next to NWEA it said "one-on-one." This did not appear in the Written Notice or in the IEP. The Team had first agreed to this in June 2011 because the Student needed extended time and numerous breaks, and the Team thought that a one-on-one would be important to the Student.

With regard to the list of things the Student needed to bring home at the end of the day, she ended up taping a list she made herself to his desk. The Student needs to be reminded to cross off the items on that list, however. Throughout the year, the Student has come home without things. He recently forgot to bring home a second shirt that he needed to wear that day. She didn't agree to use the plastic bin because last year those bins were used when there was a problem with bedbugs, and the Student said he was worried that everyone would think he had bugs if he used one of those bins. Also, there was a picture of a backpack on the bin, but the Student needs to be reminded of what needs to go into the backpack.

She feels that she was duped at the mediation when the District promised that a decision would be made on May 11, 2012 regarding a one-on-one for the regular education classroom. If she had known they were going to delay making the decision until June 4th, she would have left the mediation without coming to agreement. The fact that there was an ed tech there from May 11th to June 4th was of no benefit to the Student. Ms. Gage-Croll told her that the ed tech hardly ever intervened, and that the Student's behavior was no different during that period of time. Ms. Wiles told her that the ed tech was instructed not to help the Student with his academic work. Instead of letting the Student interrupt the teacher, the ed tech could have given the Student something else to do until the teacher was able to talk to him. The ed tech just basically sat there with her clipboard. She believes that this went against the spirit of the mediation agreement.

VII. Conclusions

Allegation #1: Failure to fully and adequately implement the Student's IEP with respect to provision of social skills lunches in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

Based on the notebook maintained by Ms. Eaton, the Student missed very few of these sessions. This is inconsistent, however, with the comment made by Ms. Eaton to the Student about him missing too many sessions, and with Ms. Gage-Croll's recollection that on several occasions both she and the Student forgot about those sessions. Ms. Eaton ultimately conceded that she may have mistakenly written the Student's name into her notebook for days when he did not attend the session.

With regard to allegations of a failure to implement a provision of the IEP, a finding of violation requires sufficient evidence of 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 (9th Cir. 2007). See also *Mr. and Mrs. C v. Maine S.A.D. No. 6*, 49 IDELR 36 (D.Me. 2007). On this issue, as with the remainder of the allegations, the Parents bear the burden of proof.¹ As there was no clear evidence collected during this investigation as to how many sessions the Student missed during the year, whether many or a few, the evidence does not support a conclusion that the number of sessions missed represented a material failure to implement. Nevertheless, this allegation is but one of several where a pattern of forgetfulness seems to have resulted in deviations from the program described by the Student's IEP. The District should review its procedures for putting students' programs into place with an eye towards eliminating those instances where students miss out on prescribed programs due to someone's failure to remember that they are supposed to happen.

Allegation #2: Failure to provide periodic reports of the progress the Student is making towards his annual goals in violation of MUSER §IX.3.A (1)(c)
NO VIOLATION FOUND

As with the previous allegation, there was less than total compliance with respect to the provision of Ms. Eaton's periodic reports of the Student's progress due to a combination of forgetfulness and failure to monitor that the reports were being provided. Given that all other periodic reports were provided when they were due, and that there was no indication of any harm resulting to the Student as a result of the failure to report on this particular goal, a violation is not found.

Allegation #3: Failure to fully and adequately implement the Student's IEP with respect to provision of one-step directions (visual and oral) in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

The Student's IEP provides for one-step directions to the Student on an "as needed" basis. Ms. Gage-Croll expressed awareness of the need to provide directions to the Student of that

¹ The U.S. Supreme Court has held that, in the context of a due process hearing, the party seeking relief bears the burden of proof. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed. 2d 387 (2005). The reasoning of that case applies equally well to the complaint investigation process, placing the burden of proof on the Parents.

sort, and Ms. Davis observed her doing so during a math lesson. Ms. Davis further reported that, during the art class she observed, the Student appeared to have understood the directions he received, with the exception of a direction with regard to not taking the art project home. Even there, Ms. Davis reported that the Student understood the direction at the point that he disregarded it, but suspected that he might not have understood it when it was given initially in a non-one-step fashion.

The Student's mother, with regard to this allegation, focused on the end of the school day when the Student forgot to bring items home because, she believes, he was not given specific directions with respect to each individual item he needed to bring home. The Student's mother has elsewhere addressed this particular issue in connection with provision to the Student of a list of these items, a more precise strategy which is now in place.

