

Complaint Investigation Report
Parents v. State IEU

March 21, 2013

Complaint #13.045C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Parents
Address
City, Zip

Respondent: Cindy Brown, State IEU Director
146 State House Sta.
Augusta, ME 04333

Site Director: Greg Armandi

Child: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on January 23, 2013. The Complaint Investigator was appointed on January 23, 2013 and issued a draft allegations report on January 25, 2013. The Complaint Investigator conducted a complaint investigation meeting on February 15, 2013 (rescheduled from the original date of January 8, 2013 at the Respondent's request). On February 15, 2013, the Complaint Investigator received a 3-page memorandum and 54 pages of documents from the Complainants, and received a 4-page memorandum and 33 pages of documents from Respondent (the "IEU") on February 21, 2013. Interviews were conducted with the following: Greg Armandi, site director for the IEU; Amy Sanborn, teacher for the IEU; Tina Lajoie, COTA for the IEU; Donna Chambers, former ed tech for the IEU; and the Child's mother.

III. Preliminary Statement

The Child is xx years old and is currently receiving special education under the eligibility criterion Multiple Disabilities. This complaint was filed by the "Parents", the Child'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 parties' mediation agreement with respect to provision of aquatic therapy to the Child, enforceable pursuant to MUSER §XVI.3.B(9);
2. Failure to fully and adequately implement the Child's IEP by leaving the Child alone and unaccompanied by an ed tech in violation of MUSER §IX.3.B(3);
3. Failure to fully and adequately implement the Child's IEP with respect to provision of OT services designed to address the Child's OT goals in violation of MUSER §IX.3.B(3);
4. Failure to fully and adequately implement the Child's IEP with respect to the Child's use of his gait trainer in violation of MUSER §IX.3.B(3).

V. Stipulations

1. The Child's IEP provides that he is to have a 1:1 ed tech with him at all times.

VI. Summary of Findings

1. The Child lives in xx with the Parents, and began attending preschool at CDS Opportunities in Oxford, Maine (the "Site") during the summer of 2012 until October 31, 2012, when the Parents removed the child from the program. He began receiving early intervention services at around seven months.
2. The Child was assessed at the Maine General Medical Center Developmental Evaluation Clinic in March 2009, at which time he was diagnosed with diffuse hypotonia, severe gross and fine motor delays, severe oral motor delay, severe expressive language delay, cognitive delay level unspecified, status post-surgical excision of a paraspinal neuroblastoma, and gastroesophageal reflux.
3. The Child's IEP dated May 1, 2012, contains a total of 23 annual goals, including five OT goals as follows: "1. [The Child] will grasp small objects and food pieces with an inferior pincer grip 4 out of 5 opportunities; 2. [The Child] will manipulate (push and pull) knobs on toys 100% of opportunities; 3. [The Child] will align and push together 2 or more pop beads in 4 out of 5 opportunities; 4. [The Child] will place all 5 rings on a stacker with cues and prompting in 4 out of 5 opportunities; and 5. [The Child] will demonstrate lateralization of food within his mouth and chewing patterns to the right and left of his mouth 50% of snacks and meals," and a PT goal as follows: "[The Child] will use his walker to access his pre-school environment 50% of the school day."
4. The IEP provides for various services, including OT services two 60 minute sessions per week and PT services two 60 minute sessions per week. As stipulated, the Child was to have a 1:1 ed tech with him at all times.
5. On December 14, 2011, the Parents filed a request for a due process hearing based on allegations of failure to implement the Child's IFSP and IEP. The parties agreed to

participate in a mediation of this dispute, held on January 18, 2012, resulting in a mediation agreement. Paragraph 5 of this agreement states as follows: "CDS Opportunities will provide [the Child] with forty, one-hour sessions of physical therapy, provided by a qualified physical therapist. These sessions will be available for use beginning February 1, 2011 [sic] through August 2013, at which time any remaining, unused sessions will cease to be available for use. The physical therapy will be provided at a public pool mutually agreed upon by the parent and the physical therapist. The Family will provide receipts for [the Child]'s pool admission to CDS Opportunities for reimbursement....Should the Family have an ongoing or repeated difficulty scheduling or accessing the physical therapy sessions, the Family will promptly contact the CDS Opportunities site director to resolve the scheduling difficulty."

