

Complaint Investigation Report
Parents v. Winthrop

April 28, 2009

Complaint #09.065C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Parents
Address

Respondent: Stephen Cottrell, Superintendent
17A Highland Avenue
Winthrop, ME 04364

Special Services Director: Lewis Collins

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on March 10, 2009. The Complaint Investigator was appointed on March 10, 2009 and issued a draft allegations report on March 11, 2009. The Complaint Investigator conducted a complaint investigation meeting on March 30, 2009, resulting in a set of stipulations. On April 2, 2009, the Complaint Investigator received 67 pages of documents and a list of proposed interviewees from the Complainant, and a 3-page memorandum and 126 pages of documents from Winthrop Public Schools (the "District"). Interviews were conducted with the following: Lewis Collins, director of student support services; Melissa Cook, case manager; Pam Cairnie, autism information specialist; Sally Stone, teacher; Jessica Callahan, special education teacher; Michelle Urso, educational technician; Lynda Mazzola, speech pathologist; Andrea Mishou, speech/language pathologist; the Student's mother; and the Student's father.

III. Preliminary Statement

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

IV. Allegations

1. Failure to prepare the student's IEP in conformity with what the IEP team agreed to at the 10/29/08 meeting in violation of MUSER §VI.2.J(4);
2. Failure to consider the results of the student's reevaluation and appropriately revise the IEP to address a lack of expected progress toward the speech and language annual goals in violation of MUSER §VI.2.J(5);
3. Failure to provide special education and related services in the nature of speech therapy sufficient to enable the student to advance appropriately toward attaining his annual goals in violation of MUSER §IX.3.A(1)(d)(i);
4. Failure to include speech and language goals in the IEP that meet the student's educational needs in violation of MUSER §IX.3.A(1)(b)(ii);
5. Failure to involve the full IEP team, including the parents, in the development of the student's transition plan in violation of MUSER §§VI.2.C(3)(b) and VI.2.I;
6. Failure to take steps to ensure the student's preferences and interests were considered in the development of the student's transition plan in violation of MUSER §VI.2.C(3)(d);
7. Failure to obtain the parent's consent before administering a vocational rehabilitation assessment in violation of MUSER §V.1.B(3)(a)(i).

V. Complainants' Proposed Resolution (from Dispute Resolution Request form)

1. The Student's speech therapy services should continue at previous levels, with compensatory education for any lost services.
2. The Student's speech goals in his IEP should be expanded to specifically address weaknesses identified in his recent speech evaluation.
3. The transition plan in the most recent IEP should be removed until the IEP team has discussed and developed a transition plan.

VI. Stipulations

1. After the 10/29/08 IEP team meeting, the Student's IEP was modified so as to change the speech services delivered in the regular education classroom from 20 minutes of direct service weekly to 20 minutes consult services bi-weekly.
2. A post-secondary transition plan was not discussed at the 10/29/08 meeting.
3. A post-secondary transition plan was included in the Student's IEP following the 10/29/08 IEP team meeting.

VII. Summary of Findings

1. The Student lives in Winthrop with the Parents, his twin brother and two other siblings, and is presently attending xx grade at xxxx School. He began receiving special education services under the category Autism in 2000.
2. The Student's IEP dated October 30, 2007 provided for, among other things, speech and language therapy for 80 minutes weekly, with 60 minutes being delivered in the special

education classroom and 20 minutes delivered in the regular education classroom. The present level of academic and functional performance relating to speech stated “[the Student] has made progress in all areas.” The speech and language goals contained in the IEP were as follows:

- [The Student] will demonstrate comprehension of various language structures, intent and meaning, including compound/complex sentences, vocabulary, and figurative language, as well as produce accurate expressive language forms in answering questions, narration, and sentence production with 80% accuracy independently in a structured setting to become a clear and effective communicator by 10/08.
- [The Student] will identify nonverbal cues/behavior and how his and others’ behavior affects others in various settings with support 80% of the time by 10/08.
- [The Student] will demonstrate functionally appropriate social skills to become a clear and effective communicator in various settings with support 80% of the time by 10/08.

3. The October 30, 2007 IEP, which was in effect when the Student turned xx on xx/xx/xxxx, did not contain a post-secondary transition plan.

4. On October 29, 2008, the Student’s IEP team met to conduct its annual review. The team discussed the Student’s speech goals and level of speech services, with the District proposing to reduce the Student’s direct speech therapy service to 30 minutes weekly, and converting the 20 minutes in the regular education classroom to 20 minutes bi-weekly consultation service. The District further proposed to develop only functional speech goals. The Parents disagreed with each of those proposals. The District ultimately agreed to not reduce the 60 minutes per week of speech services to 30 minutes while the Student’s speech therapist, Ms. Mishou, performed a new speech evaluation of the Student. Although most of those in attendance believed the District had agreed to make no changes to the Student’s speech program in the interim, the District intended only to leave the 60 minute segment unchanged and to proceed with the conversion of the 20-minute segment to bi-weekly consultation and develop the new goals. It was further agreed that the team would meet again to discuss the results of the evaluation and reconsider the speech services and goals in the Student’s IEP.

5. Although the Student was xx on October 29, 2008 and was in attendance at the meeting, the meeting ended before the team had an opportunity to discuss and develop a post-secondary transition plan for the Student.

6. After the meeting, the District issued a Written Notice in which the District proposed to provide speech and language therapy to the Student for 60 minutes weekly in both special and regular education settings, with 20 minutes as consultation services. The Written Notice further provided that a speech and language evaluation would occur “to assist programming and IEP goal options.”

