

**Complaint Investigation Report**  
**Parents v. SAD #61**

November 26, 2012

Complaint #09.037C  
Complaint Investigator: Jonathan Braff, Esq.  
Date of Appointment: December 18, 2008

**I. Identifying Information**

Complainant: Parents  
Address

Respondent: Patrick Phillips, Superintendent  
900 Portland Road  
Bridgton, ME 04009

Special Education Director: Lisa Caron

Student: Student  
DOB: xx/xx/xxxx

**II. Summary of Complaint Investigation Activities**

The Department of Education received this complaint on December 18, 2008. The Complaint Investigator issued a draft allegations report on December 19, 2008. The Complaint Investigator conducted a complaint investigation meeting on January 9, 2009 (originally scheduled for December 30, 2008 but continued due to conflicts in the schedule of the attorney for the mother(the "Parent")), resulting in a set of stipulations, amended on January 15, 2009. On December 18, 2008, the Complaint Investigator received 79 pages of documents and a list of proposed interviewees from the Parent, supplemented on January 15, 2009 with two additional interviewees, and on January 20, 2009 received 92 pages of documents and a 6 page memorandum from Lisa Caron of SAD #61 (the "District"). Interviews were conducted with the following: Lisa Caron, director of special services; Lisa Shane, IEP coordinator; Rebecca LaChance, case manager; Mary Lou Vitale, special education teacher; Kathy Rehill, special education teacher; Meghan Decoster, teacher; Linda Bennett, counselor; Sally Serunian, licensed psychological examiner; Victoria Dalzell, M.D., physician; and the Parent.

### **III. Preliminary Statement**

The Student is xx years old and was found eligible for special education under the eligibility criterion Autism at age xx or xx. 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 develop, adopt and implement a new IEP after the IEP Team meeting of June 5, 2008 in violation of MUSER §IX.3.B(5)(a)(i);
2. Failure to provide a free appropriate public education including services comparable to those described in the Hall School's IEP after the meeting of June 5, 2008 in violation of MUSER §IX.3.B(5)(a)(i);
3. Failure to have an IEP in effect at the beginning of the 2008-2009 school year in violation of MUSER §IX.3.B(1);
4. Failure to develop an IEP after the IEP Team meetings of September 18 and 22, 2008 in violation of MUSER §VI.2.J(4);
5. Failure to provide written notice of the proposed change in program following the IEP Team meetings of September 18 and 22, 2008 in violation of MUSER App. 1, 34 CFR §300.503;
6. Failure to provide written notice of the proposed change in placement into general education full time at the beginning of the 2008-2009 school year in violation of MUSER App. 1, 34 CFR §300.503;
7. Failure to provide written notice of the proposed change in program into the TLC classroom full time on September 9, 2008 in violation of MUSER App. 1, 34 CFR §300.503;
8. Failure to involve the parents in the decision to place the student in the general education classroom during September 2 through September 9 in violation of MUSER §X.2.B.

### **Ancillary Allegations**

1. Decision to implement on September 19, 2008 changes to the student's program discussed at the IEP team meeting of September 18, 2008, prior to issuance of Written Notice in violation of MUSER App. 1, 34 CFR §300.503.

### **V. Stipulations**

1. Prior to transferring to Stevens Brook Elementary School on May 14, 2008, the student was a student at the Hall School in the Portland School District, where he was in a self-contained classroom and received direct instruction for 30 hours per week plus speech and language therapy for 60 minutes per week.

2. Prior to transferring to Stevens Brook Elementary School on May 14, 2008, The student's brother was a student at the Hall School in the Portland School District, where he was in a self-contained classroom and received direct instruction for 30 hours per week, occupational therapy for 30 minutes per week and speech and language therapy for 120 minutes per week.
3. At the Hall School, both children attended regular education gym, art and recess with the support of an adult aide.
4. For the first three weeks after the student and his brother transferred to Stevens Brook, they were placed in the District's day treatment program for autistic children called "TLC".
5. At an IEP team meeting on June 5, 2008, the team decided to adopt the Hall School IEP for the student but to decrease direct instruction in the self-contained class to 550 minutes per week, decrease speech and language therapy to 30 minutes per week, add social work for 60 minutes per week, add a behavior intervention plan and extended school year services and put him in regular education classes for science, social studies and reading with one-on-one adult support.
6. At an IEP team meeting on June 5, 2008, the team decided to adopt the Hall School IEP for the student's brother but to decrease direct instruction in the self-contained class to 600 minutes per week, decrease speech and language therapy to 90 minutes per week, add social work for 60 minutes per week, add a behavior intervention plan and put him in regular education classes for science, social studies and reading with one-on-one adult support.
7. On September 18 and 22, 2008, the IEP team met and determined to leave in place the program described at the June 5, 2008 meeting for both children, with the additional modification for the student of more time spent in the regular education classroom.

