

Complaint Investigation Report
Parents v. RSU #34

December 16, 2011

Complaint #12.032C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Parents

Address

City, Zip

Respondent: David Walker, Superintendent

156 Oak St.

Old Town, ME 04468

Special Services Director: Kimm Kenniston

Student: Student

DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on October 27, 2011. The Complaint Investigator was appointed on November 1, 2011 and issued a draft allegations report on November 4, 2011. The Complaint Investigator conducted a complaint investigation meeting on November 18, 2011. Subsequently, the due date of November 28, 2011 for submission of documents was extended at the Respondent's request to November 30, 2011. On December 1, 2011, the Complaint Investigator received a 1-page memorandum, 2 CD recordings and 94 pages of documents from the Complainants, and received a 3-page memorandum and 132 pages of documents from RSU #34 (the "District") on November 30, 2011. Interviews were conducted with the following: Kimm Kenniston, director of special education for the District; Roberta Littlefield, teacher for the District; Kerri Doyle, teacher for the District; Jonathan Heeren, Ph.D., psychologist; and the Student's mother.

III. Preliminary Statement

The Student isxx years old and is currently receiving special education under the eligibility criterion Other Health Impaired. This complaint was filed by the Student's parents, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to adequately consider the evaluation by Dr. Heeren provided by the parents of the Student in violation of MUSER §V.3.A(1)(a);
2. Failure to conduct an evaluation and assessment of the Student in all areas of suspected disability, including specific learning disability, in violation of MUSER §V.2.C(4);
3. Failure to adequately consider the Student's unique, individualized needs in developing his educational program in violation of MUSER §§II.33 and IX.3.C(1)(d).

V. Summary of Findings

1. The Student lives in Old Town with the Parents and his siblings, and is presently attending xx grade at Old Town Elementary School (the "School"). He began receiving special education services under the category Other Health Impaired in xx grade.
2. A psychological evaluation of the Student was performed on September 23, 2008 by Tim Rogers, Ph.D. Dr. Rogers found that the Student functioned within the average range of intellectual abilities as assessed by the WISC IV and, although the Student had difficulty on some individual subtests of that assessment, did not show a processing deficit. Dr. Rogers similarly found that, although the Student scored in the "at risk" range on some subtests for attentional problems, he did not meet diagnostic criteria for an attentional disorder.
3. Dr. Rogers prepared a psychological evaluation update on April 3, 2009, in which he reviewed results of the ADHD Rating Scale completed by the Parents and by the Student's teacher. Based upon those results, Dr. Rogers found that the Student met diagnostic criteria for ADHD – Inattentive Type.
4. On September 25, 2008, the Student was given nine tests from the Woodcock Johnson-III Achievement Battery, including tests on broad written language, spelling, writing samples and writing fluency. The Student scored in the high average range on all of these tests except for writing fluency, which the Student refused to attempt.
5. On November 18, 2008, speech/language pathologist Joan Ellis observed the Student in the classroom. In the report of that observation, Ms. Ellis wrote that the "quantity and quality of [the Student's] written work are significantly below that of his grade level peers," but it was not clear "whether [the Student] was avoiding the writing task because he found the physical act of writing difficult or because the act of composing his thoughts was the stumbling block." Ms. Ellis also found that the Student's attention to task was significantly below that of his peers, being unable to sustain focus on his writing task for longer than two minutes at a time.
6. A communication evaluation of the Student performed by Ms. Ellis in December 2008 indicated receptive and expressive language skills within normal limits.

7. The Parents referred the Student to Anne Marie Vickers Quin, Ed.D. for academic testing, conducted on July 2, 2010. The Student's composite scores were all in the average to above average range, although there was some discrepancy between sub-scores within the domains. Two tests were administered which directly assessed writing: the Test of Written Spelling and the Test of Written Language. The Student's standard score on the former was 82 (12th percentile). With regard to the latter, Dr. Quin reported that the Student's work was too brief and illegible to be scored. Dr. Quin recommended that the Student maintain a "word bank" containing spelling words with which the Student had difficulty written on index cards, and that the Student use the language experience method for writing, which makes use of the Student's spoken language using "scramble charts" and the Student's word bank.

8. The Parents also referred the Student to Jonathan Heeren, Ph.D. for diagnostic consultation regarding the Student's attentional and reading skill development in September and October 2010. Dr. Heeren reviewed the testing that had been conducted previously on the Student. He noted that the Student was then reading on grade level, and described the subtest discrepancies noted by Dr. Quin as "mild." Dr. Heeren concurred with Dr. Rogers' diagnosis of ADHD, described the Student's xx grade classrooms and structures as a "good fit," found a lack of primary processing challenges for the Student, and ruled out the possibility of a specific learning disability.

9. On April 13, 2011 the Student's IEP Team met to develop his 2011-2012 IEP. The Team reviewed the results of the Student's NWEA testing as follows: Reading – 174 (14 point growth), 1 ½ years behind grade level; Language Usage – 187 (26 point growth), 1 year behind grade level; and Math – 194 (24 point growth), at grade level. On the NECAP exams, the Student scored 339 in reading and 336 in math, with 340 considered proficient for xx grade; the Student was accordingly rated as partially proficient. The Team noted that the Student produces less than his peers in the area of writing, and determined that the student needed a graphic organizer to assist in his writing.

