

Complaint Investigation Report
Parents v. RSU #16

April 11, 2013

Complaint #13.051C
Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Parents
Address
City, Zip

Respondent: Michael Wilhelm, Interim Superintendent
3 Aggregate Rd.
Poland, ME 04274

Special Education Director: Susan Prince

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on January 30, 2013. The Complaint Investigator was appointed on February 7, 2013 and issued a draft allegations report on February 11, 2013. The Complaint Investigator conducted a complaint investigation meeting on March 21, 2013 (rescheduled from the original date of February 25, 2013 at the Respondent's request). On March 28, 2013, the Complaint Investigator received a 4-page memorandum and 2 pages of documents from the Complainants, and a 10-page memorandum and 99 pages of documents from R.S.U. #16 (the "District"). Interviews were conducted with the following: Susan Prince, special education director for the District; Joe Fossett, special education teacher for the District; Tiffany Witherell, speech pathologist for the District; Renne Lamb, school psychologist for the District; and the Student's mother and legal guardian.

III. Preliminary Statement

The Student is xx years old and until May 25, 2012 was receiving special education under the eligibility criterion Autism. This complaint was filed by the "Legal Guardians", the Student's parents and legal guardians, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to evaluate the communication needs of the Student in violation of MUSER §§V.2.B(1)(b) and V.2.C(4);
2. Failure to adequately consider the communication needs of the Student and whether the Student needed assistive communication devices when developing the IEP dated 9/29/11 in violation of MUSER §§IX.3.C(2)(d) and (e);
3. Failure to provide related services in the nature of speech/language services and supplementary aids and services in the nature of augmentative communication assistive technology sufficient to enable the Student to advance appropriately toward attaining her annual goals in violation of MUSER §§IX.3.A(1)(d)(i) and XI;
4. Failure to include within the Student's IEPs dated 9/29/11 and 3/15/12 a statement of measurable annual goals with respect to the Student's communication skills sufficient to meet the Student's communication needs in violation of MUSER §IX.3.A(1)(b)(ii);
5. Failure to include within the Student's IEPs dated 9/29/11 and 3/15/12 a statement of the Student's present levels of functional performance related to the Student's annual goals and objectives in violation of MUSER §IX.3.A(1)(a);
6. Failure to include within the Student's IEPs dated 9/29/11 and 3/15/12 an adequate transition plan providing appropriate measurable postsecondary goals, based upon age-appropriate transition assessments, and transition services needed to assist the Student in reaching those goals, in violation of MUSER §IX.3.A(1)(h);

Ancillary Allegation 1. Failure to review the Student's IEP at least annually in violation of MUSER §IX.3.D(1)(a);

Ancillary Allegation 2. Failure to complete reevaluations of the Student within 45 school days of the parent's consent to evaluate in violation of MUSER §§V.1.A(3)(a)(i) and V.1.B(1).

V. Summary of Findings

1. The Student lives in Mechanic Falls with her parents, the Legal Guardians, and attended Poland Regional High School (the "School") from the start of the 2011-2012 school year until May 25, 2012. After June 2012, the Student was no longer eligible to receive a public education due to her age.

2. The Student has the following multiple severe disabilities in addition to autism: severe cognitive impairment with an IQ of 32 (below the 0.1 percentile) as measured in 2001 by the Stanford Binet test; cortical visual impairment only partially correctible with prescription lenses; and agenesis of the corpus callosum, a neurological impairment that impairs the ability to transfer information between the two hemispheres of the brain. The Student exhibits challenging behaviors including flopping, screaming, hitting and tantrums.

3. The Developmental Profile III assessment was administered to the Student by school psychologist Lori Pendergraft in late 2008 with the following results: physical age – 3 years, 9

months; adaptive behavior – 3 years, 4 months; social-emotional – 2 years, 1 month; cognitive scale – 3 years, 3 months; communication scale – 2 years, 5 months.

4. The Student's IEP dated January 31, 2011, developed when the Student was attending Lewiston High School, contained the following present levels of academic and functional performance (Section 4): "[The Student] is capable of using 1 or 2 words combined to indicate her wants or needs. [The Student]'s academic and social skills are all on a pre-primer to kindergarten level...[The Student] is easily distracted by what is happening around her, and this affects the speed at which she completes tasks...[The Student] is capable of completing some vocational tasks, but again, it may take her a bit longer to complete the tasks than is typical due to her distractibility...Due to her significant defects in communication, social and academic skills, [the Student] will be taught in the self-contained Real World Prep special education class for 8 out of 8 periods."

5. The IEP contained the following communication goal: "By January 2012, [the Student] will increase her communication skills by gaining people's attention in an appropriate manner, and by increasing the length of her utterances in 95% of opportunities (increasing from the current level of 60%)," and the following vocational goal: "By January, 2012, given vocational experiences in the school and in the community, [the Student] will increase her ability to complete work with a "check +" rating for quality, speed and effort in 90% of opportunities (up from the current 70%) as measured by classroom data collection." The IEP also included one behavioral goal. The services provided under the IEP were specially designed instruction, 20 times per week for 1 hour and 20 minutes, along with ESY services and special transportation. No supplementary aids or services or program modifications were provided.