## **VI. Summary of Findings**

1. The Student lives in Casco with his mother (the Parent), and with his twin brother who also receives special education services under the eligibility category of Autism.
2. Prior to May 14, 2008, when he transferred to Stevens Brook Elementary School in the District, the Student had been receiving special education services in the Hall School of the Portland School District under an IEP dated January 16, 2008. That IEP provided for the Student to receive direct instruction in a self-contained classroom for 1,800 minutes per week, plus speech and language services for 60 minutes per week. The Student also attended regular education gym, art and recess with the support of an adult aid.
3. On June 5, 2008, the District held an IEP team meeting and decided to adopt the Hall School IEP with several modifications as follows: the amount of time the Student was to receive direct instruction in a self-contained classroom (termed the "TLC" class) was reduced to 550 minutes per week; speech and language services were reduced to 30 minutes per week; social work services were added in the amount of 60 minutes per week; in addition to

gym, art and recess, the Student was to also attend regular education classes for science, social studies, music and some reading; an educational technician was to be provided for 900 minutes per week; a behavior intervention plan was added; and extended school year services were added.

4. The District issued a Written Notice on June 20, 2008 describing the decisions made at the June 5 IEP team meeting. Attached to the Written Notice were two new annual goals with short-term objectives and the behavior intervention plan. Other than those attachments, no new or amended IEP was issued.

5. On September 2, 2008, the first day of the 2008-2009 school year, the Student (together with some of the other students in his self-contained classroom) spent virtually the entire school day in the same regular education classroom where the Student was scheduled to receive art, music, science, social studies, some reading, lunch and recess. During the day, the Student participated in some community building activities with his non-disabled peers. The Student also was given a spelling test, and participated in reading and vocabulary activities. The Student received support from an educational technician during the time he was in the regular education classroom.

6. The District did not inform the Parent that the Student would be participating in the community building activities or spending the day in the regular education classroom.

7. The Parent became upset when she learned that the Student was in the regular education classroom beyond the times provided in the program described at the June 5, 2008 IEP team meeting. The following day, September 3, 2008, she demanded that the Student remain in the self-contained classroom for the entire school day until an IEP team meeting could be held. The Parent spoke with Ms. Caron, after which the Student spent the rest of the day in the regular education classroom.

8. After spending three to five days in the regular education classroom, the Student then spent an entire day exclusively in the self-contained classroom. At the end of that day, Ms. Caron called the Parent to report that the Student had cried most of the day because he hadn't been allowed to go to the regular education classroom. At that point, the Parent agreed to allow the Student to participate in art, music and physical education in the regular education classroom until the next IEP team meeting.

9. The District did not issue a Written Notice or a new or amended IEP following this decision made with the Parent to modify the Student's program.

10. An IEP team meeting was held on September 18, 2008. The team decided at that meeting to continue to follow the program described at the June 5, 2008 IEP team meeting with the following modifications to be implemented starting September 19, 2008: some of the Student's math instruction to take place in the regular education classroom, an end-of-the-day check-in with staff in the self-contained classroom each day during dismissal; and the Student to be forewarned and removed early from the building during fire drills. The team also

decided to collect data, including skill assessments, and then meet again in approximately four weeks to reconsider the Student's program.

11. The District issued a Written Notice for the September 18 meeting on October 1, 2008, but did not issue a new or amended IEP.

12. On October 29, 2008, an IEP team meeting was held resulting in a new IEP dated November 13, 2008. Under that IEP, the Student was to receive special education instruction in a combination of the TLC and regular classroom for 300 minutes per week, with 60 minutes per week of speech and language services and 60 minutes per week of social work services. The balance of the Student's instruction was to take place in the regular education classroom. The Student was to also receive educational technician support for 1,530 minutes per week.