6. On April 13, 2012, PT Kelley Champagne wrote to Mr. Armandi informing him that she had given the Child 4 or 5 aquatic PT sessions and requesting forms for her to submit in order to receive compensation. In response, Mr. Armandi wrote that he understood that Ms. Champagne would bill MaineCare directly for the PT time, but that she could submit invoices on her own letterhead and be reimbursed by the Site for pool fees and transportation cost. Ms. Champagne did not submit any invoices and, on November 16, 2012, Mr. Armandi learned from the Child's mother that Ms. Champagne had discontinued the PT sessions due to non-payment. Mr. Armandi promptly wrote to Ms. Champagne reminding her that she needed to submit invoices in order to receive payment. On February 7, 2013 the Child's mother wrote to Ms. Champagne to ask whether she had received any payment for the PT sessions, and Ms. Champagne responded that the Site had requested a W-9 form from Ms. Champagne but that she had been too busy to send it to them.

7. In e-mails dated December 13, 2012 and January 11, 2013, Ms. Champagne responded to Mr. Armandi's inquiry whether she had resumed PT sessions with the Child by stating that she and the Parents had been having difficulty with scheduling. Mr. Armandi wrote to the Parents on January 25, 2013 about the availability of another PT in Bridgton, Maine if they were having difficulty scheduling with Ms. Champagne.

8. When the Parents withdrew the Child from his program at the Site, one of the reasons for this decision given to Mr. Armandi by the Child's mother was a safety concern involving the presence at the Site of a sex offender. Following investigation by Mr. Armandi, he relayed a report of the Child's teacher, Amy Sanborn, that on three occasions the Child's ed tech, Donna Chambers, left the Child and had to be redirected to return to him by Ms. Sanborn. On each of those occasions, several other staff members were present in the room with the Child.

9. In a written statement of Ms. Chambers provided to the investigator by the Parents, Ms. Chambers denied that she ever left the Child alone while at the program, and thus never needed to be redirected to return to him.

10. The Child's OT services were provided primarily by COTA Tina Lajoie. During the time that the Child was attending the Site, those services primarily consisted of activities designed to increase the Child's core strength, such as swinging, walking and moving to music. Ms. Lajoie also instructed Ms. Chambers to engage with the Student in the activities described in the Child's OT goals, and provided gloves designed to assist the Child with his pincer grasp.

11. Except for a few occasions when it was inadvertently left in another room, the Child had access to his gait trainer while at the Site, and used it to move up and down the hallways, during outdoor activities and within the classroom. He was estimated to be using it during 30 % of the program day. Beginning in October 2012, upon the recommendation of the Child's PT, Pat Struck, the Child moved between teacher-led activities by walking (with adult support) rather than using his gait trainer, so that his use of the gait trainer was reduced thereafter.

12. During an interview conducted by the Complaint Investigator with Greg Armandi, Mr. Armandi stated the following: He is the site director for the Site. The Child began receiving early intervention services from the Site in February 2009, but only started attending the pre-school program during the summer of 2012. Initially, the Child attended twice a week during a transition period, and then began attending regularly on September 4, 2012.

Following the mediation of the earlier dispute, the Site contracted with Ms. Champagne to provide to the Child the PT services described in the mediation agreement. The contract signed by Ms. Champagne provided that she would bill MaineCare for her services, but that the IEU would ultimately be responsible for payment if MaineCare denied the claim. When Ms. Champagne asked him what forms she should use to submit her bills, he told her to bill MaineCare directly and to submit her own invoices to the Site for transportation and pool use fees. He never received any of those invoices, and he never heard that there was a problem with the billing or the provision of services. The mediation agreement stated that the Parents were supposed to notify him if there was any problem with accessing the PT services.

The first time he learned that Ms. Champagne had stopped providing services was during a conversation with the Child's mother on November 16, 2012, after the Parents had removed the Child from the program. He was trying to find out why the Parents had made that decision, and one of the things that the Child's mother told him was that Ms. Champagne had stopped providing services because she hadn't gotten paid. He wrote to Ms. Champagne and reminded her that she was supposed to submit invoices. Ms. Champagne was also told that she needed to submit a W-9 form so that the IEU could pay her, but she still hasn't done that despite several reminders.