6. The transition plan under the January 31, 2011 IEP (Section 11) provided that informal situational assessments for vocational skills were to be completed (11c), that the Student and her family "would most likely benefit from having a case manager to assist them in her transition," (11e) and that the Student "will benefit from any instruction geared towards helping her to achieve independence. Communication/social skills, cooking skills and vocational skills top the list." (11e).

7. The Student transferred to the District from the Lewiston School Department during the summer of 2011. On September 13, 2011, the District issued a Written Notice of Implementation of an IEP for a Transfer Student, indicating that the Student would be receiving her education program, consistent with the existing IEP, in the functional life skills ("FLS") program until an IEP Team meeting could be held.

8. On September 22, 2011, the Student's IEP Team met and determined to adopt the existing IEP from Lewiston, given a new effective date of September 29, 2011 and in effect until January 30, 2012. The IEP Team also made the following determinations: the Student would be referred to Vocational Rehabilitation-Bureau of Rehabilitation for the Blind; the Legal Guardians would explore day habilitation placements for the Student; the Legal Guardians would contact a case manager to make a referral for adult case management services; the division of eye care would be contacted for support and a possible evaluation; and assessments would be performed including adaptive behavior, functional communication and

a classroom observation. The Legal Guardians signed the consent form for the assessments on November 18, 2011. February 11, 2012 was 45 school days from that date.

9. On September 29, 2011, Thomas Van Tassel from Vocational Rehabilitation, at the request of the Student's teacher Joe Fossett, spoke with the Student's mother and e-mailed to her information about the DHHS Office for Adults with Cognitive and Physical Disabilities.

10. The Student's IEP was amended on October 31, 2011, by agreement without an IEP Team meeting, to add speech consultation services for 30 minutes per month.

11. A progress report dated January 23, 2012 showed the Student making insufficient progress with regard to the goal of gaining people's attention 80 % of the time (she was using shoulder tapping 50% of the time), and stated that the Student had been using her words more (with prompting), using one-word utterances and two-syllable words.

12. The assessments ordered by the IEP Team were completed as follows: a functional vision assessment was completed on January 18, 2012; classroom observation was completed on January 24, 2012 (with findings as to speech/language all in the low/below average range, with the Student utilizing effective methods of communication 30% of the time compared to 80% for her peers); an augmentative communication assessment was completed on February 1, 2012; and an adaptive functioning evaluation was completed on February 6, 2012 (with findings that the Student's adaptive functioning skills continued to be at levels considered severe and global in nature). An IEP Team meeting scheduled for February 8, 2012 to review the results of the assessments had to be rescheduled to March 15, 2012 because the augmentative communication evaluation report was not furnished to the District until February 21, 2012.

13. The recommendations in the augmentative communication evaluation report included: continued visual supports for the Student within her classroom, including the picture symbol system being used; use of a picture symbol daily schedule; use of Dialogue Specific Displays (visual representations of vocabulary specific to a certain activity); and a three week trial period, during which data would be collected, using an iPad with the apps Go Talk Now and TapSpeak Choice.

14. At the March 15th IEP Team meeting, Mr. Fossett reported that the Student was being reinforced to use the "all done," "break," and "walk" signs and/or pictures in place of shouting "No!" or violent gestures, that extreme physical hitting behavior had been reduced, and that the amount of time it was taking the Student to resume on-task behavior after becoming upset had been greatly reduced. The Team reviewed the recently completed assessments and determined to maintain the Student's placement and program, adding to the IEP a communication goal and a behavioral goal. The Team also determined to have a person familiar with the iPad apps recommended in the augmentative communication evaluation come to the School and show staff how to use the apps effectively. The Student's transition plan was reviewed, and the Legal Guardians were encouraged to visit adult service providers and to make connections with adult services case management. The Student's adult services

case manager, Sherry Poland, was invited to attend the March 15th IEP Team meeting but did not do so.

15. The Student's IEP dated March 15, 2012 stated, with regard to the Student's needs (Section 3.D): "[The Student] currently uses PEC's and some signs for communication. She will attempt to use an ipad to experiment apps for functional communication." To the present levels of academic and functional performance (Section 4) was added "[The Student] is learning functional sight words (women, men, stop, lunch, exit, school, eat) as well as days of the week. More functional sight words are being introduced to [the Student]." To the Student's communication goal was added the following objective: "[The Student] will become familiar with and use an Augmentative & Alternative Communication device by 6/3/2012." Section 8 of the IEP listed 13 supplementary aids and services or program modifications, including use of augmentative communication and visual schedule (pictures and words). In view of the stated intention for the Student to continue to live with the Legal Guardians after she was finished with school, the Student's transition plan, at Section 11e ("Post-School adult living objectives"), was changed to reference exploration of possible "day habilitation placements" in place of "living arrangements."