13. During an interview conducted by the Complaint Investigator with Rebecca LaChance, Ms. LaChance stated that she became the Student's case manager in August 2008. She said she received a phone call from the Parent on September 2, 2008, who told her that the Student's educational technician had called the Parent that day and told her that the Student had been in the regular education classroom working on spelling. The Parent said she was concerned because the Student had never been in the regular education environment before. The Parent told Ms. LaChance that she had called Ms. Caron and requested an IEP team meeting be scheduled.

The next day, Ms. LaChance scheduled a time to observe the Student. The observation took place on September 4, 2008 and lasted for approximately 1¼ hours. The Student was in the regular education xx grade classroom taught by Ms. Decoster. The Student's brother was also in the classroom and there may have been a third similarly disabled child there as well. There was one educational technician in the classroom. When Ms. LaChance first came into the classroom, Ms. Decoster was reading a story to the entire class. The Student was sitting in his seat and appeared to be attentive. Ms. Decoster then announced it was time for quiet reading. The Student got out of his seat, took a book from the shelf and then returned to his seat and began reading, all without need of support. He was sitting in a cluster of four seats, and seemed to interact appropriately with the other three students. During the following vocabulary lesson, the Student responded appropriately to Ms. Decoster, and raised his hand to tell her when he didn't understand something. The Student seemed proud of what he was doing. The educational technician checked in with the Student from time to time, and the Student seemed annoyed by this. Ms. LaChance concluded that the placement was appropriate for the Student.

Afterwards, Ms. Decoster told Ms. LaChance that the Student was in the regular classroom for the full day during the first week of school so that he could "get used to the flow of the school day," and then would start being pulled out at times for instruction in the TLC classroom. Ms. LaChance did not observe anything that she would consider to be a "community building activity," only typical academic instruction. When Ms. LaChance reported her observations to the Parent, the Parent told her that the Student was more

advanced academically than his brother, but that she was still concerned about the amount of time he was spending in the regular education classroom.

Ms. LaChance observed the Student on later occasions in the same classroom, and he continued to do well there. On those other occasions, there was an educational technician present that was dedicated to the support only of the Student. When she attempted to talk with the educational technician about the Student, she was told that the educational technician had been instructed by Ms. Caron not to talk to her, and that she should direct her inquiries to Ms. Rehill.

14. During an interview conducted by the Complaint Investigator with Mary Lou Vitale, Ms. Vitale stated that she was a special education teacher at the Hall school in Portland and had the Student in her class from September 2005 until May 2008. At Hall school, the Student received all of his academics in Ms. Vitale's self-contained classroom, participating in music, gym, lunch and recess in a regular education classroom with the support of an adult aide. At times, there was one aide for both the Student and his brother, and at other times there were two aides for the Student, his brother and one other student from the self-contained classroom. Ms. Vitale believed that the Student made great advances in the three years he was in her classroom. Ms. Vitale stated that staff from the District came to Hall School to observe the Student and met with her for a long time to discuss strategies and methods that had and hadn't worked with the Student.

Ms. Vitale also participated in the June 5, 2008 IEP team meeting, where she advised the team that although the Student was able to read well, he was better at decoding words than at comprehending them. She advised that the Student needed support around reading comprehension, even in small groups. Ms. Vitale also told the team that the Student needed his program to be consistent, always in the same sequence. He needed to be given his daily schedule and to know in what order the day's activities would be. Ms. Vitale told the team that although the Student had more ability than his brother, he had a greater need for his day to be predictable. Ms. Vitale further advised the team that the Parent needed regular communication with the school staff, more than most parents. In considering the program that resulted from the June 5, 2008 meeting, Ms. Vitale thought it was appropriate for the Student, although the Parent was nervous about the Student being in the regular education classroom. Ms. Vitale said that she didn't have the option of sending the Student to a regular education classroom for science and social studies, but she thought that it was "worth a try" as long as there was an aide to provide support.

