

**Complaint Investigation Report**  
**Parent v. Acton**

November 26, 2012

Complaint #09.023C  
Complaint Investigator: Jonathan Braff, Esq.  
Date of Appointment: October 24, 2008

**I. Identifying Information**

Complainant: Parent  
Address

Respondent: Brian Beeler, Superintendent  
700 Milton Mills Rd.  
Acton, ME 04001

Special Education Director: Sandra Warden

Student: Student  
DOB: xx/xx/xxxx

**II. Summary of Complaint Investigation Activities**

The Department of Education received this complaint on October 24, 2008. The Complaint Investigator was appointed on October 24, 2008 and issued a draft allegations report on October 29, 2008. The Complaint Investigator conducted a complaint investigation meeting on November 5, 2008, resulting in a set of stipulations. On November 11, 2008, the Complaint Investigator received a one page memorandum and list of proposed interviewees from the Student's mother (the "Parent") and on November 12, 2008 received 80 pages of documents and a 2 page memorandum from the Acton School Department (the "District"). Interviews were conducted with the following: Sandra Warden, special education director; Amy Northrup, teacher; Susan Ottey, educational technician; Tyler Putnam, teacher; Jaclyn Nutter, teacher; Tracy Scully, teacher; Lisa DeWitt, teacher, and the Parent.

**III. Preliminary Statement**

The Student is xx years old and was found eligible for special education services under the eligibility criterion Other Health Impaired on September 21, 2005. This complaint was filed by the Parent, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

**IV. Allegations**

1. Failure to review the child's IEP at least annually in violation of MUSER §IX.3.D(1)(a);
2. Failure to provide the reading program described in the IEP in violation of MUSER §IX.3.B(3);
3. Failure to conduct necessary reevaluations in order to ensure the child is making adequate progress in violation of MUSER §V.1.B(1)(a);
4. Failure to provide a free appropriate public education in violation of MUSER §II.11 and 34 CFR §300.101(a).

**V. Stipulations**

1. The Student's IEP in effect during the 2007-2008 school year expired on September 18, 2008; a new IEP was not created until September 24, 2008.
2. The Student's academic and language development re-evaluations were not completed by the time of the September 18, 2008 IEP Team meeting, and were not provided to the Parent until less than 3 days before the September 24, 2008 meeting.
3. The results of the Student's 2008 academic re-evaluation showed that he was reading 3 years below grade level.
4. The last evaluation prior to the Student's 2008 evaluation was performed in 2005.

**VI. Summary of Findings**

1. The Student, who is xx years old and lives in xx with his mother, was found eligible to receive special education services under the eligibility criterion of Other Health Impaired on September 21, 2005.

2. At the time of the Student's initial evaluation in 2005, upon his entering xx grade, the Student's standard scores on the Woodcock Johnson III test were: broad reading 87, with a grade equivalency of xx, putting him in the low average range; broad written language 89, with a grade equivalency of xx, putting him in the low average range; and overall academic knowledge score 83, with a grade equivalent of xx, putting him in the low average range.

3. The Student's initial IEP dated September 21, 2005 required 2 ½ hours per week of direct instruction with a special education teacher, both in the regular classroom and special education classroom, and 3 ½ hours per week for 4 weeks during the Extended School Year specifically using the Wilson Reading Program.

4. As of June 6, 2006, the Student was reported to have made consistent progress toward accurately reading in DRA Reading Program Levels 20, 24, 28 and 30 books.