Another reason given by the Child's mother for the decision to remove the Child was that the Child had supposedly been left alone while at the program. She didn't say what that accusation was based on. When he looked into it, the only thing he could find that was anything like what the Child's mother had said was Ms. Sanborn's report that she had to tell the Child ed tech, Ms. Chambers, on a few occasions to return to being with the Child. Even on those occasions, however, there were other children and other staff members in close proximity to the Child. The Child's program is in a classroom with five other children, each one of whom has an ed tech, as well as the teacher, Ms. Sanborn. He has no reason to believe that the Child was ever left alone while at the program.

With regard to the Child's gait trainer, the Site purchased a gait trainer for the sole use of the Child. The Child used it to get around the classroom and the hallways. He observed the Child using the gait trainer in the hallways on several occasions. There were times during the day when the Child's providers were working on developing the Child's muscle strength and

they therefore didn't have him using the gait trainer. Otherwise, there was no reason why the Child wouldn't have been able to use the gait trainer.

The Child was doing really well in the program and the staff had high expectations for the gains that the Child would be able to make; the staff was very disappointed when the Parents removed him.

13. During an interview conducted by the Complaint Investigator with Amy Sanborn, Ms. Sanborn stated the following: She is a special education classroom teacher at the Site, and had the Child in her room from July 2012 to November 2012. In July, the Child started coming twice a week, and then increased to four days a week in September (he was originally going to attend five days a week, but the Child's mother informed the staff on September 5th that she decided to send him only four days). Her classroom had six children (including the child) and 7 staff members (including her). She does not believe that the Child was ever left alone anywhere at the Site. There was always at least one adult in the same space with the Child. There were three occasions when Ms. Chambers left the Child's side (for example, Ms. Chambers walked up to her desk to speak with her), and each time she explained to Ms. Chambers that she needed to return to his side. Ms. Chambers was a new ed tech and was learning what her responsibility was for the Child. On all of those occasions, however, there were several other adults in the room with the Child.

The Child always had a gait trainer at the Site; after the Site purchased one for the Child, Ms. Struck decided that she preferred to use the one owned by the family as it was adjustable, so they exchanged them. The Child used the gait trainer to move up and down the hallway, in and out of the building and to transition within the classroom. He was one of three children in the class who used a gait trainer, and she had to rearrange the classroom (such as removing an easel that stood on the floor) so that the children would be able to maneuver. They tried to have the Child use it as much as possible. Initially, staff members were using a carriage to bring the Child inside at the beginning of the day in order to save time, but the Child's mother requested at the September 5, 2012 meeting that he be allowed to use his gait trainer for this, and the staff agreed as long as it wasn't raining. During fire drills, unless the Child was already strapped into his gait trainer, he was carried out because it took too long to secure him into the trainer. On a day that the fire department came to the school, she carried the Student out because she didn't want him to miss the opportunity to go onto the fire truck.

Starting in October, Ms. Struck recommended that staff members have the Child walk while holding his hands when he was transitioning between teacher-led activities, after which the Child was not using the gait trainer as often. The Child was still using the gait trainer during free play in the classroom, during outside time and at the beginning and end of the day. The Child was doing really well with walking and was gaining in his ability to take steps, something he had not been doing before. Ms. Struck was also planning to adjust the gait trainer to make it more of a walker. The gait trainer allowed the Child more freedom to move himself, but this needed to be balanced against the greater independence the Child would achieve when he became an independent walker.

She generally tries to bring into the classroom the goals a child's therapists are working towards. She collaborated with the OT and PT in designing the Child's program, what they

should be working on and how to do it. Ms. Lajoie did a lot of work with Ms. Chambers in helping her to understand what to work on with the Child. Ms. Lajoie had been working with the Child on his pincer grasp – picking up small pieces of food, toys and coloring utensils. Ms. Lajoie made special gloves for the Child to help him learn that skill. Both she and Ms. Chambers worked with the Child on pushing and pulling knobs on toys, using pop beads and foam boards, and stacking rings. They worked on at least some of these skills every day. Her classroom notes reflect the time spent on these activities.