7. On November 14, 2008, the District sent to the Parents an IEP dated October 29, 2008. The IEP contained new speech goals for the Student, and indicated that the Student was to receive 60 minutes per week speech therapy in the special education classroom, plus 20

minutes bi-weekly speech consultation services in the special education classroom. The IEP contained the following speech and language goals:

- [The Student] will, with modeling of social scripts, initiate communicative interactions with others by asking relevant questions of others and maintain that conversation from a baseline of 30% success to 50% success rate.
- [The Student] will participate in 3 conversational turns, making relevant comments, questions and statements, from 30% accuracy, to 50% accuracy.
- [The Student] will end a conversation appropriately, through comments and statements such as “talk to you later” or “thanks for talking with me,” from 0% accuracy, to 20% accuracy.

8. The IEP also contained a post-secondary transition plan. It stated as a training/education goal: “[The Student] would like to train to be a NASCAR driver or become a teacher.” It further provided that the Student would receive daily living skills in the Functional Life Skills Program at the xx school, and called for a Vocational Rehabilitation and parent assessment of the Student’s independent living skills.

9. After the Parents received the Written Notice and IEP, they wrote to Mr. Collins complaining that those documents violated the agreement the team had reached that speech goals and services would stay the same. Mr. Collins wrote back that he had a different recollection of what the agreement had been, but that he would maintain services at previous levels until the next IEP team meeting.

10. The Student participated in a speech evaluation conducted by Andrea Mishou of the District on November 25, 2008. The results indicated that the Student had: severe delays in all areas of the Clinical Evaluation of Language Fundamentals-IV testing, with most subtest scores in the 40s, and results from the Pragmatic Profile suggesting an overall age equivalent of xx-xx years old; an Expressive Vocabulary Test score in the 1st percentile (grade equivalent of xx), demonstrating a severe expressive vocabulary delay; and a Peabody Picture Vocabulary Test score in the 1st percentile (grade equivalent of xx), demonstrating severe receptive vocabulary delay. The scores obtained were not significantly changed from those obtained in previous evaluations from 2005 and 2006.

11. The 2008 speech evaluation noted that social skills continue to be an area of need for the Student, remarking that social demands will increase when the Student enters xx school, and contained the following suggested interventions for the Student:

- Improve receptive and expressive vocabulary skills, including comparing and contrasting information.
- Improve ability to formulate complete sentences when provided with a target word.
- Increase understanding of spoken paragraphs.
- Improve pragmatic skills

12. In a speech-language progress report dated December 1, 2008 from Lynda Mazzola, a speech language pathologist with whom the Student had been working since June 1, 2008,

Ms. Mazzola recorded excellent or good progress on all but 2 of her objectives. She noted both significant gains in the areas of auditory attention, listening skills, word knowledge and use of later development word and sentence structures, and in the area of pragmatic language skills. With regard to the latter area, Ms. Mazzola stated that the Student “initiates conversations with this clinician, shares personal experiences (past and future), and interacts with other adults in the environment. In addition, he has requested to play language games, and has consistently used an appropriate, quiet voice during all therapy sessions.” Ms. Mazzola described the Student’s ongoing difficulty “understanding more complex language structures, inferential language, higher level vocabulary concepts..., and determining meaning from context.” Ms. Mazzola’s report contains her recommendation that the Student continue to receive speech therapy services, stating that the current goals and objectives in her work with the Student would remain in place.

13. Ms. Mazzola conducted a speech evaluation of the Student on January 29, 2009, consisting of the Receptive One-Word Picture Vocabulary Test (score in the 3rd percentile, age equivalent of xx years xx months), the Expressive One-Word Picture Vocabulary Test (score in the 5th percentile, age equivalent of xx years xx months), and the Comprehensive Assessment of Spoken Language Test (composite score in the 0.1 percentile). Ms. Mazzola interpreted the results as indicating significant weaknesses in the Student’s oral language processing skills, knowledge and use of words and grammatical structures, ability to use language for tasks requiring higher-level cognitive functions, and knowledge and use of language in communicative contexts. Ms. Mazzola strongly recommended that the Student continue to receive speech therapy services (not specifying whether her own, through the District or both) to increase word knowledge, word retrieval and verbal memory, knowledge and use of grammar, language comprehension and organization skills, verbal expression and pragmatic language.

14. The Student’s IEP team met again on February 10, 2009 to review Ms. Mishou’s speech evaluation. Ms. Mazzola attended the meeting, but her evaluation had not been completed and was therefore not provided to the IEP team, although she orally presented some of the Student’s scores. The Student’s speech and language goals were reviewed as well as the focus and quantity of direct therapy. Ms. Mishou recommended that therapy focus on the area of social language skills, with 30 minutes per week for direct instruction, and 15 minutes per week of consultation to the Student’s special education teachers. Therapy would include practicing interpersonal skills within a small group and utilizing social scripting in regards to social situations in which the Student was experiencing difficulty. Consultation would enable the Student’s teachers to implement these techniques and social scripting ideas into the Student’s school day. The Parents and Ms. Mazzola disagreed with the recommendation to reduce the level of direct speech services. In the absence of consensus, Mr. Collins determined to accept the recommendation of Ms. Mishou.

15. At the February 10 meeting, Mr. Collins proposed that a full non-verbal cognitive evaluation of the Student with adaptive tests be conducted to inform the team’s programming decisions. He noted that the Student’s 2006 neuropsychological evaluation reflected levels in the extremely low range for mental processing, but did not contain actual scores. The Parents have so far not consented to have this evaluation performed.

16. After the February 10 meeting, the District issued a Written Notice in which the District proposed to provide to the Student 30 minutes of direct speech services in a special education setting and 15 minutes of consultation, with the speech goals being solely in the area of social language skills.

17. Once the Parents filed this complaint, the District discontinued efforts to further develop new speech goals for the Student's IEP, and maintained the level of services contained in the current IEP.

18. The District scheduled a Meeting of the Student's IEP team for March 31, 2009 to discuss and develop the Student's post-secondary transition plan. The Parents refused to attend and requested that the meeting not go forward until the resolution of this complaint investigation.