Allegation #4: Failure to fully and adequately implement the Student's IEP with respect to provision of sensory breaks in violation of MUSER §IX.3.B(3)
VIOLATION FOUND

The IEP dated March 11, 2011 provided for sensory breaks after recess. This referred to the "brain gym" activity which the Student received on a daily basis in Ms. Wiles' room. The IEP dated March 6, 2012 provided for sensory breaks "as needed." The Student continued to receive the "brain gym" activity after recess, and at other times his teachers would ask him whether he wanted a break, which he sometimes (but not always) agreed to take. The subject of sensory breaks was one of the items addressed in the mediation agreement, and as a result the IEP was amended on April 23, 2012 to provide, in addition to the daily "brain gym" activity, sensory breaks "scheduled in the morning and the afternoon, and as needed." More than one month later, Ms. Gage-Croll responded to an inquiry from the Student's mother that the Student was only receiving sensory breaks as needed, and that this was what was required under the most recent IEP. Due to Ms. Gage-Croll not having been made aware of the amendment to the IEP with respect to sensory breaks, the Student was not receiving them on a regular basis as required under that amendment. He began to receive them thereafter.

Allegation #5: Failure to fully and adequately implement the Student's IEP with respect to validating concerns in violation of MUSER §IX.3.B(3)
VIOLATION FOUND

The purpose of the provision in the Student's IEP with respect to validating concerns as needed was to acknowledge the Student's feelings when he was upset by something and to process with him the issue that was making him upset, so that he didn't continue to dwell on the matter which could interfere with his being able to successfully participate in activities that followed. Ms. Davis, during her observations, did not observe any instance of this taking place, and was able to recount two specific instances of failure to provide this accommodation. While it may be difficult for staff members to take the time necessary to carry out this requirement at the particular time when it is needed, as the requirement was placed in the IEP the District must find a way to properly implement it.

Allegation #6: Failure to fully and adequately implement the Student's IEP with respect to provision of visual schedules in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

There was never a time when the Student was not provided with a visual schedule, although there was disagreement between the Student's mother and Ms. Wiles as to the level of detail it should contain based on a more fundamental difference of opinion regarding the amount of support the Student required during his school day. The fact that the Student's mother provided a list of certain changes she wanted to be made to the schedule did not obligate the District to make all of those changes. Nevertheless, all the changes were ultimately instituted. No violation was found with regard to this allegation.

Allegation #7: Failure to fully and adequately implement the Student's IEP with respect to provision of weekly communication from the guidance counselor and specialist teachers in violation of MUSER §IX.3.B(3)
VIOLATION FOUND

Mr. Sweet aside (as the Parents' failure to receive his reports did not result from a failure on his part to prepare them but on a failure of communication as to who was going to send them), the remaining staff members missed a combined total of 5 out of 12 weekly reports in the four weeks following the IEP amendment. This is a more than minor discrepancy. Having agreed to put this requirement into the IEP, the District was obligated to carry it out with no more than the occasional lapse in performance.

Allegation #8: Failure to fully and adequately implement the Student's IEP with respect to provision of a private bathroom in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

The provision of a private bathroom for the Student has at all times been listed in the IEP as being on an "as needed" basis. All evidence supports the conclusion that the District did make such a bathroom available to the Student, that he understood that he had the option to use it, and that he chose not to. The Student's mother may be correct that the Student will not, as a function of his disability, deviate from the routine with which he is comfortable, but the IEP did not require that the Student be restricted to using only the private bathroom at all times. Should the Student's use of the regular boys' bathroom begin to impact the Student's ability to benefit from his education, then the District may be required to further address the issue.

Allegation #9: Failure to fully and adequately implement the Student's IEP with respect to provision of adaptive/social skills physical education in violation of MUSER §IX.3.B(3)
NO VIOLATION FOUND

The Written Notice of the June 13, 2011 IEP Team meeting, as amended on August 4, 2011, states that the Student “will also have the opportunity to attend an adaptive PE class to assist him with practicing skills taught in the regular PE class. The case manager will work with the PE teacher on the schedule.” Although both the Student’s mother and Ms. Davis recall that there was discussion at that meeting about using the adaptive PE class to work on the Student’s social skills, this is not what the Written Notice recorded as the determination made at the meeting.² The Parents had the opportunity, pursuant to MUSER §XIV.8, to request that the Written Notice be amended to correct any inaccuracy, and did not make that request. Mr. Sweet’s understanding of the purpose of the class was consistent with the Written Notice.

As to whether the class was actually being provided to the Student, there was apparently some delay in getting the class scheduled. Both Ms. Gage-Croll and Mr. Sweet did not recall the delay being very long or the Student missing very many of the classes. Although the Student’s mother has a different recollection with regard to the number of missed classes, the evidence was not sufficient to support a conclusion that the number of sessions missed represented a material failure to implement.

Allegation #10: Failure to fully and adequately implement the Student’s IEP with respect to provision of adult support in music and art from March 6 to April 26, 2012 in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

The first time that reference to adult support for the Student in music and art appears in the Student’s IEP is in the April 23, 2012 amendment, and no reference to this accommodation appears in the March 6, 2012 Written Notice. Accordingly, the e-mails on April 27, 2012 from Ms. Poirier and Ms. Finn that the Student began receiving such support that day reflects a delay of only four days in implementing the accommodation. This short delay represents only a minor discrepancy.