She uses daily notes that the ed techs carry with them to make it easier for them to record the activities they engage in with the children, and to mark what gains the children make in their activities. The ed techs turn in those notes, and she enters the information in a spreadsheet and prints out the result. The ed techs then sign those forms, which are kept in the children's records. At some point when Ms. Chambers was learning how to use the daily notes, she asked Ms. Chambers to sign the resulting form and Ms. Chambers said she couldn't sign it because it said that the Child had done something that she hadn't seen him do. She was surprised, and explained to Ms. Chambers that the information on the form came directly from Ms. Chamber's notes. Ms. Chambers still refused to sign, but she looked at the information and realized that she herself had seen the Child do what was on the form, so she signed it herself. She has done that for other children on other occasions, and only signs off on actions that she knows a child has done.

The Child was making incredible gains while attending the Site, and it was very sad when he stopped attending.

14. During an interview conducted by the Complaint Investigator with Tina Lajoie, Ms. Lajoie stated the following: She is a Certified Occupational Therapy Assistant for the District. She began working with the Child sometime around New Year 2012 when he was in a private day care setting, and continued to work with him once he began attending the Site's pre-school program in July. With the Child's OT goals as a basis, Ms. Dionne (the OT) developed a plan of care with short-term objectives designed to enable the Child to reach his IEP goals. She worked on all of those objectives with the Child. She collaborated with other OTs and PTs to make sure the ways in which she was working towards the goals and objectives were appropriate.

With regard to the pop beads, the Child basically mastered this activity during the summer while in day care, and she expected that this goal would be revised at the next IEP Team meeting. She worked with the Child on putting small objects into containers and on the stacking rings, but she noticed that, while those activities were not very motivating for the Child, the Child seemed very motivated by music. Accordingly, she developed activities involving dancing to music, activities which developed the Child's core strengths.

Motor development proceeds from the core outwards. In order for fingers and hands to develop, a child must first develop shoulder strength and work downward from there. The Child's mother said she wanted the Child to learn to pull up his pants, but he first needed to develop his balance and to be able to hang on while he pulled. She spoke with Ms. Struck about working directly on self-care skills with the Child, and Ms. Struck agreed that those

activities were not yet appropriate for the Child. When she first started the music activities with the Child, the Child couldn't hold on to the bells or shakers she gave him for more than 30 seconds. By the time the Child was removed from the program, he was able to hold on to them during three consecutive songs. The Child was making great gains.

She met with Ms. Sanborn and reviewed the Child's OT goals, preparing her to work on those fine motor activities. She made special gloves to help the Child with his grasp. In the classroom, Ms. Chambers worked with the Child using pop beads, the ring stacker and putting things in containers. The Child could do those things, but he needed verbal cues to do them. The Child could put rings on the stacker, but not in the correct order.

With regard to the chewing goal, she would work with Ms. Chambers during lunchtime, training her on how to work with the Child on developing chewing patterns and sipping from a cup. She discussed with her what to look for and how to encourage the Child. She herself would occasionally work on food during her OT sessions with the Child - she would put a piece of licorice in the Child's mouth on the left side and then after a while move it to the right side, so he experienced what that felt like. The Child was making minimal progress for a while because he was not getting the kinds of foods in his lunch box that enabled him to develop this skill. She asked the Child's mother to pack more things in the Child's lunch that were chewy, instead of yogurt and applesauce, and the Child's mother was starting to put better food items in his lunch by the time the Child was removed from the program.

With regard to the Child's gait trainer, she saw the Child using the gait trainer in the hallways and she knows he used it in the classroom, although she can't say with what frequency. She would often have the Child walk without using the gait trainer to develop his strength and balance, and the Child was coming along nicely.

She never observed the Child being left alone while at the Site.

15. During an interview conducted by the Complaint Investigator with Donna Chambers, Ms. Chambers stated the following: During the period from July 2012 to November 2012, she was an ed tech in Ms. Sanborn's classroom, and she was assigned to be the Child's ed tech during that period. She is not aware of any occasions when the Child was left alone while at the Site.

When she began working with the Child, she met with Catherine Cody, a behavior specialist, who reviewed with her a list of tasks she should be working on with the Child. That list came from the Child's IEP goals. She also met with Ms. Lajoie, who wanted her to work with the Child on fine motor skills. Her work with the Child included pop beads, ring stacking and putting objects in containers. The Child could already put objects in containers by the time she started working. The Child could put pop beads together, but not take them apart. The Child improved in his ability to stack rings during the time she worked with him.