19. During an interview conducted by the Complaint Investigator with Melissa Cook, Ms. Cook stated the following: She is a case manager at Sweetser, and has been the Student's case manager for about two years. She thinks the Student is a great kid, with a fun sense of humor. She performs monthly observations of the Student at his school. She sits with the Student and talks with him. She also talks with his teachers, especially Ms. Urso. She thinks the Student has come a long way, and is much better at communicating. She can ask him how things are going and he responds to her. He also responds to the other students, although he tends to correct them. He is more independent with his academics. The social aspect of the Student's communication skills is of the biggest concern to her. The Student struggles with how to maintain conversation with people. He doesn't understand the difference between appropriate and inappropriate social behavior; he doesn't understand what "rudeness" is. She believes the Student has potential to learn more and acquire more skills. She agrees that he needs life skills, but thinks he should be in regular education classes as well. As long as he has his educational technician there to support him, he should be able to do this in xx school as well.

At the October 29, 2008 IEP team meeting, the District suggested decreasing speech services, but the Parents didn't agree. They talked about updating his speech evaluation. Her understanding was that the team agreed that the level of speech services should stay the same until the next meeting after the evaluation was completed. They talked about the Student's need to improve social communication skills, but also agreed that the speech goals would remain the same until after the evaluation.

At the February 10, 2009 meeting, the team discussed the speech evaluation. The District said they didn't see much change since the last evaluation, so it looked like the Student wasn't able to make much progress. The District recommended a decrease in speech services, with a focus on social skills. She didn't agree with that proposal, believing speech services should remain at the current level. She didn't think it made sense to say on the one hand that the Student needed work on his social communication skills, but then to reduce his speech services that would help him work on those skills. She also didn't think the speech services should be focused solely on the social skills, although they were the most important. She agreed with the speech goals.

20. During an interview conducted by the Complaint Investigator with Lynda Mazzola, Ms. Mazzola stated the following: She is a speech and language pathologist, and began providing speech therapy to the Student when he was xx years old and not talking. She has continued to work with the Student since that time. Prior to becoming a speech and language pathologist, she was a special education teacher for 15 years, and then a special education director for 4 years. One of the reasons she became a speech and language pathologist is that she realized that language and communication was the key to a child's learning and living, and she wanted to focus on that with her students.

She doesn't believe that the gains that the Student has made over the years are directly measurable. He used to come into her office and say nothing. He only responded to direct questions. Now, he comes in and tells her what they are going to do. He tells her what he has been doing. He talks to other adults in the office. There is no test for this. Although some of these gains are the result of his maturation and the time he has spent in the school environment, much is directly related to her work with him.

She attended the October 29, 2008 IEP team meeting. Mr. Collins wanted to reduce the level of direct speech services for the Student, stating that the Student was having his speech needs met in the special education classroom. She and the Parents disagreed. There was also discussion of the speech goals in the Student's IEP. The only goals being proposed were with regard to social interaction. She disagreed with this, believing that there were other areas of his speech development that needed to be worked on. One goal was "The Student will maintain his current level of functioning." She disagreed with this goal, because she thought the Student's verbal abilities should be growing, not just maintaining the same level. At this point, Ms. Mishou was new to the District and didn't know the Student very well. It was decided that Ms. Mishou would do a new speech evaluation and the team would reconvene to review the results of that evaluation. At the end of the meeting, Mr. Collins read a list of the team's determinations, and he said that speech goals would not be set and speech services would remain at current levels until the completion of the speech evaluation and further meeting.

After she received Ms. Mishou's evaluation, she decided with the Parents that she would do her own evaluation, being careful not to retest the Student with any of the same instruments used by Ms. Mishou. She knows the tests that were used in Ms. Mishou's evaluation very well, and she believes that the evaluation is probably reliable. By the time of the February 10, 2009 IEP team meeting, she had mostly but not totally completed her own speech evaluation. She did, however, verbally report the scores she had obtained. She particularly emphasized the couple of subtests on which the Student scored fairly high (75), to make the point that the Student has some real strengths and his educators need to capitalize on those strengths. Mr. Collins questioned the validity of her tests, and asked if her report would be ready for the next meeting.

With regard to the results of Ms. Mishou's evaluation, she was concerned because the District seemed to see the fact that the Student's scores were similar to the previous speech evaluation's scores as proof that he had made no progress. This is incorrect. The tests are normed for his age group; as he was older the second time, he had to get more answers correct

in order to achieve the same scores as last time. The evaluation shows that he made steady progress, but not more than just normal growth. She sees this as an indication that the Student needs a greater level of services, not less, in order to achieve greater than normal growth. From her years in the classroom, she knows that a classroom teacher can't meet the language needs of every student in the classroom. The teacher can individualize her program, and can implement therapies the Student works on with the speech therapist, but students need speech and language services to support their learning. This is particularly true for a child with autism like the Student, who needs lots of repetition and doesn't generalize information.

She argued against reduction of the Student's direct speech therapy from its current 60 minutes per week. Ideally she would like to see more services, but as the Student also spends 60 minutes per week with her, she feels the current level is adequate. She agreed with provision of consultation services 20 minutes per week, but thinks 20 minutes bi-weekly is insufficient. She doesn't agree with the speech goals in the Student's IEP. She believes the Student can already begin and end a conversation; it's maintaining a conversation that is difficult for him. He needs more language skills – making sentences, describing things, talking about things. His vocabulary is a strength, falling in the mild to moderate range, but a speech therapist needs to teach him how to use that vocabulary.

With regard to a neuropsychological reevaluation, she thinks this is unnecessary. The Student was tested in 2006 leading to his official diagnosis of autism. Dr. Popenoe made it clear that the Student was very difficult to test, and that the test results gave only a minimum idea of what he could do. At the October 29, 2008 meeting, Mr. Collins said we didn't need to do a reevaluation because the 2006 test results were still reliable. Mr. Collins only started talking about doing a reevaluation at the February 10, 2009 meeting, when the Parents and she were resisting the decrease in speech services. Mr. Collins said he wanted the Student tested by the District because he doesn't know what the Student's strengths are. Mr. Collins said that the staff has to keep telling the Student what he is supposed to be doing. She explained that the Student does much better with pictures; show him a picture of his schedule, and he will know what to do. The Student doesn't do well in testing situations, and a new evaluation won't give them any new and useful information. She believes that the Student's functional ability is higher than his testing ability. He has some non-verbal skills that are age appropriate, but other skills that are not age-appropriate. He has strong computer skills. She believes Mr. Collins wants to do the reevaluation because he is looking for evidence that the Student is cognitively limited to support the decision to reduce speech services.