5. In his September 25, 2006 IEP, as he entered xx grade, the Student was reported to be reading at a xx grade level based on a Spring 2006 Developmental Reading Assessment.
6. The Student's 2006 IEP required the same amount of direct instruction with a special education teacher as the prior year, with the Extended School Year program increased to 4 hours per week.
7. As of June, 2007, the Student was reported to have made consistent progress toward accurately reading in DRA Reading Program Levels P (38), Q, R, S, and T books.
8. In a Student Progress Report that measured the Student's progress in reading and language usage from Fall of 2006 to Fall of 2007, the Student's Northwest Education Association ("NWEA") score in reading went from 184 to a high of 192 in the Spring of 2007, and then ending at 178, for an overall Student Growth measurement of -6, and in language usage went from 211 to 196 for a Student Growth measurement of -15. The Fall 2007 score for reading put the Student in the 3<sup>rd</sup> percentile and for language usage in the 10<sup>th</sup> percentile.
9. In the Student's September 21, 2007 IEP, as he entered xx grade, the Student's low reading and writing scores were reported to be impacting his ability to function in the regular classroom setting in all academic areas. The most recent evaluation scores noted were those of his initial assessment.
10. The Student's 2007 IEP required 7 hours of instruction with a special education teacher per week, 5 hours in the special education classroom, and 2 hours in the regular classroom. The IEP also provided for various supplementary aids and services, including modification to the classroom reading material.
11. As of June, 2008, the Student was reported to have met his goal of accurately reading words at Level 50 (xx grade)
12. Prior to the summer of 2008, the Parent and the District orally agreed to an extended school year ("ESY") program consisting of 4 hours per week over 4 weeks. The program was to consist of the Wilson Reading Program, with additional reading work and math, spelling and language materials. The Student received this program during the summer, as confirmed by a Summary of Extended School Year Services form completed by the educational technician that provided the services.
13. In order to conduct a reevaluation of the Student, the District sent to the Parent a Parental Consent for Evaluation form on July 30, 2008. The Parent did not sign the form until September 2, 2008, and she requested that learning development testing be added to the assessments already indicated on the form.
14. On September 10, 11, 12 and 22, 2008, the Student was reevaluated, including the additional evaluation requested by the Parent. At this time, the Student's standard scores on the Woodcock Johnson III test were: broad reading 86, with a grade equivalency of xx, putting him in the low average range; broad written language 86, with a grade equivalency of

xx, putting him in the low average range; and overall academic knowledge 80, with a grade equivalent of xx, putting him in the low average range.

15. The Student was also given a speech/language evaluation, on which the Student's scores for core language (76), receptive language (83) and expressive language (77) were all below average.

16. The Student's 2007 IEP expired on September 18, 2008. An IEP Team meeting was scheduled for that date, however, the testing had not been completed and the District suggested that the meeting be postponed. The Parent asked that the meeting go forward, and a meeting was held lasting about two hours. During the meeting, several of the Student's teachers provided input, and then excused themselves from the meeting. Throughout the meeting there was at least one special education teacher and one regular education teacher present.

17. Due to the incomplete testing, the meeting was adjourned without forming a new IEP. A further meeting was scheduled for September 24, 2008. The testing was completed on September 22, and the Parent was provided with the results of the testing less than three days before the meeting resumed. The Parent did not object to the meeting being held at that time.

18. The second meeting resulted in an IEP that required 8 hours of instruction per week with a special education teacher, with 5 hours in the special education classroom working on language skills, and 3 hours per week in the regular classroom working on math and social studies. In addition, the IEP called for 45 minutes per week speech/language services. As in the previous year, the IEP also provided for various supplementary aids and services, including modification to the classroom reading material.

19. At the beginning of the 2008-2009 school year, the Student was receiving language arts instruction in a regular education classroom, with support later in the day in the special education classroom. When the Student appeared to be struggling greatly and experiencing high levels of stress in the regular classroom, he was instead assigned on or about September 17, 2008 to the special education classroom for his language arts instruction. This arrangement was formally adopted in the 2008 IEP.

20. Some time in October 2008, the Parent came to the special education classroom and complained that the Student was not working on vocabulary as required by the IEP. The special education teacher showed the Parent the materials the Student was working with, including vocabulary materials, and the Parent was satisfied with the language arts program at that point.