Ms. Lajoie also spoke with her about working with the Child on chewing and sipping from his cup. There were also times that Ms. Lajoie came into the classroom at lunch time to work on these things with the Child herself. The speech/language therapist also worked on chewing skills with the Child; she would give the Child popcorn or gummy bears to chew on. During

the time she was working with the Child, she saw improvement in the sipping, but not the chewing.

On several occasions, she observed Ms. Lajoie working with the Child during OT sessions. Ms. Lajoie would have the Child sit on a large swing, or do a dance activity. Ms. Lajoie would walk with the Child in the hallway (without using the Child's gait trainer). She understood that Ms. Lajoie wanted to develop the Child's core strength, his shoulders and arms, so that the Child could then develop fine motor skills.

With regard to the gait trainer, the Child used it in the hallways and outdoors (unless it rained). The Child did not use the trainer in the classroom; the classroom was not physically set up for the Child to be able to use it. At first, the Child was brought into the program in the morning by using a stroller. After the Child's mother requested that the Child be allowed to use the gait trainer for this, they only used the stroller when it was raining. There were two or three times when one of the specialists moved the Child's gait trainer into the OT room and that room was locked, so she didn't have access to it. She told Ms. Sanborn about this and Ms. Sanborn told her not to worry, to just walk with the Child. Starting in September, both Ms. Lajoie and Ms. Sanborn asked her to walk with the Child without using the trainer. At that point, the Child was using the gait trainer approximately 20 to 30% of the day.

There was a daily report that listed skills on which the Child was working and stated whether the Child was able to do them. At some point, she noticed a report which indicated that the Child could do certain things that she hadn't observed the Child being able to do (scotching across the floor, for example). Ms. Sanborn asked her to sign the form verifying that information, but she told Ms. Sanborn that she hadn't seen the Child do those things. Ms. Sanborn got frustrated with her, but she wouldn't agree to sign something when she hadn't actually seen it happen. She later saw that Ms. Sanborn had signed the report where she had refused to do so.

She saw the Child improve while at the Site, but she thinks that the Child was overstimulated by the environment; sometimes the Child would put his head down and not be willing to do any work.

16. During an interview conducted by the Complaint Investigator with the Child's mother, the Child's mother stated the following: When she found out from Ms. Champagne that the Site was asking Ms. Champagne to bill MaineCare for her PT services, she asked her advocate what she should do. Her advocate told her that this was between Ms. Champagne and the Site, and she shouldn't get involved. Therefore, she didn't say anything about it to anyone at the Site. She thought, however, that Ms. Champagne was still providing some PT to the Child over the summer. Then, when the Child started going to the Site four days per week in September, the Child was too exhausted to do additional PT so she didn't ask for it. She didn't find out that Ms. Champagne hadn't been paid and wasn't providing PT over the summer until her conversation with Mr. Armandi on November 16, 2012. She believes that, because the IEU agreed to provide the additional PT as compensation for failing to provide the amount required under the IEP, the IEU shouldn't be allowed to ask MaineCare to pay for it.

During the conversation with Mr. Armandi on the 16th, she told him that the single biggest reason that she removed the Child from the program was due to the fact that a convicted sex offender who had a child in the program was being allowed into the building, and she felt that the Child (who is non-verbal and non-ambulatory) wasn't safe. Mr. Armandi then issued his report in which he said that Ms. Sanborn told him that Ms. Chambers left the Child alone on three occasions (which Ms. Chambers denies). She doesn't know if this is true or not, but she was concerned that the Child would be left alone if Ms. Chambers was not there for some reason.

With regard to the OT services provided by Ms. Lajoie, she feels that they were really in the nature of PT services. Ms. Lajoie was not helping the Child with his fine motor skills; the Child has trouble with feeding, dressing and bathing activities, and Ms. Lajoie wasn't working on any of those things. The OT that preceded Ms. Lajoie worked on fine motor skills with the Child, and the OT that just recently started working with the Child says that she will work on fine motor skills. She doesn't think that the Child needs so much focus on core strength – he can sit on a chair and swing his legs, he can stand at a table and manipulate small toys that are on the table, and he can sit on a chair and pull pop beads apart.