She thinks that the Student would benefit from some life skills training, but that it shouldn't be his full-time placement. The Student has some really good academic skills. He may not be at grade level, but he is still gaining skills; he hasn't plateaued. The District shouldn't be telling the Student he can't learn any more and no longer belongs with his peers. When the Student transitioned to xx school, the District said his program would remain the same, with some resource room support. When the Parents got the Student's IEP, the program had been totally changed; he went from being in the regular education class to full time in a self-contained classroom. The Parents demanded to meet with the superintendent and got the program changed. At the beginning of the current school year, the District tried to get the Parents to agree to put the Student into the xx school life skills classroom this year. They

refused. This is why the Parents are insisting that the transition plan, with its reference to a life skills program, be removed from the IEP. They believe the District intends to place the Student full time in the life skills classroom when he goes to xx school.

Just because the Student's cognitive functioning is not at age level, that he has significant learning impairments and learns differently, doesn't mean he doesn't learn. He needs to be with his non-disabled peers. The research on autism confirms the importance of exposure to non-disabled peers for learning. She believes the Student can be a functional member of society, and with some support could one day hold down a job.

21. During an interview conducted by the Complaint Investigator with Pam Cairnie, Ms. Cairnie stated the following: She is an autism information specialist working through the Autism Society of Maine. She became involved with the Student and his family shortly before the October 29, 2008 IEP team meeting. She attended the meeting to support and advocate for the Parents. Her chief concern was that the Student's transition to xx school not be too rapid, as this often causes problems in students with autism, causing anxiety and interfering with their learning. The Parents wanted the Student to remain in his current placement and be transitioned slowly into the xx school along with his non-disabled peers. Based upon what the Parents had shared with her, she had expected that the Parents' concerns would not be resolved at the meeting. She was surprised by the District's positive response to the concerns of the Parents. At the conclusion of the meeting, it was decided that the Student's program would stay as it was, and there would be no dramatic changes in the Student's program. The Parents would be informed of any gradual changes to the Student's program, and the team would meet again in March 2009. The Parents were pleasantly surprised by this outcome.

At the urging of Parent I, the District invited her to present an in-service training to the school staff on February 13, 2009. The training reviewed the nature of the various autism spectrum disorders, and presented strategies for working with students with those disorders.

22. During an interview conducted by the Complaint Investigator with Sally Stone, Ms. Stone stated the following: She is a xx and xx grade science teacher at xxxx School, and has had the Student in her class both last year and this year. The Student does not participate verbally in the class, neither asking nor answering questions, nor joining in class discussion. When the class is doing a lab exercise, she will sometimes question the Student individually. He completes written work, but what he works on is tremendously modified compared to what the other students are working on. Ms. Urso is with the Student throughout the class, and frequently reminds him what is being said and what his instructions are. The Student works with other students on lab exercises, but Ms. Urso does a lot of that for him. She doesn't think the Student is really able to do the lab work.

In general, the Student does not appear to be engaged in the work of the class. She does not believe the Student gains any science-related knowledge, although he may gain math, reading and organizational skills. She doesn't see any improvement in the Student's language skills over the last two years.

23. During an interview conducted by the Complaint Investigator with Andrea Mishou, Ms. Mishou stated the following: She is a speech/language pathologist with 15 years' experience, and has been working for the District since August 2008. Since September, she has worked with the Student, delivering speech services for 60 minutes weekly as a pull-out (both in a small group and one-on-one), and for 20 minutes in the Student's science class. She also performed a speech evaluation of the Student earlier this year. Compared to his peers, the Student requires a lot of re-teaching, and a lot of redirection from Ms. Urso. In his science class the Student does not appear to be engaged in the classwork and is focused more on his lint-picking habit. She thinks the work the class is doing is very hard for the Student. He works with other students in small group activities, but he can't really talk about what they're doing. The Student wouldn't be able to do it at all without Ms. Urso's support. She doesn't think there is much value to the Student's being in that class; he's so engaged in his own compulsive behavior that he's not able to absorb what's going on around him. The Student is functioning as a xx grader in an xx grade science class. She believes that next year the Student's needs would best be met in the life skills program at the xx school.

When she did the speech reevaluation, the Student's scores were very similar to the previous evaluation. This shows the Student is maintaining but not advancing. He's had a lot of therapy for a significant amount of time and he's still not in the average range. She thinks it is unlikely the Student will pull himself into the average range. She also doesn't think that the Student will slip backwards with the reduction in services the District is proposing. She understands that Ms. Mazzola believes that the Student is functioning at a higher level than she does. She thinks that when you have been working with a Student for a long time, it can become difficult to be objective. She knows that Ms. Mazzola has seen improvement in the Student over the years, but the test scores do not demonstrate any impressive gains, just that he is maintaining. She doesn't see speech therapy as a lifetime commitment.

At this point, she thinks further gains for the Student will be minimal. Other students have IEPs with speech goals of gaining 15 or 20 points on their standardized test scores, but this would not be realistic for the Student. Both she and Ms. Callahan, who has been working with the Student on his expressive and receptive language skills, believe that the Student needs to be working on his social language skills. She thinks the Student's teachers and therapists should be asking what they can do so he can communicate with other people more successfully. One of the areas in which the Student has difficulty is in keeping a conversation going. In xx school, there will be even more interaction with his peers. The Student has to learn that other people have things to share with him. She is not giving up on the Student, just trying to shift the focus to functional language skills. She believes she should be working on those skills, while Ms. Callahan continues to work both on those skills as well as the academic language skills. The less concrete the speech goals are, the more difficult they are for the Student. Just because the Student has had these academic language goals in his IEP for a long time doesn't mean they are the most appropriate for him. The Student has had a lot of speech therapy for a long time, without a lot of progress.