16. On or about May 7, 2012, the Student was provided with an iPad on which was loaded the GoTalk software.

17. A progress report dated June 15, 2012 reported adequate progress on the Student's communication goal, stating: "[The Student] used one-word utterances and did not echo 2-3 word utterances when prompted. However, she became familiar with using an iPad which made a significant difference in her communication with people during her last 3 weeks of school." With regard to progress on the behavioral goal, the report stated that after the iPad was introduced, the Student's behavioral episodes "decreased dramatically as her desires were more clearly identified as well as communicating her feelings and schedule changes."

18. On May 29, 2013, Ms. Prince met with the Legal Guardians and the Student's new adult services case manager and agreed to allow the Student to borrow the iPad for an additional three weeks, and to provide weekly speech services to the Student. Those services, in the amount of one hour per week, began on July 26, 2012 and have continued to be provided since that time.

19. During an interview conducted by the Complaint Investigator with Renee Lamb, Ms. Lamb stated the following: She is a school psychologist for the District, and was asked to perform an adaptive evaluation of the Student. The evaluation consisted of analysis of rating scales completed by the Student's mother and by Mr. Fossett. The Student obtained raw scores in the range of 0 to 31, but given her age of xx, the scaled scores were 1 in all dimensions. It is very unusual for someone to receive such low scores across all dimensions, and indicates severe and global delays. The Student's profile is very complex – very delayed, with a diagnosis of autism.

It is well understood that, for students with autism, early intervention is very important. While she understands the Legal Guardians' concerns, she believes they would have been better addressed when the Student was younger.

20. During an interview conducted by the Complaint Investigator with Susan Prince, Ms. Prince stated the following: She is the special education director for the District. She first became aware that the Student was entering the District on or about August 28, 2011, and she set up a transfer IEP meeting. At the meeting, the Student's mother said that the family had been in Lewiston for less than a year before recently moving to the District. She said that she wanted the transition for the Student to be as smooth as possible. There was discussion about the fact that the Student would be aging out at the end of the school year, and she asked the Student's mother whether the Student had an adult services case manager. The Student's mother said that she hadn't done anything about that, but that she wasn't worried because the Student was just going to continue to live at home after she completed school. She told the Student's mother that it takes time to make a connection with adult services agencies.

At the meeting, the staff was concerned that there were no speech services provided as part of the Student's IEP. The Student's mother said that the Student had been exposed to PECS in the past, but the Student just got frustrated and threw them. The Student's mother said that for now, she just wanted the Student to get settled in. She told the Student's mother that there was new technology available to help someone like the Student, and suggested that the District could order an augmentative communication evaluation in addition to several other assessments. The Student's mother asked that she contact her later about that. The District didn't receive a signed consent for the evaluations (dated November 18, 2011) from the Legal Guardians until November 25, 2011. She scheduled an IEP Team meeting to review the assessments within 45 school days from the date of the Legal Guardians' consent, but it took AllTech a long time to schedule the augmentative communication evaluation, and then 20 days to send in its report, so she had to reschedule the meeting.

Soon after the meeting, she spoke to the Student's mother about adding speech/language consulting services to the Student's IEP. The Student is a severely impaired adult (in her 30 years of special education experience, the Student is among the top three most significantly disabled students she has encountered), and she felt that a speech/language pathologist ("SLP") could provide some guidance and strategies to the teachers working with the Student. At the same time, as the Student was so limited and was prone to challenging behaviors, she didn't want to disrupt the Student's day with pull-out direct services. She also considered that the District was only going to have a short time with the Student. The Student's life skills program, however, is a very language-based program, modified to meet the needs of each student. Those students work non-stop on communication skills. The Student's program also includes a therapeutic swim program in which an OT, a PT and an SLP participate, so the SLP would have the opportunity to provide support to the Student in a community setting. In addition, as they were going to move forward with the augmentative communication evaluation, consultation with the SLP would be very helpful if and when the Student was provided with a device.

While the District was waiting to receive the iPad for the Student, the Student had access to iPads in her classroom. It took some time until they received the Student's iPad, which had a special case to prevent breakage. Shortly after the iPad was delivered, she saw the Student in the classroom and the Student, with cueing from a teacher, was able to navigate on the iPad to

provide answers to simple questions. As with learning any language, it takes more than a couple of weeks for a student to become independent. In the classroom setting, the Student had the attention of adults almost constantly. When she visited the Student's home after the Student had stopped coming to school, the Student was just sitting on the couch playing with the iPad like a toy, instead of using it for communication. She knew this wasn't a good thing for the Student, and she offered to provide one hour per week of speech/language service. The SLP reported, however, that the family wasn't accessing the iPad very much, so she had gone back to working with PECS.