During the time that Ms. Lajoie was working with the Child, she saw improvement in the Child's gross motor skills – he became better able to walk, and more stable when upright. The Child also improved in his ability to use the ring stacker. She saw no improvement, however, in the Child's pincer grasp. The Child has made far more gains since November 1, 2012 than he made during the period from July 2012 to November 1st. The Child is now at day care run by a friend of hers, who also home schools her three children and provides day care to another child as well. Up until last week when a new OT started working with him, the Child was getting only speech/language therapy from a private provider. The Child's day care provider pushes the Child to do more. His core strength has continued to improve (he no longer needs the chest support on his gait trainer), he feeds himself with a correctly held spoon, he chews on both sides of his mouth, he is becoming potty trained, his signing is better defined and his speech has improved. She doesn't know, however, to what extent any of these improvements are the result of maturation.

With regard to the Child's gait trainer, the IEP goal was for the Child to be using it 50% of the day. This was not a matter of improving the Child's ability to use it, but an assurance that the gait trainer would be available to the Child throughout the day. She wanted the Child to be able to use it because she believes that it provides to him a feeling of independence. The Child should have been able to use it during free play in the classroom, however, the classroom was not set up to accommodate the trainer. Ms. Sanborn said that she would rearrange the furniture so that there would be room for the trainer, but she never did so. The Child should have been using the trainer to go up and down the hallways, but Ms. Chambers told her that the Child was walking with an adult instead. She went to the Child's classroom on several occasions and never saw the Child in the gait trainer; one time, the trainer was locked in the OT room and not even available to the Child. Ms. Chambers also told her that there were other times when she was told not to bother with the gait trainer because it was inconvenient at that moment.

She doesn't like the Site, and they don't like her. She doesn't trust them, doesn't trust their communications, and she doesn't think it was the right place for the Child.

VII. Conclusions

Allegation #1: Failure to fully and adequately implement the parties' mediation agreement with respect to provision of aquatic therapy to the Child, enforceable pursuant to MUSER §XVI.3.B(9)

NO VIOLATION FOUND

The mediation agreement provided that the site would provide the Child with forty, one-hour sessions of physical therapy. Nothing was said about whether or not payment for those services could be obtained through MaineCare, as is typically the case. The contract signed by Ms. Champagne provided that Ms. Champagne would bill MaineCare for her services, but that the Site would ultimately be responsible for payment. This is in no way inconsistent with the language of the mediation agreement.

When Ms. Champagne shared with the Child's mother Mr. Armandi's e-mail directing her to bill MaineCare directly, despite their belief that it was at variance with the mediation agreement, neither of them responded to Mr. Armandi. In anticipation of just such a misunderstanding, the mediation agreement obligated the Parents to contact Mr. Armandi in case of any difficulty accessing the PT services. The Parents' failure to comply with this provision prevented Mr. Armandi from addressing the situation and clearing up the misunderstanding. As of the date of Mr. Armandi's interview with the complaint investigator, Ms. Champagne had still not provided to the Site the information needed to process her requests for payment.

Allegation #2: Failure to fully and adequately implement the Child's IEP by leaving the Child alone and unaccompanied by an ed tech in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

No evidence was uncovered in the course of this investigation that the Child was ever left alone while at the Site. The only thing offered by the Parents in support of this allegation is the statement in Mr. Armandi's report that Ms. Chambers had "left her immediate assignment with [the Child] and had to be directed back." There is nothing in this statement to suggest that the Child was therefore alone and uncared for, rather than (as described by Ms. Sanborn) surrounded by his classmates and as many as six staff members, herself included.

Furthermore, Ms. Chambers (offered by the Parents as a person to be interviewed in support of their complaint) denied that she ever did what was stated, and denied ever being aware of a time when the Student was left alone.