21. The Student's reading was again tested on October 23, 2008 using the NWEA and he scored 202, a gain of 24 points from the previous Fall.

22. During an interview conducted by the Complaint Investigator with Sandra Warden, Ms. Warden stated that she became special education director in August 2007. She further stated that the District had sent out a consent form for the Parents' signatures in July 2008. When

Ms. Warden became aware after the new school year started that the District had not received the form back from the Parents, she had someone ask the Parent for her signature when she was present in the school. As a result of the delay in getting the consent form, the District was unable to complete all testing by the time of the scheduled IEP Team meeting on September 18, 2008. She explained this to the Parent on the morning of the scheduled meeting and suggested that they postpone the meeting. The Parent insisted on proceeding with the meeting, and requested that a number of teachers be present. Ms. Warden stated that the meeting lasted more than two hours, and that several teachers gave their input and then asked to be excused to return to their classrooms. She said that throughout the meeting there was at least one special education teacher and one general education teacher present. Ms. Warden further stated that the 2007 IEP did not address the Student's ESY program, but that before the summer she spoke with the Parent and they agreed on a 4 week program of four hours of instruction per week, consisting of the Wilson Reading Program along with other learning support materials. Ms. Warden stated her belief that the Student received the agreed-upon program.

23. During an interview conducted by the Complaint Investigator with Amy Northrup, Ms. Northrup stated that she is a special education teacher and has been working with the Student since January 2008. She stated that when the 2008-2009 school year began, the Student was receiving language arts instruction in the regular classroom setting. It soon became apparent, however, that this was very demanding and was extremely stressful for the Student. She said that a decision was made to move the Student into her learning center classroom for language arts instead on a trial basis during the week before the September 24, 2008 IEP team meeting. By that time, there was consensus that the Student would be better served by receiving his language arts instruction in her room. During the first two months of the new school year, while in her classroom, the Student was working somewhat with the Wilson program, although less than he had before, as she believed too much emphasis on the Wilson program was preventing broader growth in language skills. Ms. Northrup stated that once the IEP went into effect, the Student began receiving the educational program described in the IEP. She described an incident when the Parent came into her class in October and asked why the Student wasn't doing vocabulary work. Ms. Northrup told her that he was doing that work, and showed her the materials both posted on the wall and in handouts. She said that the Parent appeared satisfied. She further stated that Susan Ottey, who had told the Parent that the Student wasn't doing vocabulary work, was not the person doing that work with the Student, that only she was doing it. Ms. Northrup said that she has seen the Student make good progress since Spring 2008, and expects his test scores to reflect this in Spring 2009.

24 During an interview conducted by the Complaint Investigator with Susan Ottey, Ms. Ottey stated that she has been working with the Student as an educational technician all of last year and this year. She stated that she worked with the Student during his ESY program, and that he got the amount and type of instruction that had been specified. Ms. Ottey stated that this year the Student has primarily been working on language arts with Ms. Northrup, although Ms. Ottey occasionally was given language arts materials or assignments by Ms. Northrup to work on with him. She said that she had been told by Ms. Northrup not to use the Wilson program when working with the Student, as she had in the past, but that some rules of the Wilson program would continue to be followed with other materials. She was also told to

continue working with the 2007 IEP until a new IEP could be created. Ms. Ottey stated that she was in the learning center on some occasions in October 2008 and that there were no vocabulary materials for her to use with the Student. She said this changed after the Parent came in to the class and complained.

25. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated that she believed that the Student did not receive reading instruction using the Wilson Reading Program during the 2008 ESY program as he was supposed to. She said that she sat with the Student during a lesson with Ms. Ottey, and that the Wilson program wasn't being used. The Parent further stated that Ms. Ottey told her the Student wasn't getting the program. She stated her belief that the Student wasn't being instructed with the Wilson program in the beginning of the 2008 school year either. The Parent said that at the September 24<sup>th</sup> IEP team meeting, she was told that the Student would be getting a new reading program in place of the Wilson program. She said that after the meeting, the Student was not bringing home vocabulary words as he had in the past, and the Student reported that all he was working on was spelling. The Parent further stated that Ms. Ottey reported to her that the Student was not working on vocabulary in his language arts class, and she went into the school to complain about this. She stated that Ms. Northrup showed her the reading program materials she was using with the Student, including vocabulary work, and that she was satisfied with the reading program at that point. The Parent stated that she did not receive the consent for evaluation form in the Summer of 2008, and that she was asked to sign it when in the school at the beginning of the school year. She said that during the meeting on September 18<sup>th</sup>, teachers got up to leave before the meeting ended saying they didn't have coverage in their classrooms. The Parent further stated that at the end of the meeting, the only teachers there were Ms. Northrup and Ms. Nutter, both special education teachers. She said that the regular education teachers were present at the September 24<sup>th</sup> meeting and provided their input to the IEP.

26. During an interview conducted by the Complaint Investigator with Tracy Scully, Ms. Scully stated that the Student was in her regular education classroom for about three weeks at the beginning of this school year, but after that she has not been working directly with the Student. Ms. Scully further stated that there was discussion at the IEP Team meeting about the vocabulary program in her class, and that the Student was to continue working on her vocabulary words in Ms. Northrup's class. She said that she supplied a list of 12 vocabulary words for the Student to work on right after the team meeting, but has not been asked for more words since then. Ms. Scully stated that she occasionally observes the learning center class, and that she hasn't seen the Student engaged in vocabulary work. She further stated that she has heard from the Parent and from Ms. Ottey that the Student is not getting the prescribed reading program in his learning center class. With regard to the September 18, 2008 IEP team meeting, Ms. Scully said that she had adequate coverage in her classroom for the meeting, and that she stayed for the entire meeting.

## **VII. Conclusions**

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

**NO VIOLATION FOUND**

MUSER §IX.3.D(1)(a) requires that the IEP Team review an IEP at least annually, to determine whether the annual goals for the child are being achieved. The Student's IEP dated September 21, 2007, therefore, expired on (was required to be reviewed no later than) September 21, 2008 (although the parties stipulated to the date of September 18, 2008, review of the documents does not bear this out). Although a meeting was held before that date and the Student's progress was reviewed, the meeting did not conclude at that time. While it is true that certain of the teachers involved in the meeting left before it ended because they needed to return to their classrooms, it is also true that the Student's testing had not been completed by that date, and concluding the meeting without taking into account the reevaluation results might have represented a violation of MUSER §VI.2.J(5)(c).

As for the testing not being completed by the time of the meeting, this delay was caused at least in part by the District not receiving the signed Consent to Evaluation Form until September 2, 2008. Although the Parent states that she did not receive it when the District claims to have mailed it, on July 20, 2008, the form does reflect that mailing date. As the testing was conducted reasonably soon after the consent was signed, and a new IEP was put in place three days after the prior IEP expired, the failure to complete the review of the IEP by September 21 does not rise to the level of a violation.

**Allegation #2:** Failure to provide the reading program described in the IEP in violation of MUSER §IX.3.B(3);

**NO VIOLATION FOUND**

Although the Student's 2007 IEP was never amended to include the ESY program, the parties agree on what it was to include. They disagree on whether it was implemented. Although the Parent contends that the educational technician who delivered the program, Ms. Ottey, told her she did not provide the agreed upon Wilson Reading Program, and the Parent states that she did not observe it being used, Ms. Ottey stated to the Investigator that she did use the Wilson program, and she completed a "Summary of Extended School Year Services" that confirms this.