With regard to the Student's IEP goals, the Student's behavior (becoming agitated and aggressive) was a major issue, so they decided that it was very important to retain the goal of enabling the Student to get a staff member's attention in an appropriate fashion. Staff was spending a significant amount of time during the day getting the Student calmed and able to return to her activity. If the Student was going to make any progress during the year, the Student was first going to have to improve in asking for help so she could avoid getting agitated and having a meltdown. The IEP Team discussed this goal and agreed that it was a pretty significant life skill, and that the Student's greatest needs were attention getting, behavior and expressing herself.

With regard to assessing the Student's communication needs, the Student wasn't able to access any of the typical evaluations. The Student could understand and follow some directions, but she wasn't able to express her needs. Mr. Fossett, at the transfer IEP Team meeting, was able to describe the Student's communication needs and communication style. By that time, he was already working with the Student using PECS. From what she heard and saw, it seemed to her that technology was likely to be the most helpful thing for the Student; if she wasn't able to use speech by that time, she wasn't likely to acquire the ability in her last year unless technology made the difference.

With regard to transition, the Student is functioning at a two-year-old level, and there are not many vocational opportunities available to her. At the IEP Team meetings, the staff said that the Student needed a structured living situation, but the Student's mother was clear that the Student was just going to be living at home. Then the staff said that the family needed to look into day habilitation programs for the Student. The Student was at the IEP meetings, but she wasn't able to share information about what she would like to do. With regard to assessment of vocational skills, the Student is not capable of taking a standardized assessment. Mr. Fossett does an informal assessment in his classroom, however. The students wash dishes after cooking activities, they wash tables, sort silverware, do classroom chores and take out trash. Mr. Fossett gauged how independent the Student was capable of being. The Student was very successful at washing tables, and is now doing this at the elementary school on a volunteer basis (with support from her mother). She wouldn't have included volunteering in the Student's transition plan, because she knew that the Student couldn't do that sort of thing independently, and she didn't know that the Student's mother was available and willing to supervise the Student.

She and the Student's mother had great rapport all through the 2011-2012 school year. Then school ended, the Student had nothing to do and she got really frustrated. The Student saw the

school bus go by, and didn't understand why she wasn't going to school, too. The Student's mother called her and asked her for help. She thinks that if the Student's mother had gotten a case manager for the Student in advance as she had suggested, this complaint might not have been filed.

21. During an interview conducted by the Complaint Investigator with Joe Fossett, Mr. Fossett stated the following: He is a special education teacher at the School, and had the Student in his class during the 2011-2012 school year. He had the Student and the Student's mother come to the School before the school year started. At that time, he had no records of the Student's abilities, but he realized right away that the Student had severe communication needs. There were only a few words that the Student could say, including "fun," "lunch" and "no." He couldn't use any of the usual communications assessment tools with the Student. The Brigance Inventory, for example, involves identifying words and coins, and telling time. The Student has none of these skills, and wouldn't have been able to respond. He asked the Student's mother whether she had a communication system in place for the Student, and the Student's mother said that she had used a PECS system in the past, but the Student made a mess of the pictures and threw them around. He suggested that we could start with a picture communication system just for some of the basic things.

When he finally got records from Lewiston, the records showed that they had been working with the Student on putting together two and three-word sentences, with adequate progress on two-word sentences and limited progress on three. He continued to work on three-word sentences with the Student, particularly "I want..." in an effort to enable the Student to get her needs met. He also worked with the Student on communicating "All done" when she wanted to stop doing an activity, instead of banging on or pushing the table, which made him worry about the safety of the other students. The Student could recognize some words. He would put three words in front of the Student and ask "Which one is ___?" The Student could pick up the word and hand it to him.

He started the year with building a PECS system for the Student. At first he used black and white images, but discovered that the Student responded better to color images, and better to photographs than drawings. Ms. Witherell helped him with developing the PECS system, and worked with him on creating PECS using the Boardmaker program. She consulted with him about how to set up the Student's day, to break it down into parts so the Student would know what to expect. The Student made some progress with using the PECS system, but he wanted to see more.

The Student's functional vision assessment helped identify the kind of materials that were best to use for the Student. For example, he began presenting word cards to the Student on an easel rather than on the table. He also confirmed that he was using the appropriate sized print with the Student, and he enlarged the size of the icons on the iPad.

After the iPad was delivered, he downloaded directions from AllTech and tried out the two programs (TapSpeak and Go Talk Now). He found that the TapSpeak program had a lot of pre-programmed elements that made it difficult to find what you were looking for. With Go Talk Now, he could start very small and gradually increase the number of elements. Also,

with Go Talk Now he could increase the size of the buttons, and this was important because the Student had a visual impairment.

Once the Student started working with the iPad, he felt that she made adequate progress towards her speech goals. By the end of the year, the Student could scroll through the iPad to communicate how she was feeling. He was able to put the Student's schedule on the iPad so she could see what was coming later in her day. Before, when the Student would grab her bag to get something, he would ask the Student "What do you want?" while giving the Student four PECS to choose from. Sometimes she would choose one, but sometimes she would just get angry and bang the table. The iPad gave the Student many more choices, and she would look for what she wanted by sliding her finger along the screen. This seemed to act as a replacement behavior for banging on the table.