She also believes that it is unrealistic to expect the Student to work with her for 60-minute sessions. 60 minutes is a long time for the Student to focus on any activity. She recalls Parent I agreeing with that statement at one of this school year's IEP team meetings. She

believes 30 minutes is a good amount of time to expect the Student to work. Then there should be 20 minutes per week consultation between her and Ms. Callahan, so there can be carry-over from her therapy session into the classroom. The reference in the October 29, 2008 IEP to 20 minutes of consultation bi-weekly is a typo; it is written correctly in the Written Notice as 20 minutes weekly. Speech is supposed to be a supportive service to the Student's special education programming. The 20 minutes of service in the Student's regular education classroom is not appropriate or necessary for the Student. He already has his educational technician in the classroom with him.

Regarding a new psycho-educational evaluation, she thinks it would be helpful to have solid numbers at which to look. She would like to be able to compare those scores with the Student's scores on his speech evaluation and on academic testing. She knows that some students don't test well, and that the tests don't cover everything. She doesn't look only at test scores, but they are helpful in understanding where the Student's strengths are and what his needs are.

24. During an interview conducted by the Complaint Investigator with Jessica Callahan, Ms. Callahan stated the following: She has been a resource room teacher at xxxx School since September 2007, and has had the Student in her class during that time period. The Student is "a great kid," although he doesn't participate much in the classroom. She is working with the Student on how to maintain conversations, and is also reinforcing the use of socially appropriate words.

She sees the Student for three classes per day: reading, language arts and math. Ms. Urso is with him during these classes. There are a total of 2-5 students in her class at these times. The presence of other students doesn't prevent her from working with the Student on his speech goals. She is always looking for ways to work on the speech goals within the other activities. She is currently using the "Reading A to Z" program with the Student, working on comprehension strategies, sentence formation and vocabulary. The Student is also getting pragmatic speech instruction in her classroom using real-life peer interactions. She meets with Ms. Mishou to discuss strategies for this.

She has not observed much change in the Student's communication skills, and no improvement in his functional language skills. It's difficult for the Student to express what he knows, and difficult for him to understand what the teachers want him to do. He can read phonetically, but has a hard time understanding what he reads. He is just now becoming able to write one sentence about a main idea in what he has read. His fluency skills have improved, but not his comprehension. She believes the Student has reached his capability level in academic language arts.

When the Student is in the regular education classes, he is not engaged in the work of the class. Ms. Urso does a lot of the Student's work for him. The Student is unable to comprehend what he is doing. On tests, he relies on rote memory, and has no understanding of the material. In science, he memorizes facts but he can't explain what he learned. This is more a function of his low cognitive abilities than his speech deficit. She is starting to see the Student's cognitive deficits becoming a more significant educational factor than his autism

disability. He is meeting his level. She teaches other children with autism, and the Student looks different than they do; his cognitive abilities are lower. She thinks that a cognitive reevaluation would be helpful in this regard, to provide a better picture of the Student's abilities. She finds Dr. Popenoe's report too vague on this subject. This issue will be more significant when he goes to xx school next year. She doesn't believe the Student can participate in regular education classes in xx school. He needs a functional life skills program, participating with his non-disabled peers in physical education, home economics and "specials."

She attended the IEP team meeting of October 29, 2008. The team discussed doing away with the 20 minutes in-class speech instruction, but decided that services should remain the same until after the new speech evaluation was completed. She also thinks that 60 minute speech therapy sessions are too long for the Student, and that 30 minutes would be more appropriate. The team further discussed changing the goals to more functional, pragmatic speech goals. She believes those goals will be more meaningful for the Student when he enters xx school. The meeting ended before the team could discuss the Student's transition plan, and the team agreed it would meet again in March 2009. To make the IEP "legal," however, it was necessary to include a transition plan in the Student's IEP. At the meeting, she told the Parents she would be interviewing the Student and would develop a draft transition plan, and they would talk about it at the next meeting. The next day, she interviewed the Student for 5 to 10 minutes on October 30, 2008 regarding his career goals and prepared the transition plan, with the understanding and expectation that it would be revised after subsequent meetings. The transition plan references a vocational rehabilitation assessment and a parent assessment as items to be completed in the future, usually during a student's xx year.

25. During an interview conducted by the Complaint Investigator with Michelle Urso, Ms. Urso stated the following: She has been an educational technician at Winthrop School and has been working with the Student for the last 8 years. The Student is somewhat more communicative now than he was two years ago, but his language is not appropriate for his age. The Student can talk more about his interests, but doesn't listen to others talking about theirs. He talks inappropriately about people loving other people, and makes sexualized comments. He also tends to correct his peers when he thinks they are disobeying rules. Ms. Mishou, Ms. Callahan and she are working with the Student on how to talk with peers more age-appropriately.

In the resource room, the Student is working on written language skills, currently on forming a paragraph. This is very difficult for the Student, and he needs a lot of prompting before he can even come up with a topic sentence. The Student's writing skills have only slightly improved over the last two years. The Student has realized a definite increase in his reading comprehension over that period, however.

In his regular education classes, the Student tends to do a lot of lint picking and nail biting, and she has to do a lot of prompting. She does a lot of the work the Student completes in these classes. When the teacher is lecturing, the Student seems to feel that the teacher is not talking to him and so he doesn't have to pay attention. The Student can't really have a

conversation with his peers about what is going on in the class. The Student understands only small bits of what the class is doing, especially in science, where he has a harder time relating to the subject matter than in social studies. The Student recently gave a presentation to the class about one of the elements (radon). The Student read the presentation straight from his notes. If anyone had asked him about some of the terms that were in his report, he wouldn't have been able to answer them. He does enjoy getting up in front of the class. She thinks he sees the other students doing it and wants to be doing it too.