15. During an interview conducted by the Complaint Investigator with Lisa Shane, Ms. Shane stated that she has been the IEP coordinator for the District since 2004, and in that capacity chaired the IEP team meetings concerning the Student. With regard to the June 5, 2008 meeting, Ms. Shane said that both Ms. Vitale and the Parent agreed to the revisions to the Hall School IEP, and that there was complete consensus. She further said that after the meeting she discussed with Ms. Caron what documentation was required for the revisions, and that they decided that the new annual goals for the speech and language and social work components, as well as the behavior intervention plan, were sufficient. Ms. Shane said those materials were added to the previous IEP, were sent to the Parent and were available to the

Student's teachers. With regard to the September 18, 2008 meeting, she characterized this meeting as an attempt to clarify for the Parent what the Student's access to regular education looked like under the existing IEP, in terms of when it occurred, what was being taught and who was present with him. The only amendment to the IEP that occurred at that meeting was in connection with fire drills. This was documented in the Written Notice dated October 1, 2008.

16. During an interview conducted by the Complaint Investigator with Linda Bennett, Ms. Bennett stated that she is a licensed clinical counselor, and has been providing social work services to the Student since June 2008. She stated her opinion that the program being offered to the Student since June 2008 is appropriate for him, and that he has been successful in that program. Ms. Bennett described the District's approach with students such as the Student as providing day treatment wherever it is most appropriate in the building, not just in the TLC classroom. She believes that the IEP says "direct instruction" but doesn't say where it takes place. Direct instruction might occur anywhere in the school. Ms. Bennett said that supports and instruction follow the student to the location where he is receiving treatment. She described the present situation for the Student as ideal because the classroom where he participates in regular education is right next door to the TLC classroom. This enables the staff to remove him from the regular education classroom to the TLC room whenever there is a behavior problem and then immediately work on the behavior. It is also ideal because it allows the Student to be educated at times with his brother, something the Parent wanted. Ms. Bennett suggested that the District did not do a good enough job explaining to the Parent its philosophy and how the Student's program worked until the October 18, 2008 IEP team meeting.

17. During an interview conducted by the Complaint Investigator with Sally Serunian, Ms. Serunian stated that she is a licensed psychological examiner who had done an evaluation of the Student in September, 2007, spending some time in the classroom observing the Student in connection with that evaluation. Ms. Serunian described the Student as having better non-verbal thinking skills than his brother, but said that it was easier to work with the brother. She felt the Student needed extra encouragement. She also described the Student's verbal quotient as quite low. Ms. Serunian felt that it could be appropriate for the Student to be in the regular education classroom for some academics, but not if it involved straight lecture or reading. She felt that some of the concepts being taught in xx grade would be too difficult for the Student. Ms. Serunian believed that for reading instruction the Student required small group instruction with other students at his level. Ms. Serunian also expressed her opinion that, for the first week of school, the District shouldn't have departed from the Student's IEP without a meeting involving the Parent and staff who was working with the Student to discuss making that change.

18. During an interview conducted by the Complaint Investigator with Kathy Rehill, Ms. Rehill stated that she was a special education teacher in the TLC classroom, where the Student has been attending since May 2008. Ms. Rehill reported that before the Student first came to her class, she went to the Hall School to observe him and to meet with his teachers. She said she was given permission to continue using the reading curriculum being taught to him there, and that the Hall School staff also provided the materials for that curriculum. Ms.

Rehill discovered after she started working with the Student that he was working from the same xx grade curriculum as his brother, and determined that this was not appropriate for the Student. She quickly changed him to a xx grade curriculum, and he did very well at that level, completing four levels in one week. Ms. Rehill reported that the Student began attending the regular education classroom for some of his reading instruction within a few weeks of when he started at Stevens Brook School. Ms. Rehill finds that there is not a large discrepancy between the Student's decoding and comprehension skills, and that they are both now at about grade level. The Student is below grade level in reading fluency, which Ms. Rehill attributed to his speech and language difficulties. Ms. Rehill described the Student's transition to Stevens Brook School as having gone very well.

With regard to the first day of the current school year, Ms. Rehill stated that she explained to the Student that he was going to the regular xx grade classroom to meet his new teacher and some new classmates. She spoke with the educational technician at the end of the day, and the educational technician told her that the Student was doing well and already liked his new teacher, Ms. Decoster. The next day, Ms. Rehill got a message that the Parent had called demanding that the Student be pulled from the regular education classroom. Ms. Rehill spoke to the Parent, and got the Parent to agree that the Student could be in the regular education classroom for anything hands-on, art- or music-related. Ms. Rehill reported that the Parent kept saying that she didn't want her children to look like a "3 ring circus act," and was very worried that they would be subject to bullying in the regular education classroom. She continued to talk with the Parent every day, sometimes twice a day. Ms. Rehill described the Student as very excited during the first week of school, especially about making new friends.