After the Student began to use the iPad, the Student definitely had more good days and fewer outbursts. When the Student came into the class in the morning, if the iPad wasn't there she would go and look for it and be upset until she found it. At the point that the Student left the School, she was still in the early stages of learning how to use the iPad; she still needed some prompting. He got permission from AllTech to allow the Student to take home the iPad on a trial basis, and then AllTech agreed to transfer the loan agreement from the District to the Legal Guardians for at least three weeks.

With regard to transition, he first of all tried to develop a program to improve the Student's functional communication. He also provided work training to the Student in both the classroom and the cafeteria setting. The jobs included washing tables, sharpening pencils, sweeping floors (which was difficult for the Student due to her visual impairment), moving and stacking chairs, setting the table for meals, and filling silverware containers, napkin bins, and coolers. Part of this experience was simply learning how to follow directions. Although the Student couldn't work independently, he believed that the Student would benefit from employment in the more structured and supportive environment of a sheltered workshop. At the meetings, they talked about the family exploring workshop settings, but he never heard that the family did that. He hadn't heard about long waiting lists, and he didn't hear from the family that they were having that sort of problem. He had a somewhat similar student a few years ago that was able to be placed in a workshop program within a couple of months of applying for it.

22. During an interview conducted by the Complaint Investigator with Tiffany Witherell, Ms. Witherell stated the following: She is a speech/language clinician for the District. Before the Student first came to the District, the Student hadn't been receiving any speech/language services. She asked Mr. Fossett to find out what Lewiston had been doing with the Student, and if the District could obtain their system. He found out that there had been a PECS program which was not very elaborate, but Lewiston didn't want to provide it to the District. The Student's mother said that she didn't want too much, too early in terms of services for the Student, so the District decided to offer speech/language consult services. With high school students, it's often more effective for her to work with the ed tech, who can then continue the speech/language work throughout the day. She also wanted to have AllTech do an evaluation of the Student. AllTech could recommend what would work best for the Student, especially

because the Student's vision was an issue. The Student had very limited communication skills, and the Student needed to become able to communicate before she could do any further assessment of her needs.

She was in the Student's classroom four days a week, and was part of the staff during the class swim program. She worked with the Student on communicating in the pool and while getting dressed. She helped Mr. Fossett develop a PECS system for the Student, and they tried to get the Student to use the PECS as much as possible. She worked on developing a picture schedule, and on having the Student make choices using PECS. The Student made a lot of excess noises, like burping, and she suggested strategies to try to curb that behavior (with little success). They tried to have the Student work with a computer, but she didn't know whether the Student's vision was a barrier (which was why they needed the AllTech evaluation).

With regard to the communication goal, it's common for the new district to adopt the IEP of the previous district until they have more experience with the student. The Student often did things to get attention, but not deliberately to get one person's attention and not in an appropriate way. Having the Student be able to communicate her wants and needs is a basic skill.

She worked with Mr. Fossett and the ed tech to some extent on the Go Talk Now program, but by the time they had it there was only one month before the Student finished school. She was not specifically familiar with that program, but all of these systems are fairly similar. She observed that the Student was often not using the program effectively – was just pushing buttons - and she saw the ed tech trying to teach her how to use it. She didn't see the Student become able to effectively use the program by the time she left school. She has heard that the Legal Guardians purchased an iPad after school ended, but that the Student is still not very competent with it and the Student's mother is feeling frustrated.

The Student's progress over the year was quite limited. It was often difficult getting the Student to engage in activities. The Student was not overly interested in communicating most of the time. She does think that the Student was interacting more with staff and her peers by the time the year ended. The Student became interested in being part of the classroom socially. The Student loved being there, and loved the pool, where she was the most social. It was difficult for the District, with the Student coming in at age xx and with no speech/language services before that. There were so many obstacles and so little time to overcome them.

23. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: The Student received speech services when she was xx and the family lived in Arizona, and may have received speech consult services when the family lived in California. When the Student was in Lewiston, she was just getting the life skills program – no speech services. She used to be able to understand the Student a little more, and didn't think that speech services were necessary. She started to lose the ability to understand the Student while the family was still in Lewiston. She thought this was her problem, not that there had been a change in the Student. She didn't know what could be done

about that. She didn't ask the District for speech services at the September 22, 2011 IEP Team meeting, but she said she was concerned about the Student's being able to communicate.

When the subject of an augmentative communication evaluation came up during the September 22nd meeting, she warned the staff that an electronic device might be too high-tech, too difficult for the Student to use. She agreed to go forward with the evaluation, and assumed that doing the evaluation was the right thing to do, but then nothing happened. She finally received a consent form on November 17, 2011, and sent it back signed the next day. She didn't contact the District to ask why the evaluations weren't proceeding because she assumed they knew what they were doing. In January 2012, she warned the District that it was too late to be getting started with the evaluations because by the time any programs got put in place there wouldn't be enough time left for the Student to receive any benefit. She believes that the District was just using the Student in order to get an iPad into the School.