When Ms. Mishou is in the science classroom, usually she observes the Student and then they discuss strategies she can use to help the Student refocus. This is helpful, but she doesn't think it would impair the Student's education if it stopped. She thinks the Student has reached a plateau in these classes with respect to his compulsive behavior. The Student's compulsive behavior is not allowing him to pay attention and so he doesn't get much educational benefit from the classes. She doesn't think the Student will be able to be successful in regular education classes in the xx school, and she doesn't think that he would get much benefit from them. She thinks the Student would benefit from life skills training, and that he probably is capable of someday holding a job.

She agrees with Ms. Mishou that 60 minutes is a long time for the Student to work on something, and that 30 minutes makes more sense.

26. During an interview conducted by the Complaint Investigator with Lewis Collins, Mr. Collins stated the following: He is the director of special education for the District, and is in his first year in that position. At the October 29, 2008 IEP team meeting there was discussion about reducing the 60 minutes of one-on-one speech therapy for the Student to 30 minutes, as both Ms. Mishou and Ms. Callahan believed 60 minutes was too long for the Student, but on this issue the District agreed to keep services the same until completion of the speech evaluation. On the issue of eliminating the 20 minutes of instruction in the regular education class and adding 20 minutes bi-weekly consultation, the team did not achieve consensus and he therefore made a determination to make that change in service; the District did not agree to maintain the speech service in the regular education classroom. When the Parents contacted him after they received the IEP to complain about this, he readily agreed to restore that service, and there was therefore only a total of one week where the Student did not receive that service.

With regard to the speech goals, the team spent a great deal of time working on the goals that appeared in the October 2008 IEP, and there was consensus regarding those goals. It was not until the February 10, 2009 meeting that the Parents complained about having only functional goals. At the latter meeting, the Parents and Ms. Mazzola wanted to add goals for expressive and receptive language skills. The Student's teachers and Ms. Mishou, on the other hand, believed that the Student was not likely to make significant gains in these areas and, as he was headed to xx school next year, would be better served by the staff helping him become a more effective communicator with his peers.

The District is requesting a cognitive evaluation of the Student in an effort to obtain additional data for programming purposes. Dr. Popenoe's report does not contain standardized test

scores, and it's appropriate to complete that picture as the Student prepares to enter xx school. The District is not saying that the Student is not autistic, but that the Student's predominant learning features seem to be those associated with cognitive impairment. The Student appears to his teachers to have many characteristics of students with cognitive deficits. The District has not decided that the Student will be attending the xx school life skills next year. He just spoke with the life skills teacher about the students who would be in her class next year, and the Student's name was not mentioned. No decision on this will be made until there is another meeting, hopefully one with additional cognitive data.

The Student is a great kid, who works hard and wants to please his parents, and the Parents have given him a great environment to support his work.

27. During an interview conducted by the Complaint Investigator with Parent I, Parent I stated the following: When the Student is focused, he's remarkable: he loves to read and he engages in conversation. The Student didn't acquire speech the way other children with autism do, but his communication skills have greatly improved. Compared to 3 years ago, the Student is more likely to discuss things that are happening in his life, things that he saw on TV or read, or to ask questions about those things. He has a lot of video games, and is an expert at playing those games. His peers know this about him, and he's well thought of by them. It's a great thing for him to be with his peers; it gets him to talk. The Student isn't perfect: he says things he shouldn't say and sometimes is quiet in a setting where he should be verbal. He is also not a good test taker.

At the October 29, 2008 IEP team meeting, he believed the team had an agreement that there would be no change in speech services until after a speech evaluation was conducted. The Written Notice didn't accurately reflect that agreement as it kept the proposed changes to his services in there and in the IEP. There was a transition plan in the draft IEP the District sent before the meeting, but they ran out of time at the meeting before they could discuss it. It was agreed the team would discuss it at the next meeting in March 2009. Then he saw that the plan was in the October 2008 IEP, and that it said the Student was going to go into the xx school life skills program. The District tried to get the Student into the life skills program this year and he and Parent II wouldn't allow it. He spoke to the life skills teacher at the xx school, and she told him that the District was making plans for the Student to be in her class next year. He doesn't believe that class is appropriate for the Student. In that class the Student will learn how to fold sheets and be a housekeeper. He would be 90% in the self-contained classroom. There is another program at the xx school where the students are in the self-contained class for 10-20% of the day, and the rest of the time they are in regular education classrooms with the support of an aide. He thinks the Student belongs in that program, and doesn't know why the District has already decided to place the Student in the life skills program. They've never discussed it.

After the speech evaluation was done, the District said it showed that the Student wasn't making any progress. It is not correct that the Student wasn't making any progress; the rate of progress just wasn't as much as it could be. Then the District said the Student's speech services should be reduced. This doesn't make any sense; if the Student isn't making progress with the current level of service, then the District should provide more service, not

less. Also, the District has not been open to suggestions made by Ms. Mazzola that could improve their results.

He has a problem with the change in speech goals from academic goals to functional goals proposed by the District. He agrees that the Student needs help with understanding social situations. The Student is easily misdirected by other children, and he uses inappropriate language with them. The Student, however, still needs help in academic settings as well. He believes the Student is learning in his regular education classes. The Student still remembers the phases of the moon that he once learned in science class. The Student recently did a science project on the element radon. The Student built a model of their house showing their radon removal system. The Student fully understood what he studied, and will give a presentation to the class about it. The Student doesn't fully understand everything in his classes, but he understands enough. At the end of the school day, the Student can tell him what he learned and what he has for homework. The Student is curious and interested, and the District shouldn't stifle that. The xx school has the capability to help the Student be the best he can be. Give him a chance, and there are certain things the Student can do very well.