With regard to educational technicians, Ms. Rehill said that there is generally one educational technician to support both the Student and his brother in the regular educational classroom. When working on reading in the TLC classroom, because the two brothers are so far apart in literacy skills, they each have their own educational technician. Ms. Rehill said that she is very pleased with the Student's academic progress this year, and that he received a spelling award at a school assembly. Ms. Rehill felt that the Student's behavior has also improved although she said that the Student's behavior sometimes gets in the way of his making academic progress. For example, if the Student is unsure of the correct spelling of a word, he will get stuck and be unable to move on to the next word. The Student also pushes behavior restrictions to the limit, and has a need to be in control. Ms. Rehill is trying to find a better way to help the Student control this behavior. Ms. Rehill stated her belief that the Student's curriculum right now is where it should be.

19. During an interview conducted by the Complaint Investigator with Meghan Decoster, Ms. Decoster stated that she is a regular education teacher with a xx grade class, and has had the Student in her class since September. She said that during the first week of school, her students were involved in community building activities, such as "get to know your neighbor" where students interviewed their classmates. The class also engaged in some outdoor activities, such as math facts baseball. Ms. Decoster said that, throughout the school, special education students are generally not pulled out of their regular education classrooms during the first week to allow for this community building. She believes that these first week activities are very important as they allow students to get to know their peers. During this first



week, the Student was in her class at least 80% of the day. Ms. Decoster reported that the other children in her class were very accepting of the Student. She also reported that the Student was very concerned when he was pulled out of her class after the first week. Ms. Decoster stated her belief that the Student was very capable of handling instruction in her class, and can work on his own, as long as he has someone to keep him focused. She said that there were always at least two and sometimes three educational technicians in her class for the three special education students in her class (there is a fourth student that doesn't require that kind of support).

20. During an interview conducted by the Complaint Investigator with Victoria Dalzell, M.D., a developmental-behavioral pediatrician, Dr. Dalzell stated that she first saw the Student as a patient in 2004, when she diagnosed him as suffering from autism. She last saw the Student in November 2007. On September 5, 2008, the Parent called Dr. Dalzell's office and spoke with her associate, Amanda Evans-Powell, LMSW. Ms. Evans-Powell's notes reflect that the Parent was upset with the way the school year had started for the Student and that the Parent told her: "Every aspect of the IEP was broken." The Parent said that the Student was in a regular education classroom and not in a self-contained classroom. At the Parent's request, Ms. Evans-Powell participated by telephone in the September 18, 2008 IEP team meeting. Ms. Evans-Powell's notes reflect that she advised the IEP team that there needed to be better communication between the Parent and the District. Her notes also state that the team agreed to do more testing and observation of the Student over the next four weeks and to then reconvene and write new annual goals for him. Dr. Dalzell hadn't seen any of the District's IEPs for the Student, and hadn't seen the Student recently enough to comment on the appropriateness of the program developed for the Student by the District. She did state, however, that when planning a transition program for a child such as the student, it was very important to start where the student was, review the proposed change with the child's parent and then make the change. Dr. Dalzell believed that if the District had a program for the Student in place at the end of the 2007-2008 year, and then at the beginning of the 2008-2009 year made significant changes to the program, it might be very disturbing for the Student. Change in general was very stressful for the Student.

21. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated that although she had concerns on June 5, 2008 about the Student's greater participation in regular education as proposed by the District, by the end of the meeting she was in agreement with it. She said that there were no problems during the last few weeks of the 2007-2008 school year and during the summer program. On the first day of school, September 2, 2008, the Parent reported that when she went to meet the school bus at the end of the day, the Student's brother was crying and she spoke with the educational technician on the bus. The educational technician told the Parent that the Student had been teasing his brother about the Student's being a regular xx grader. When she asked what this meant, she was told that both the Student and his brother had spent the day in the regular education xx grade classroom. The Parent was very upset about this and the next morning she spoke with Ms. Caron and told her to take the Student and his brother out of that classroom. The Parent reported that Ms. Caron asked the Parent to give the Student more time in the regular education classroom and refused to remove them. The next week, the Parent's attorney called Ms. Caron and the Student was then kept in the self-contained TLC classroom all the next

day. At the end of that day the Parent received a phone call from Ms. Rehill who told her that the Student had been crying all day because he wasn't allowed to go to the regular education classroom. According to the Parent, Ms. Rehill told the Student that his mother didn't want him to go there. The Parent then agreed to allow the Student into the regular education classroom for snacks and "specials." She described the first week of school to the Investigator as "an absolute nightmare" both for her children and for her. The Student's program was next discussed at the September 18, 2008 IEP team meeting, and the Parent decided to give the District's program a try.