The District didn't receive the iPad until early May 2012, only a few weeks before the Student had to leave school. She signed a permission form to allow the iPad to come home with the Student, but the Student didn't come home with it. The Student would start to become upset as soon as the bus dropped her off at home, and the Student's father figured out it was because she didn't have the iPad. She called Mr. Fossett to ask about this, and he said that the iPad was on loan to the District, and the form she signed only related to the period after the trial period was over. When she pointed out that this would be after the Student had left school, he offered to look into it. Ultimately, Mr. Fossett set it up so that the family could continue the last 1½ months of the trial period at home after school ended.

When they finally got the iPad at home, they found out that the Student didn't know how to use it. The Student didn't know how to turn it on, or how to press the icons to get what she needed. The last progress report said that, as a result of the iPad, the Student's behavior had greatly improved, but she saw no evidence of that. After the trial period ended, the Student still didn't know how to use the iPad, but it was very entertaining to the Student and she was upset without it, so they decided to buy one. As the Student was finding it so difficult to use the iPad, Ms. Prince suggested that a SLP come to the home once per week to help with it. It turned out, however, that the Student didn't even want to use it to communicate. It was too difficult for her to use, too high-tech. The Student needs a simple system, and the iPad is too distracting. Now the SLP works on the Student's speech mechanics, to try to get the Student to speak more clearly. She has tried to use a PECS system with the Student, but she needs a system where the Student isn't able to pull the pictures off the Velcro and throw them around. She made a PECS system of about five pages, with simple requests (hurt, hungry, tired, etc.), but the Student doesn't really use them. She has been told that children with autism don't really want to communicate.

With regard to the Student's IEP communication goal, she thought it seemed "dumbed down" a little. The Student was able to find ways to make her needs known with the Legal Guardians. After Lewiston taught the Student to tap people on the shoulder to get their attention, the Student kept tapping them on the shoulder, but then she didn't have the gestures or words to communicate what she wanted. The goal should have focused on communicating wants and needs, rather than on getting people's attention.

With regard to transition, the District gave her the information regarding who to contact to get the Student lined up with adult services. She spoke with those people throughout that year. She met with Mr. Van Tassell from vocational rehabilitation who said that there were no work settings that provided the amount of structure the Student needed, and she reported this to Mr. Fossett. On October 30, 2011, Ross Leavitt from DHHS came to her home and was supposed to send her paperwork. When she didn't receive it, she contacted his office, and was told that Mr. Leavitt was on sick leave and that someone else would take over. She still didn't get any paperwork until finally she got a letter stating that the Student was eligible for services, along with a list of agencies she could contact to arrange for services. She started with NFI North, and a case manager (Ms. Poland) was appointed sometime around January 2013. The case manager kept making appointments to meet with the Student and then not showing up, which was upsetting to the Student, so she changed to another agency (Opportunities Enterprises) around May 2013. Meanwhile, she was contacting various day habilitation agencies, and was told that there wasn't enough funding in the state of Maine, so the Student was placed on waiting lists.

The District gave her information on who to contact, but they knew that the Student wasn't able to be employed, and they should have known that the habilitation agencies had waiting lists. She finally contacted the Elm Street School in her neighborhood and inquired about having the Student volunteer there to clean tables. After checking with Ms. Prince and the District superintendent, Elm Street School agreed to let the Student come to the school. She goes to the school with the Student every day, and she does most of the cleaning. She's going to reduce the schedule to three days a week, because she has her own things that need to get done. She thinks that the District could have set up something like this. Given that there were no day programs with available space, they should have switched tactics and considered volunteering opportunities. That's all the Student really needs, so that she feels like she's part of society.

VI. Conclusions

Allegation #1: Failure to evaluate the communication needs of the Student in violation of MUSER §§V.2.B(1)(b) and V.2.C(4)

Allegation #2: Failure to adequately consider the communication needs of the Student and whether the Student needed assistive communication devices when developing the IEP dated 9/29/11 in violation of MUSER §§IX.3.C(2)(d) and (e)

Allegation #3: Failure to provide related services in the nature of speech/language services and supplementary aids and services in the nature of augmentative communication assistive technology sufficient to enable the Student to advance appropriately toward attaining her annual goals in violation of MUSER §§IX.3.A(1)(d)(i) and XI

Allegation #4: Failure to include within the Student's IEPs dated 9/29/11 and 3/15/12 a statement of measurable annual goals with respect to the Student's communication skills sufficient to meet the Student's communication needs in violation of MUSER §IX.3.A(1)(b)(ii)

Allegation #5: Failure to include within the Student's IEPs dated 9/29/11 and 3/15/12 a statement of the Student's present levels of functional performance related to the Student's annual goals and objectives in violation of MUSER §IX.3.A(1)(a)

NO VIOLATION FOUND

The Student, a multiply handicapped individual with severe and global delays across all dimensions, came to the District for her final year of schooling. Given the relatively scant information that the District had regarding her previous educational programming, the Student's IEP Team reasonably determined to adopt the then-current IEP. The Legal Guardians did not disagree with this determination, the Student's mother having been focused on providing a smooth transition. In addition, the District decided to proceed with a number of evaluations (functional vision assessment, adaptive functioning assessment and classroom observation) intended to provide information that could guide the development of the Student's educational program. In view of what appeared to be minimal progress by the Student toward her communication goals in the past, the District also recommended that an augmentative communication evaluation be conducted to see whether technology might provide a better outcome.