Allegation #3: Failure to fully and adequately implement the Child's IEP with respect to provision of OT services designed to address the Child's OT goals in violation of MUSER §IX.3.B(3)

VIOLATION FOUND

One purpose served by the annual goals written in an IEP is to communicate to parents what areas of performance the services being provided to the child will be designed to address. If the goal is for a child to learn to recognize the letters of the alphabet, for example, the parent can reasonably expect that the specially designed instruction provided to the child will involve the letters of the alphabet. In this case, the Parents reasonably expected that the OT services being provided to the Child would involve work with pop beads, stacking rings, toys with knobs and use of a pincer grasp to manipulate small objects, or at least activities closely related to those activities. Instead, Ms. Lajoie spent the majority of the time in the Child's OT sessions building his core strength through walking, swinging and shaking noisemakers to music.

This is not to call into question Ms. Lajoie's judgment that those activities and the building of core strength were appropriate precursors to developing the fine motor skills involved in the goals, but rather to say that upon reaching that conclusion, it was Ms. Lajoie's obligation to request that the IEP Team be convened so that amendments to those goals could be discussed. Making that decision explicit and involving the Parents in a discussion of it might have helped to lessen the Parents' feeling of distrust.

It should be noted that, although Ms. Lajoie did not herself spend a great deal of her time working directly on the goals with the Child, she did guide Ms. Chambers to engage with him in those activities. While that no doubt reduced the harm (if any) to the Child from Ms. Lajoie's shift away from addressing directly the OT goals, it was a provision of consult services that was not identified in the IEP. Based on the services identified in the IEP, the Parents were entitled to expect that the OT, and not the ed tech, would be working with the Child on developing the skills identified in the IEP goals. Again, at an IEP Team meeting, the suggestion that the IEP be amended to include some amount of OT consult services could have been discussed.¹

Allegation #4: Failure to fully and adequately implement the Child's IEP with respect to the Child's use of his gait trainer in violation of MUSER §IX.3.B(3)

VIOLATION FOUND

The problem underlying this allegation is that the goal in question, "[The Child] will use his walker to access his pre-school environment 50% of the school day," was not properly a goal, but should have been included in Section 8 as a supplementary aid. The Child was not

¹ It should further be noted that Section 4 of the Child's IEP, the Present Level of Academic and Functional Performance, did not provide information regarding the Child's present ability to perform the activities that were identified in the annual goals (e.g., the Child presently is able to push together 2 or more pop beads in 2 out of 5 opportunities). This information is key in order to enable assessment of a child's progress towards the goals.

working at improving his use of the trainer from a starting point of, say, 20 % to a level of 50%. Rather, the “goal” was intended to assure the Parents that the gait trainer would be available to the Child throughout the day, and 50% was merely a short-hand way of addressing that assurance.

Each of the persons interviewed for this investigation, with the exception of the Child’s mother, reported seeing the Child use his gait trainer, including Ms. Chambers (although she disagreed with Ms. Sanborn on whether the Child used it in the classroom). A progress report dated September 1, 2012 stated a figure of 30% for the Child’s use of the trainer, a figure with which Ms. Chambers concurred. The IEU asserted that, since it was merely a first quarter assessment, 30 % was a reasonable degree of progress towards the goal of 50%. The problem with this position, however, was that there were no services being provided with the intention of increasing this figure. To the contrary, the Child’s OT and PT had decided that the Child was better served by spending time trying to walk with adult support rather than self-propelling in his gait trainer. Whether this was sound judgment or not, the decision was not reflected in an amendment to the IEP goals, or otherwise the result of an IEP Team decision. Having agreed with the Parents to make 50% use of the gait trainer a goal, a change to this aspect of the Child’s program required the participation of the Parents in the decision-making.

VIII. Corrective Action Plan

There was insufficient evidence of educational harm to the Child resulting from either of the two violations found to warrant the provision of compensatory services. The State IEU Director shall issue to the Site Director and all staff members of the Site involved in the writing and implementation of IEP goals a memorandum, to which is attached this investigation report (sanitized of all personally identifiable information), directing that they review the report and addressing the issues of: the requirement that services delivered pursuant to an IEP be in alignment with IEP goals; the requirement that any material change to those goals, or to the services being provided in connection with the goals, be accomplished through a meeting of the IEP Team; the requirement that services be provided via consultation with other staff only where consultative services are identified in the IEP; and the requirement that present levels of performance stated in an IEP reflect a child’s present ability to perform in those areas described in the child’s goals.

The IEU will document compliance by submitting to the Due Process Office and the Parents a copy of the memorandum and a list of the names and job titles of all those to whom it was delivered.