With respect to the beginning of the 2008-2009 school year, when the Student's 2007 IEP was still in effect, the Parent again complains that the Student was not receiving instruction using the Wilson program. The Student's IEP does not, however, specify what reading program is to be used. It instead appropriately describes the annual goals for the Student, including a reading goal, and how they will be measured. The IEP further identifies the special education

services to be provided (specially designed instruction by a special education teacher), their location, frequency and duration. The decision of the best instructional technique to be utilized in attaining that goal is properly left to the District. Ms. Northrup, the special education teacher in charge of this aspect of the Student's education, made the decision that there was too much emphasis on the Wilson program at the expense of other important language instruction, and modified his program accordingly. This does not in itself constitute a violation.

With regard to the implementation of the September 24, 2008 IEP, the Parent complains that the Student did not get the vocabulary work dictated by the IEP. The IEP does indeed encompass vocabulary instruction (Goal #6). The Student's regular education language arts teacher, Ms. Scully, stated that she at least initially provided a list of vocabulary words to Ms. Northrup. Ms. Northrup stated that the Student was getting the instruction dictated by the IEP after it was written, including vocabulary work. The Parent's belief to the contrary was based upon the Student's reports that he was only working on spelling, the fact that he wasn't bringing home vocabulary worksheets, and the reports of Ms. Ottey that vocabulary wasn't being worked on. Ms. Northrup stated that Ms. Ottey during this period of time was not involved in working with the Student on language arts, including vocabulary. Both the Parent and Ms. Northrup agree that when the Parent came into Ms. Northrup's classroom to ask about the vocabulary, Ms. Northrup was able to show her vocabulary materials that the student had been working on, and that the Parent was satisfied at that point.<sup>1</sup> Although not free from doubt, on the whole, there was insufficient evidence of the failure to deliver this aspect of the Student's reading program to support the finding of a violation. In the future, better efforts on the part of the District to keep the Parents informed of the educational work the Student is doing, such as sending samples of the work home with the Student, might avoid this kind of dispute.

**Allegation #3:** Failure to conduct necessary reevaluations in order to ensure the child is making adequate progress in violation of MUSER §V.1.B(1)(a);

**Allegation #4:** Failure to provide a free appropriate public education in violation of MUSER §II.11 and 34 CFR §300.101(a)

**NO VIOLATION FOUND**

The Parent claims to have been taken by surprise when the results of the Woodcock Johnson III (WJ III) test were reported at the September 2008 meetings and she learned that the Student was reading 3 years below grade level (at grade level xx upon entering xx grade). In actuality, the Student's broad reading score on this test remained fairly constant when compared to September 2005 (87 in 2005; 86 in 2008), and his grade equivalence increased from xx in 2005 to xx in 2008. The Parent's surprise may be due to the District's having reported the results of the Developmental Reading Assessment (DRA) in paragraph 1 of the

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<sup>1</sup> The Parent during her interview complained that Ms. Northrup became seriously ill in November, 2008, had been out of school since then, and that the substitute teachers were not properly implementing the Student's reading program in the IEP. As this was a new allegation beyond the scope of the filed complaint, any investigation would necessitate the filing of a new complaint.



2005 IEP, while reporting the results of the WJ III test in the comparable section of the 2008 IEP. Comparing the DRA (grade xx in 2005) with the WJ III (grade xx in 2008) makes it appear as though no progress had been made, whereas comparing WJ III scores from the two years paints a different picture.

In the interim between the two formal evaluations, the District assessed the Student's reading regularly using the Northwest Evaluation Association computerized assessment. Although the Student's scores fluctuated up and down, not showing overall consistent progress, review of the Student's IEPs from 2005 through 2008 shows that the District recognized that progress was less than satisfactory and made appropriate adjustments to his program. The amount and nature of services changed over these years, responding to the deficits in reading and in academics generally. Where in 2005 the Student was receiving instruction from his special education teacher 2 ½ hours per week both in the regular and special education classroom, by 2008 he was receiving 5 hours per week in the special education classroom with an additional 3 hours per week in the regular classroom, along with speech/language services and other supplementary aids and services. This history of ongoing assessments and response to their results satisfies the legal requirements.

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

None is required.