In the Parent's opinion, the Student has made very little progress during the current school year. She said the Student is being given homework that he doesn't understand. The Parent described the Student as being able to spell really well, but with no comprehension of what the words mean. She described going to a school assembly to watch the Student get an award, stating that she knew the Student didn't deserve the award because she knows what his capabilities are. The Parent did say that the Student feels positively towards going to school this year, but also that the Student was "overly proud" that he was participating in the regular education class.

22. During an interview conducted by the Complaint Investigator with Lisa Caron, Ms. Caron stated that she has been the director of special services for the District since 2004. Ms. Caron was not present at the June 5, 2008 IEP team meeting, but was aware of all the components of the program developed at that meeting. She stated that although the Student had more skills and capabilities than his brother, the Parent insisted that they both be in the same program. Ms. Caron confirmed that the new goals that were developed as a result of the June 5th meeting were sent to the Parent with the Written Notice. She reported that the Student handled the transition to the new school very well, much more smoothly than the Parent anticipated.

With regard to the events of the first week of the current school year, Ms. Caron confirmed that after a brief time in the TLC classroom when he arrived at school, the Student spent the remainder of the first day in the regular education xx grade classroom. Ms. Caron said that the Parent called her after that first day very upset. She said the parent demanded that the Student be pulled out of the regular education classroom. Ms. Caron said she asked the Parent if the Parent could give her 24 hours before taking that action. The Parent agreed, and after the Student spent one more day in the regular education environment (September 4, 2008), he was pulled out of that classroom. Ms. Caron confirmed that the Parent had not been notified in advance about the changes to the Student's schedule during the first days of the school year, and conceded that it was a mistake on the part of the District not to do so. The next day, September 5, 2008, the Student was reported to be crying all day because he couldn't go to the regular education classroom. Ms. Caron called the Parent and asked whether she could support the Student returning to that class until the Parent and the IEP team could meet. The Parent agreed to allow the Student to return to the regular education classroom for art, music and "specials." At that point, Ms. Caron felt that there was no need to issue a Written Notice for the change in the Student's program because the IEP team would be meeting within the next 10 days.

A few days later, on September 8, 2008, Ms. Caron received a phone call from the Parent's attorney, and the IEP team meeting was scheduled for September 18, 2008. At that meeting, which was supposed to be about both the Student and his brother, all the time was spent discussing the Student. The team agreed that the Student's program would remain basically the same as what had been agreed to on June 5, 2008, and that the staff would conduct assessments and continue observing the Student over the next four weeks. Ms. Caron believed that the changes agreed to were not of the sort that required issuance of a new IEP. Ms. Caron said that by the time of the October 29, 2008 IEP team meeting, the Maine Department of Education had circulated a new IEP form for use by the school districts, and she decided it would be appropriate to rewrite the Student's IEP onto the new form.

With regard to the presence of aides, Ms. Caron stated that there is always at least one educational technician available to support the Student in the regular education classroom. She said there was sometimes one educational technician to support both the Student and his brother, and that the two brothers didn't always need to each have their own educational technician. Ms. Caron further stated that there is another xx grade student in the TLC classroom that sometimes participates in activities in the regular education classroom; when the Student, his brother and this third student are all present in the regular education classroom at the same time, there are always at least two educational technicians to support the three students.