The Legal Guardians allege that the District should have done more to assess the Student's communication needs, but it is not clear what further assessments were appropriate for and likely to be of benefit to the Student. The Student's ability to communicate was so limited that any of the more typical assessments were of no practical use. One area that had apparently not been evaluated was the use of augmentative communication devices. Given that the Student had been receiving special education services for most of her life and still had only the most rudimentary communication skills, the decision to try something different was eminently reasonable, even if the Student's mother was skeptical that the Student would be able to benefit from the technology. The District's determination to proceed with the augmentative communication evaluation demonstrates that this subject was considered, and the device was eventually provided as a supplementary aid.

While it took a considerable amount of time for AllTech to deliver the device ready for the Student's use of it, and although the District remained responsible for providing it in a timely manner, there was nothing more the District could do to speed up the process. Once the device arrived, Mr. Fossett promptly became acquainted with the apps, selected the one that best suited the Student, modified the icons to adapt them to the Student's visual impairment, and then began to use it with the Student. In the three weeks that the Student had the use of the device, Mr. Fossett saw definite improvement in the Student's ability to communicate her wants and needs, and in the Student's behavior. The fact that the Student was unable to demonstrate these things at home appears to have more to do with the differing levels of support the Student was able to receive at school and at home – after only three weeks, the Student was not independent in her use of the device. In any event, the Student's mother, after further efforts were made to train the Student in the use of the device, concluded that the device was too complex and distracting to be of real use to the Student as a tool for communication. Any delay in the Student's becoming trained on the device, therefore, was ultimately of no meaningful consequence.

With regard to the communication goals in the Student's IEP, the District staff considered that addressing the Student's behavioral challenges was of primary importance, and that the Student's inability to have her wants and needs met was to a large extent what was driving those behaviors. Therefore, the District reasonably decided to continue the focus on improving the Student's ability to get the attention of an adult in an appropriate manner, and then communicating her wants or needs in simple two or three word sentences. Once the determination was made to acquire the iPad and software for the Student, a second goal was added addressing the Student's learning how to use it.

It is apparent that there were other activities in the classroom that addressed the Student's communication needs (e.g., developing a PECS system, increasing sight word vocabulary, replacing shouts or violent gestures with words or signs), and these could certainly have been incorporated into IEP goals, but the absence of such explicit goals did not deprive the Student of FAPE. These activities do refute the allegation that the Student was not receiving adequate special education services. While the Student's progress in regard to these services may have been slow, this was the pattern historically, and the reason for the District's decision to evaluate the Student for augmentative communication technology. The Student's mother herself suggested that the Student, perhaps as a function of her autism, was basically uninterested in communicating.

With regard to the present levels of functional performance in the Student's IEPs related to her annual goals and objectives, the Student's mother was unable to articulate any particular complaint on this subject. While it is true that the statements in the IEPs are somewhat general and not focused specifically on the IEP goals, each IEP goal contains within it the Student's then present level of performance. For example, the communication goal states that the Student is presently able to gain someone's attention in an appropriate manner 60% of opportunities, with the goal being to increase performance to 90%. Likewise, the instructional goal includes the statement that the Student presently is able to complete work with a "check +" rating 70% of opportunities, with the goal being to increase performance to 90%. While the preference is to place the current levels in Section 4 of the IEP, this amounts to no more than a technical violation without impact on the quality of the Student's educational program.

Allegation #6: Failure to include within the Student's IEPs dated 9/29/11 and 3/15/12 an adequate transition plan providing appropriate measurable postsecondary goals, based upon age-appropriate transition assessments, and transition services needed to assist the Student in reaching those goals, in violation of MUSER §IX.3.A(1)(h)

NO VIOLATION FOUND

The section of the September 29, 2011 IEP containing the Student's post-secondary goals (Section 11(b)) appropriately states, with regard to independent living skills, that the Student plans to live with her parents, meaning that independent living is not anticipated. As to employment, the transition plan states that the Student will explore day habilitation programs and will be referred to vocational rehabilitation. This is more a statement of the services /community experience needed to assist the Student in achieving her goals. The goal might better have been stated as "The Student will participate in day habilitation programs." As to

training/education, the transition plan states that the Student will participate in the FLS program, where she will continue to learn certain functional skills. Again, this is not truly a goal, but a statement of instruction to be provided to assist the Student to attain her goals. The goal would reference any training or education the Student hoped to receive after school. To the extent that any training programs were believed to be available and suitable for the Student post-secondarily, such programs should have been referenced in that section.