With regard to a cognitive assessment for the Student, he's not sure what position to take on this. None of the Student's doctors have suggested this, and he wouldn't have a problem with it if one of them did. He doesn't understand why Mr. Collins thinks the Student has a cognitive disorder rather than autism. Also, Mr. Collins rejected the suggestion of a psychologist that wasn't one of those the District regularly refers to as the person to perform the assessment. Mr. Collins wants one person (someone to whom Mr. Collins makes frequent referrals) to administer the test, and then have another person (who is independent of the District) review the results. He doesn't understand why the second person can't administer the assessment as well as evaluate the data.

28. During an interview conducted by the Complaint Investigator with Parent II, Parent II stated the following: In the last 2 years, the Student has made tremendous progress with his communication skills. 2 years ago, the Student couldn't carry on a conversation with people. Now he initiates conversations, asking family members what they're doing, or talking about what he's been doing. She doesn't understand why the District says that the Student can't make progress in speech; his progress may be in small increments, but he's clearly making progress.

The Student never really works on academics with Ms. Mishou. Ms. Mishou plays games with the Student and with other students who all have different disabilities. The one-on-one instruction is all focused on social speech, but the Student doesn't need to work on these skills that much because he works on these at home. Mr. Collins hired Ms. Mishou as a cost-saving measure, and Ms. Mishou only goes to the Student's school one day a week. The 80 minutes of speech the Student receives happen all on the same day, and it would be better if they were broken up over 2 or 3 days.

She disagrees that 30 minutes per week direct speech service is sufficient for the Student; his low rate of progress reflected by the recent speech evaluation shows he needs more, not less, intervention. Mr. Collins makes sure that all students are no longer getting speech therapy by

the time they get to the xx school, and then he puts them in the life skills class. In the life skills class, the students learn to fold sheets and go bowling and swimming every week. The Student already knows how to fold sheets, and engages in martial arts outside of school; instead of those kinds of activities, he needs to build on his academic skills.

When the Student is in the resource room, Ms. Callahan never works with him one-on-one. Ms. Callahan doesn't really know the Student, and doesn't know how to choose the right curriculum for him. Ms. Callahan jumps around from one thing to another, when what the Student needs is repetition. Just recently, Ms. Callahan has been tying the Student's language and vocabulary development to his regular education class material. This is welcome and is what the Student needs to help him understand the vocabulary being used in those classes.

When the Student comes home after the school day is over, he shares what he learned in social studies and science. The Student is much better able to do his homework assignments than he ever was. The Student gets the same assignments and uses the same textbook as the other students, and he can read his science book and find answers to questions. He takes modified, simplified tests, and he scores 100%. He may not retain the information, but he is able to pass the tests. He doesn't learn and retain what other children do. She believes that the Student could learn even more in these classes if the teachers modified and simplified the concepts and the materials and were able to include more visual aids, because the Student is a very visual learner. Ms. Stone's science class is very hard, and many of the students in that class are doing poorly. She doesn't modify the vocabulary for the Student, only the tests. If the Student gets by only on memory without understanding the concepts, that's still a real accomplishment. He gets a great benefit from being with his peers, and from getting up in front of the class to speak. The Student also gets to experience acceptance and feel that he is the equal of the other students.

At the October 29, 2008 IEP team meeting, the District only allotted 1½ hours for the meeting. It was a while before the team even began to discuss speech. She had real concerns about some of the speech goals and about cutting the speech therapy to 30 minutes per week. The team agreed to keep the services and goals the same until after Ms. Mishou completed her evaluation. No one said that the 60 minutes would stay the same, but the 20 minutes would change – it was all going to stay the same. That's why Parent I and she wrote to Mr. Collins after they saw the Written Notice and the IEP. She also doesn't remember anyone talking about interviewing the Student or developing the transition plan after the meeting.

The Student doesn't do well on standardized tests, as is true generally of children with autism. There is a great discrepancy between the Student's low test scores and his ability to read xx grade level books (although without comprehension) and do xx grade math. Instead of saying the Student can't learn, the District needs to understand that he learns differently, and if one method isn't working, they need to try a different approach.

VIII. Conclusions

Allegation #1: Failure to prepare the student's IEP in conformity with what the IEP team agreed to at the 10/29/08 meeting in violation of MUSER §VI.2.J(4)
VIOLATION FOUND

The Parents, Ms. Cook, Ms. Mazzola, Ms. Cairnie and Ms. Callahan all left the IEP team meeting of October 28, 2008 with the understanding that the team had agreed to not alter the level of speech services or the speech goals until after Ms. Mishou had completed the Student's speech evaluation. In the Written Notice, the District nevertheless deleted the 20 minutes of direct speech services in the regular education classroom and replaced it with 20 minutes consultation service; the IEP further specified that the consultation services were for 20 minutes bi-weekly and substituted only functional speech goals for the previous mixture of academic and functional goals.

MUSER §VI.2.I provides that an IEP team should work towards consensus, but that where an IEP team is unable to reach consensus the school district must make a determination and provide parents with written notice of same. Accordingly, in this case, the director of special education could have either agreed with the other team members and created consensus, or else disagreed and then, since there would have been no consensus, proceeded to make a determination. In either event, the rest of the team needed to know what the director of special services had decided. This obviously did not occur. Instead, it appeared to at least 5 team members that consensus had been reached, but that the District thereafter substituted its own judgment. The unexpected deviation from what was apparently the team's consensual determination predictably led to suspicion and loss of trust on the part of the Parents, and violated this regulation.¹

As the District responded promptly to the Parents' written complaint in this regard and restored the previous levels of service, so that there was only one week when the Student did not receive 20 minutes of speech service in the regular education classroom, no corrective action is required for this violation.