## **VII. Conclusions**

**Allegation #1:** Failure to develop, adopt and implement a new IEP after the IEP Team meeting of June 5, 2008 in violation of MUSER §IX.3.B(5)(a)(i)

**Allegation #3:** Failure to have an IEP in effect at the beginning of the 2008-2009 school year in violation of MUSER §IX.3.B(1)

**Allegation #4:** Failure to develop an IEP after the IEP Team meetings of September 18 and 22, 2008 in violation of MUSER §VI.2.J(4);

### **VIOLATION FOUND**

MUSER §IX.3.B(5)(a)(i) provides that where a student in Maine with an IEP transfers to a new district in Maine during the year that the IEP is in effect, the new district must provide services comparable to those described in the current IEP until the new district either adopts the current IEP or else "develops, adopts and implements a new IEP." While the line is not always clear, a district may adopt the current IEP with minimal alterations made to fit the new school setting without triggering the need for a new IEP to be developed. The District, in the IEP team meeting of June 5, 2008, stated that it was adopting the current IEP with modifications. In this case, however, the modifications were substantial. Instead of the Student receiving all of his academic instruction in the self-contained classroom, as stated in the Hall School IEP, the District proposed that he would receive science, social studies and some of his reading instruction in the regular education classroom. The Student's speech and language services were being reduced, and social work services and a behavior intervention plan were being added. Changes of this magnitude required new statements of the strengths and needs of the Student, concerns of the Parent and levels of performance of the Student that

would explicate the decision to alter the Student's program. This is particularly true as the program change involved the Student receiving much of his educational program in a less restrictive environment. The Written Notice, although providing some of this information, did not fully explain and depict the new program, so that it would be clear and comprehensive for both the Parent and the staff delivering services to the Student. Development of a new IEP was required in order to provide the Parent with that clear and comprehensive picture of the Student's program.

As the Hall School IEP was no longer in effect as written, and the District had not developed a new IEP incorporating the agreed on modifications, there was no IEP in effect as the school year began.

As the District did not develop a new IEP after the June 5 meeting, and to the extent that the September 18, 2008 IEP team meeting served merely to restate and describe in more detail the program agreed to at that earlier meeting, the same obligation to develop the new IEP remained. Even if the District had developed a new IEP following the June 5 meeting, however, it would still have been necessary for it to amend the IEP to include the provision regarding the procedure to be followed during fire drills. MUSER §IX.3.C(6), which discusses amendments to an IEP, specifically references provision to a parent of a "revised copy of the IEP with the amendment incorporated." This suggests that the District would not have had to entirely redo the IEP, but only incorporate the new provision and designate the IEP as "Amended."

**Allegation #2:** Failure to provide a free appropriate public education including services comparable to those described in the Hall School's IEP after the meeting of June 5, 2008 in violation of MUSER §IX.3.B(5)(a)(i)

**NO VIOLATION FOUND**

As indicated above, once the District made a determination to "develop, adopt and implement" a new IEP, it was not required to provide services comparable to those provided in the Student's previous IEP. The District was, of course, still obligated to provide a free appropriate public education ("FAPE"). The information obtained during this investigation supports the District's determination that the Student was capable of benefitting from increased instruction in the regular education classroom. Ms. Vitale, the Student's teacher at the Hall School, considered the program to be appropriate, saying that the opportunities for the Student to spend increased time in the regular education classroom hadn't been available at her school. The Parent, too, although concerned about the Student's ability to succeed socially in the regular education classroom, ultimately agreed with the new program. Perhaps most importantly, all those interviewed who had an opportunity to observe the Student in the regular education classroom (including the Student's case manager Ms. LaChance) concluded that he was able to successfully function in that environment. In expanding the Student's exposure to the regular education classroom environment, the District was also heeding the dictates of MUSER §X.2.B to educate the Student in the least restrictive educational environment.

With regard to the decrease in the amount of the Student's speech and language services, no evidence was produced that suggested the Student was denied FAPE as a result of this modification.

**Allegation #5:** Failure to provide written notice of the proposed change in program following the IEP Team meetings of September 18 and 22, 2008 in violation of MUSER App. 1, 34 CFR §300.503  
**NO VIOLATION FOUND**

The District issued a Written Notice for the September 18, 2008 meeting on October 1, 2008 that described the changes to the Student's program developed at that meeting and proposed to be implemented.

**Allegation #6:** Failure to provide written notice of the proposed change in placement into general education full time at the beginning of the 2008-2009 school year in violation of MUSER App. 1, 34 CFR §300.503

**Allegation #7:** Failure to provide written notice of the proposed change in program into the TLC classroom full time on September 9, 2008 in violation of MUSER App. 1, 34 CFR §300.503

**Allegation #8:** Failure to involve the parents in the decision to place the student in the general education classroom during September 2 through September 9 in violation of MUSER §X.2.B

**VIOLATION FOUND**

Under MUSER §X.2.B, the District was required to ensure that any placement decision for the Student would be made by a group of persons knowledgeable about the Student *including the Parent*. It is not clear whether the decision to place the Student in the regular education classroom for the full day at the start of the school year was made by a group of persons (the decision appears to not have been made by the IEP team), but it is clear that the Parent was in no way involved in the decision. In fact, the Parent had no notice of the intended change in the Student's program, contrary to the requirements of MUSER App. 1, 34 CFR §300.503 and also contrary to the advice provided by Ms. Vitale that there should be more than the usual amount of communication between the District and the Parent.