Having observed that not all of the transition goals stated in the Student's September 29, 2011 IEP were appropriately stated as goals, the totality of the transition plan nevertheless provided an adequate and appropriate framework for preparing the Student for life after school. It is undisputed that the Student was not capable of employment or of independent living. Referrals to day habilitation programs, vocational rehabilitation, and an adult services case manager were all appropriate and necessary, and the continuation of the FLS program for the remainder of the Student's school year, with the emphasis on communication skills and skills such as washing tables and dishes, setting tables, putting away straws and silverware (more for the experience in following instructions and completing tasks), was also appropriate. The Student's performing of these various tasks in her FLS program also served as the informal situational assessment of vocational skills referenced in Section 11(c) of the IEP. As the Student was incapable of employment, any more formal assessment would have been inappropriate and, given the Student's very limited skills, unworkable.

It is unfortunate that the Student's mother was unsuccessful in finding a day habilitation program with an opening for the Student beginning soon after the end of school, but this is a circumstance beyond the control of the District. It may well be that an earlier start in this process (meaning during the 2010-2011 school year) would have yielded a more satisfactory result, but again, this is not something for which the District can be held responsible. As for the school year here in question, the Student's mother was understandably upset with the District's intimation during this investigation that she had failed to follow up on the District's suggestions in a timely manner, but it also appears that the Student's mother did not share with the District the results of her ongoing efforts.

The complaints of the Student's mother ultimately boiled down to the idea that the District should have anticipated the lack of availability of day habilitation programs for the Student, and set up volunteering opportunities for the Student after the end of school. As to this complaint, first, the District did emphasize to the Student's mother that putting the pieces in place for a successful post-secondary experience took time (although there was nothing much more that either of the parties could do about this at the time). Second, although the District might have raised the possibility of volunteering as a temporary measure until the desired programs could be secured for the Student, as pointed out by Ms. Prince, such an arrangement would require that someone from the Student's family supervise the Student and the District couldn't assume that this was feasible or acceptable to the Legal Guardians. In any event, the omission of such a discussion did not render the transition plan legally deficient.

Ancillary Allegation 1. Failure to review the Student's IEP at least annually in violation of MUSER §IX.3.D(1)(a)

Ancillary Allegation 2. Failure to complete reevaluations of the Student within 45 school days of the parent's consent to evaluate in violation of MUSER §§V.1.A(3)(a)(i) and V.1.B(1)
VIOLATION FOUND

When the Student's IEP Team met on September 22, 2011, they determined to adopt the Student's then current IEP dated January 31, 2011, giving it a new effective date of September 29, 2011 but retaining the annual review date of January 30, 2012. The District was therefore required to hold an IEP Team meeting to conduct the annual review of the IEP no later than January 30, 2012. The District did not hold this meeting until March 15, 2012, putting off the meeting until it had received all the reports of the assessments that had been conducted of the Student. While it is understandable that the District wanted this information before making determinations regarding the Student's education program, the law requires that the annual review be held in a timely fashion.

The IEP Team should have met by no later than January 30, 2012, reviewed whatever information was then in their possession (including reports from teachers and other providers), and developed an IEP for the Student. Once the remainder of the reports became available, another IEP Team meeting should have been convened to consider those results, with any amendments necessary made to the IEP developed at the previous meeting.

At the same time, the District was under an obligation to complete and review the assessments to which the Legal Guardians gave their consent on November 18, 2011 within 45 school days. The District had scheduled an IEP Team meeting for February 8, 2012 to fulfill this requirement, but then cancelled and rescheduled the meeting due to delay in receiving the augmentative communication evaluation report, even though the reports of the remaining assessments were available by that date. Although the District's preferences for holding only one meeting to review all the assessments was understandable, the District was obligated to go forward with the February 8, 2012 meeting, review those assessments for which reports had been obtained, make any necessary amendments to the Student's IEP, and then schedule a further meeting to consider the final assessment.

Nothing was uncovered in this investigation to suggest that the delay in performing the annual IEP review or in reviewing the results of the various assessments resulted in a deprivation of FAPE to the Student.

VII. Corrective Action Plan

The District shall issue to all its special education staff members a memorandum addressing the issues of: the requirement that annual review of the IEP take place by the annual review date (364 days from the effective date of the IEP) regardless of the unavailability of any outstanding evaluation reports; and the requirement that IEP Team meetings be held to review the results of completed evaluations within 45 school days of the receipt of parental consent for the evaluations regardless of the fact that one or more additional evaluations have not been completed within that time frame.

The District will document compliance by submitting to the Due Process Office, the Legal Guardians and counsel for the Legal Guardians a copy of the memorandum and a list of the names and job titles of all those to whom it was delivered.