Allegation #2: Failure to consider the results of the student's reevaluation and appropriately revise the IEP to address a lack of expected progress toward the speech and language annual goals in violation of MUSER §VI.2.J(5)

Allegation #3: Failure to provide special education and related services in the nature of speech therapy sufficient to enable the student to advance appropriately toward attaining his annual goals in violation of MUSER §IX.3.A(1)(d)(i)

Allegation #4: Failure to include speech and language goals in the IEP that meet the student's educational needs in violation of MUSER §IX.3.A(1)(b)(ii)

NO VIOLATION FOUND

¹ It should be noted that the Parents, when they received the Written Notice that they believed inaccurately stated the team's decision, could have proceeded under MUSER §XIV.8.A to request that the District amend the document. Had the District been unwilling to do so, the Parents could then, pursuant to MUSER §XIV.8.C, have requested a hearing.

The First Circuit, in *Lenn v. Portland School Committee*, 998 F.2d 1083 (1st Cir, 1993) described the obligation of a school district to provide special education to a student with a disability as follows:

The IDEA does not promise perfect solutions to the vexing problems posed by the existence of learning disabilities in children and adolescents. The Act sets more modest goals; it emphasizes an appropriate, rather than an ideal, education; it requires an adequate, rather than an optimal, IEP. Appropriateness and adequacy are terms of moderation. It follows that, although an IEP must afford some educational benefit to the handicapped child, the benefit conferred need not reach the highest attainable level or even the level needed to maximize the child's potential.

Here, the IEP team met on February 10, 2009 and considered the following information in determining what levels of speech services were appropriate for the Student: relevant data from recent evaluations that demonstrated only minimal gains for the Student in the speech and language area despite 80 minutes of speech intervention per week (not including the 60 minutes of therapy per week provided by a private speech therapist, Ms. Mazzola); the reports of the Student's teachers and the District's speech therapist that the Student was obtaining only slight educational benefit from his academic speech instruction; the reports of the Student's teachers, educational technician and the District's speech therapist that the Student was receiving only minimal academic benefit from his attendance in regular education classes.

With this information in the background, the team considered the recommendations of the District's speech therapist that the Student's speech therapy be reduced from 60 minutes per week to 30 minutes per week, that the 20 minutes per week speech services being delivered in the regular education setting be discontinued and 15 minutes consultation services per week be substituted, and that the Student's speech goals be focused on pragmatic, social speech skills. The Student's special education teacher and the director of special education supported these recommendations.

The Parents and Ms. Mazzola disagreed, believing that the Student could make greater gains with more, rather than less, services. As indicated above, however, the legal standard does not require maximum benefit, only adequate benefit. The Student has been receiving 80 minutes of direct speech therapy per week (not including Ms. Mazzola's services) for a substantial period of time, and has made only modest speech and language gains. The position of staff members that the Student is at this point being blocked more by cognitive deficits and/or his compulsive behaviors than by the quantity of speech service appears reasonable, and the services offered under the proposed IEP appear adequate.

Likewise, the decision to focus on the Student's social speech skills at a time when the Student is preparing to enter xx school appears appropriate. The Student's case manager, Ms. Cook, also agreed that these goals were of primary importance for the Student. Although Ms. Cook, along with the Parents and Ms. Mazzola, thought that the academic language goals were still relevant, the Student will continue to work on academic language skills in his self-

contained classroom. Likewise, although the District is proposing to reduce direct speech services, the work on social speech skills will continue throughout the Student's school day as he encounters natural social situations. The weekly consultation services are intended specifically to enhance these opportunities for instruction.

With respect to the issue of the Student's cognitive aptitude, the District's request for a reevaluation seems appropriate given the reports from school staff who work with the Student. While accepting that standardized test scores may yield imperfect results with the Student, information about the Student's cognitive capabilities is of particular importance as decisions are being made about his xx school program. The Parents are urged to carefully consider the District's request, and the District is urged to work with the Parents in regard to the selection of the individual(s) to perform the evaluation.

Allegation #5: Failure to involve the full IEP team, including the parents, in the development of the student's transition plan in violation of MUSER §§VI.2.C(3)(b) and VI.2.I

VIOLATION FOUND

The IEP team meeting of October 29, 2008 ended before the team had the opportunity to develop the Student's transition plan. As the District was aware of the Parents' strong feelings about the Student attending the xx school life skills program, a part of the proposed plan, more time should have been allotted for this meeting. The District correctly believed that, given the Student's age, the IEP needed to include a transition plan. In fact, under MUSER §IX.3.A(1)(h), the IEP dated October 30, 2007 (the IEP in effect when the Student was xx) should have contained a transition plan. For this reason, when the meeting ended without a discussion about the transition plan, the District should have scheduled another meeting at the earliest possible date to take up this topic. Waiting until March was not sufficient. Completing the plan without involving the Parents was a violation of MUSER.

Allegation #6: Failure to take steps to ensure the student's preferences and interests were considered in the development of the student's transition plan in violation of MUSER §VI.2.C(3)(d)

NO VIOLATION FOUND

Ms. Callahan conducted an interview with the Student to get an idea of what his vocational interests were. Although the interview was brief, it was sufficient at this early stage of the transition plan's development.

Allegation #7: Failure to obtain the parent's consent before administering a vocational rehabilitation assessment in violation of MUSER §V.1.B(3)(a)(i).

NO VIOLATION FOUND

The reference in the transition plan to a vocational rehabilitation assessment was a statement of an action to be taken in the future. No such assessment has been performed. There was no violation.

IX. Corrective Action Plan

The District shall, as soon as practicable, convene a meeting of the Student's IEP team, including the Parents and the Student, to develop a transition plan for the Student's IEP. Until that time, the transition plan presently in the Student's IEP will be considered as having no effect. Documentation will consist of the Advance Written Notice, Written Notice and transition plan, and will be submitted to the Due Process Office and the Parents.

In addition, the District shall issue a memorandum to all special education staff regarding the necessity for developing a transition plan for inclusion in the IEP in effect when a student turns xx years of age, and the requirement of soliciting the parents' involvement in this process. The District will submit a copy of the written memorandum, together with a list of the names and job titles of all those to whom the memorandum is issued, to the Due Process Office and the Parents.