There may well be value in including a special education student in community building activities in the regular education classroom at the start of the school year. If, however, the District actually had a policy of placing all special education students in regular education classes for community building purposes at the start of the year, this policy ran afoul of the requirement that all special education students' programs be individualized. Rather, each student's IEP team needed to consider whether participation in such activities was appropriate for the student given that student's unique set of abilities and needs. As to the Student, the policy should have been disclosed and discussed at the June 5, 2008 IEP meeting, giving the Parent the opportunity to weigh in on the decision to allow the Student to participate in this program. Particularly for a child such as the Student for whom a change in schedule causes

stress and anxiety, the decision to make such a change needed to be fully explored at an IEP team meeting. The determination of the IEP team with regard to the Student's participation in this community building exercise should then have appeared in the Written Notice issued following the meeting. The District's failure to include the Parent or even notify her of this policy, so that she discovered it when she found one of her children crying on the bus at the end of the school day, resulted in the total loss of the Parent's trust. This, in turn, resulted in the Parent's reconsideration of her initial agreement to allow the Student to spend more of his day in the regular education classroom than she was initially prepared to accept, leading to a series of hasty decisions made without following proper special education procedure.

**Ancillary Allegation #1:** Decision to implement on September 19, 2008 changes to the student's program discussed at the IEP team meeting of September 18, 2008, prior to issuance of Written Notice in violation of MUSER App. 1, 34 CFR §300.503.

**NO VIOLATION FOUND**

When the IEP team met on September 18, 2008, they decided to make certain modifications to the Student's program and to amend his IEP with respect to procedures during fire drills. They also decided to implement all those changes starting the next day, September 19, 2008. The Written Notice describing those changes was not issued until October 1, 2008, thirteen days later. Although MUSER App. 1, 34 CFR §300.503 requires districts to give written notice at least 7 days *prior* to the date the district proposes to take action with respect to programming, it has been the Department's policy that, so long as the parent is present and knowingly agrees to have services commence before the seven-day window of time has ended, and further providing that the Written Notice expressly references this agreement, the district may begin implementing the change in program sooner than 7 days from the date of the notice. In this case the Parent was present at the meeting and the Written Notice expressly references the determination to implement the next day. The Department strongly recommends, however, that where there is an agreement to implement a change in program before expiration of the 7-day period, the district make every effort to issue the Written Notice as soon as possible after the meeting, preferably less than 13 days later. This allows the parent to confirm that the program being implemented is the one the parent agreed to at the meeting.

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

The District shall provide in-service training to special education staff on its responsibility to comply with Maine Special Education Regulations regarding: a) the completion of a new or amended IEP when the IEP team significantly modifies the IEP of a student that transitions to the District from another in-state district; b) the need for the IEP team, including the parent(s), to consider any significant departure from a student's IEP in order for the student to participate in special school activities; c) the issuance of Written Notice in advance of implementing a change in a student's program. Such training will include the distribution of a written memorandum on the matter.

Documentation of the in-service training shall include: the name and

qualifications of the presenter; an agenda of the training; hand-outs for the training; names and titles of those who attended the training; and anonymous evaluations of the training. The District will submit this documentation, along with a copy of the written memorandum, to the Due Process Office, the Parent and the attorney for the Parent.

In addition, the District shall hold a meeting for all special education staff to instruct them that in future no blanket policy involving inclusion of all special education students in full day regular education programs at the beginning of the school year shall be followed. Staff shall be instructed that, instead, the IEP team for each student being considered for involvement in such a program shall meet and make an individualized determination as to the appropriateness of such program for that student.

Documentation of the meeting shall include: the names and titles of those who attended the meeting; the name and title of the person who led the meeting; an agenda of the meeting; and all hand-outs for the meeting. The District will submit this documentation to the Due Process Office, the Parent and the attorney for the Parent.