Allegation #11: Failure to fully and adequately implement the Student’s IEP with respect to having the Student remain in the special education classroom when there is a substitute teacher in the regular education classroom in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

The March 11, 2011 IEP contains as an accommodation that the Student will be sent to the special education room when a substitute teacher is in the classroom, on an “as needed” basis. When there was a substitute in the classroom, the Student was given the option of leaving and was monitored by Ms. Wiles during the day if he chose to stay. The March 6, 2012 IEP did not contain this accommodation, but it was put back in on April 23, 2012 as a result of

² The March 11, 2011 IEP was not amended to reference this additional service, but as the Student was provided with the adaptive PE class described in the Written Notice, the violation was technical in nature. The District is cautioned to make sure that any amendments agreed to at IEP Team meetings are properly recorded in the IEP.

mediation. The Student's mother at one time acknowledged that there were occasions when the Student was able to stay in the class with a substitute successfully, but she changed her mind about allowing the Student to stay after she received a report that the Student had experienced difficulty on a day when there was a substitute.

The District, in its written response to this complaint, contended that the accommodation in question, even after April 23rd, continued to be required only when the Student "cannot attend to instruction or is anxious due to the teacher not being in the classroom." The mediation agreement, however, provided that the Student's IEP was to be amended to include having the Student "report to the Special Education classroom on days when there is a substitute in the regular classroom." Thus, although the IEP contains a blanket statement that the frequency with which all accommodations are to be provided is on an "as needed" basis, "as needed" in the context of substitutes must mean whenever there is a substitute in the regular education classroom. It is unclear whether the District violated this provision by allowing the Student to remain in the regular education classroom after April 23rd – Ms. Wiles reported that the Student's mother had begun taking him to her classroom whenever a substitute was present and the Student's mother was unable to be specific as to dates when the Student was permitted to remain in the classroom with a substitute - and so no violation is found. The District must be sure to inform the classroom teachers that this accommodation is to be provided consistently whenever there is a substitute in the regular education classroom.

Allegation #12: Failure to ensure that each of the Student's teachers is informed of his or her specific responsibilities related to implementing the Student's IEP and the specific accommodations, modifications and supports that must be provided for the Student in accordance with the IEP in violation of MUSER §IX.3.B (4)(b)

VIOLATION FOUND

The District began the school year by making sure that staff members were aware of the provisions in their students' IEPs. When later, during the school year, the Student's IEP was changed, staff members were not similarly informed of those changes. Thus, Ms. Gage-Croll could write to the Student's mother on May 30, 2012 that the Student's most recent IEP provided for sensory breaks as needed, when in fact both the April 23rd and May 11th IEPs provided for regularly scheduled breaks. Perhaps of greater concern, Ms. Eaton, when interviewed by the investigator, was unaware that the Student's IEP had been amended on April 23rd to add a behavioral goal for which she was responsible.

Allegation #13: Failure to include all necessary members of the IEP team at the March 6, 2012 meeting, specifically the staff member who provides social work services, in violation of MUSER §VI.2.B

VIOLATION FOUND

MUSER §VI.2.B requires that the IEP Team be comprised of at least four team members – a special education teacher, a regular education teacher, a representative of the District with

authority to obligate the agency, and the parents. A person in each of those categories was present at the March 6, 2012 IEP Team meeting.

The meeting, however, was an annual review, and accordingly it was of primary importance that the Team be able to review the Student's performance on and progress towards his goals. MUSER §VI.2.J identifies, as two of the major responsibilities of an IEP Team: to determine the present levels of performance and educational needs of the student in all affected non-academic areas (MUSER §VI.2.J(2)); and to determine whether the annual goals for the student are being achieved (MUSER §VI.2.J(5)(a)). As Ms. Eaton was responsible for the school guidance/social work goal, her input was needed in order for the Team to make the appropriate determinations with regard to that goal and with regard to present levels of the Student's performance in social skill areas. Due to an administrative oversight, Ms. Eaton was not notified of the meeting, and so neither attended nor provided a report of the Student's performance and progress, thus preventing the IEP Team from performing some of its major responsibilities.

Allegation #14: Failure to provide a complete and accurate statement of all those actions that the District agreed to take or refused to take during the March 6, 2012 IEP Team meeting, and to explain why the District was refusing to provide one-on-one support to the Student, in the Written Notice of that meeting in violation of MUSER App. 1, 34 CFR §300.503

VIOLATION FOUND

MUSER App. 1, 34 CFR §300.503 requires that the District provide written notice of all those actions regarding a student's programming that it proposes or refuses to take, and to explain why the District is proposing or refusing to take the actions. The March 6, 2012 Written Notice refers to the Parents' request that the Student be provided with one-on-one support in the regular education classroom. There is no indication elsewhere in the Written Notice, however, whether the District agreed or refused to provide that accommodation, nor an explanation of why such determination was made.

Allegation #15: Failure to provide supplementary aids and services in the nature of lists of school materials and instructions on how to use the lists to enable the Student to advance appropriately toward attaining his annual goals, to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d)

NO VIOLATION FOUND

The Parents contend that the Student requires a list of materials to be brought home and must be instructed to refer to that list in order to receive FAPE. Although the Student's mother has made such a list and taped it to the Student's desk, it is not yet a part of the Student's IEP, nor is there any indication that the Student's teacher was instructing the Student to utilize the list. The Student's mother reported that there were occasions when the Student had failed to bring home all those materials he needed in order to complete his homework, in addition to failures to bring home various items of clothing and other materials.

Had the Student's disability resulted in an inability to complete his homework due to this pattern of forgetting to bring needed materials home such that he was unable to make adequate progress, this would give rise to a legal requirement that the District adopt measures to address the issue. There is no indication, however, from the evidence uncovered through this investigation, that the Student was not making meaningful progress without the list. As the Student advances to higher grade levels, the homework demands will increase, and it may become necessary for the District to provide further assistance to the Student in this regard.

Allegation #16: Failure to develop the IEP in conformity with the determinations of the IEP team on March 6, 2012 regarding provision of testing accommodations for the NWEAs in violation of MUSER §VI.2.J(4)

VIOLATION FOUND

The minutes of the March 6, 2012 IEP Team meeting (minutes are no longer required to be recorded, but the District chose to do so and provided them to the Parents at their request) state, with regard to the NWEA assessment, "one-on-one," and go on to list several accommodations to be provided for the NECAP assessment. The Written Notice of that meeting makes no reference to testing accommodations for either the NWEA or NECAP. The March 6th IEP provides, with regard to the NWEA, "Alternate to District-Wide Assessment," with no further specification as to accommodations to be provided (accommodations for the NECAP are consistent with the statement in the minutes). Ms. Wiles stated to the investigator, however, that the District decided at the March 6th meeting that the Student didn't need any accommodations for the NWEA, and that she made the "alternate" designation in error. The IEP was changed on May 11, 2012 to provide for standard administration of the NWEA. This change renders the IEP inconsistent with the recorded minutes of the March 6th meeting, and thus represents a violation.

Allegation #17: Failure to comply with the mediation agreement of April 23, 2012 by failing to decide whether the Student needed adult support in the regular education classroom, enforceable under MUSER §XVI.3.B(9)

NO VIOLATION FOUND

The mediation agreement provides, as to the subject of this allegation, that on May 11, 2012 the IEP Team "will meet to decide whether adult support is needed in the regular classroom." An IEP Team meeting was held on that date for the purpose of making that decision. The District decided that there was insufficient data to enable it to make the decision, and that a further period of data collection should occur, during which the Student would receive adult support in the classroom. The issue would then be further discussed at the already scheduled June 4th meeting. This delay of one month, during which the Student received additional support (albeit support from an ed tech who was otherwise occupied with collecting the data), for the purpose of making a more informed decision, does not violate either the letter or the spirit of the agreement. As the District decided on June 4th that adult support would not continue to be provided to the Student, the Parents had (and continue to have) the same

opportunity to request a due process resolution of the dispute that they would have had on May 11th.

VIII. Corrective Action Plan

This complaint investigation found a number of procedural violations, and several matters which, while not rising to violations, suggested a need for improvement in District procedures. While there were a number of violations, none of them rose to the level of materially impeding the Student's access to his education, or his ability to make progress in the curriculum and towards his IEP goals. Some of the issues raised by the violations were specific to the Student, and some were of a broader nature. The issues which need to be addressed and which are not specific to the Student include ensuring that: all necessary team members are invited to attend meetings; determinations made at IEP Team meetings are properly recorded in the Written Notice and then are reflected in amendments to the IEP; Written Notices contain all actions being proposed or refused by the District, with an explanation for each such proposal or refusal; and staff are informed of amendments to IEPs in mid-year. Those issues which are specific to the Student include taking steps to ensure that: the Student's concerns are validated and that an adult is available to process those concerns with him; the Student is regularly reminded to attend his special education service sessions; and staff members provide regular weekly reports to the Parents.

As to all of these issues, the District, within 120 days, shall develop a comprehensive plan to address them so that similar violations do not occur in the future, and will present that plan to the Department, with copies to the Parents, for its approval. At the District's request, the Department shall provide technical assistance to the District in developing the plan. Such assistance will be coordinated through Janice Breton, 624-6676, janice.breton@maine.gov.