10. The Student's IEP dated April 23, 2011 contained two writing goals as follows: 1. "By April 2012, when given direct specific instruction in the special setting, [the Student] will develop writing skills from an ending xx grade level to an ending xx grade level. He will edit written work for Standard English spelling and usage as evidenced by pieces that show: a) few significant errors in spelling of frequently used words; b) no significant errors in capitalization of words that begin sentences, proper nouns, or titles; c) no significant errors of ending punctuation marks and an understanding of how to use commas; d) few significant errors in the use of pronouns and adjectives. As measured by tests, teacher observation, written products, and trimester grades. [The Student] will write multi-sentence pieces showing an opening, at least five supporting details, and a closing as well as correctly formed letters, spacing, and punctuation with 80% as measured by writing samples at the end of each trimester;" and 2. "By April 2012, [the Student] will increase spelling skills patterns from late letter name/alphabetic spelling stage to the beginning stage of syllables and affixes as measured by the spelling stages on the Words Their Way Spelling Inventory."

11. The April 23, 2011 IEP provides for specially designed instruction in the special education setting for 450 minutes in a six day rotation (90 minutes per day, increased from 60

minutes per day in the prior IEP, and representing 20 % of the Student's school day), as well as a large number of supplementary aids and services, including preferential seating, use of study sheets, shorter writing assignments with the focus on quality, extra time for homework, a fidget device to increase focus, and various testing accommodations.

12. Following the IEP Team meeting and development of the April 23, 2011 IEP, the Parents returned the Student to Dr. Heeren for further testing, which was conducted on July 20, 2011. Dr. Heeren administered the Kaufman Test of Educational Achievement, 2nd ("KTEA"), and found the Student's reading skills to be within the average range and on grade level, but that his math and writing skills were notably below grade level (grade 2.6 for math and 1.7 for written language). With regard to the Student's written expression sub-scores, they were average for task, structure and word form, but were well below average for capitalization and spelling. In his letter accompanying the test results, Dr. Heeren wrote that he concurred with the IEP Team's "decision to provide [the Student] with more direct instruction time in these areas [of math and written language] as well as sequenced and guided practice in applying these concepts." Dr. Heeren additionally wrote that the Student's diagnosis would remain ADHD with the addition of Dysgraphia (Written Language Disorder) as well.

13. The Parents wrote to Ms. Kenniston on August 8, 2011, stating that Dr. Heeren had "indicated that [the Student] may have a mild form of dysgraphia," asking that they be provided with a list of the specific instruction methods intended to be used with the Student in the coming year, and requesting an IEP Team meeting.

14. On September 1, 2011, the IEP Team met to review the results of Dr. Heeren's testing and discussed the skills that the Student would be addressing in his xx grade program and the instructional methods that were to be utilized. There was specific discussion of the significance of Dr. Heeren's dysgraphia diagnosis, focused on difficulties with capitalization and punctuation, and its implications for instructional programming. The District also clarified the time that the Student was to receive specially designed instruction (60 minutes for math instruction and 30 minutes for written expression daily). The Team determined not to make any changes to the Student's IEP.

15. During an interview conducted by the Complaint Investigator with Kerri Doyle, Ms. Doyle stated the following: She teaches xx grade at the School, and has the Student in her class this year. The Student looks happy in school each day. He is very active, and appears somewhat young compared to his classmates (he is also chronologically younger than most of his classmates). The Student has been progressing very nicely so far this year. He is better able to attend and focus, and this increased ability means everything to the Student's rate of progress. In addition to resulting in steady improvement in the Student's academics, the increased maturity has helped the Student to make good friends in the class. The Student's independent reading has really improved, but what stands out as the area of greatest need is his writing.

She has modified the Student's writing assignments, so that the Student is not penalized for spelling errors and is required to do less writing. She might ask the class to add three new writing techniques to their piece, but only ask the Student to add one. She is looking for quality rather than quantity. She often will sit with the Student and allow him to orally

rehearse what he is going to write. With her help, the Student will develop a framework for the written work, which the Student will then fill in on his own. Using this method, the Student just recently wrote a piece on the Wabanaki Indians and he did really well. The Student is becoming less dependent on her, so that she can work on a problem with him and then go to help some other students, checking in with the Student again later.

The class's writing program is based upon the "Six Traits of Writing," a philosophy that focuses on six identified components of good writing. The Student participates in all the class's mini-lessons in writing, and she will often give the Student extra examples to make sure he gets what the lesson is teaching. The Student is better at identifying examples of a concept than at generating his own. The Student's written works have expanded as he has been able to sustain focus for longer periods of time. The quality of the Student's writing has improved as well, especially when she prompts him - she will remind him to take his time, to put his finger between his words, to make sure each piece has a beginning, middle and end, etc. The Student's writing is still not on grade level, but it is getting closer. The Student is not the weakest writer in the class.

With regard to spelling, she is using the "Words Their Way" program, modified for the Student, along with the Zaner/Bloser word list, adjusted to include words of particular relevance to the Student. If the Student is working on recognizing a particular pattern, she will add more words to the list that illustrate that pattern. She also has a "word wall" in the classroom, where she posts words thematically related to the work the class is doing. At the beginning of the year the Student was working with grade level spelling words, but after a time it was clear that the Student had so many holes in his spelling set that he needed to go back to xx grade words. The Student has his own list of spelling words, and uses this list during the class's daily spelling practice.

The Student is showing increased spelling accuracy. The Student is very good at word play, and is working on dictionary skills, all using his own word list. The Student is getting very good at generalizing word families, and this was something he was not able to do at the beginning of the year. He recently recognized a new word as a "VCE" pattern word. This is really important, and shows that the Student is paying attention. The Student still sometimes needs prompts to remember what the rule is for a given family of words, but with those prompts he is able to figure out how to spell the new word; he could not do that at the beginning of the year.

The class only recently started working on penmanship, and the Student will be using the "Handwriting Without Tears" program for this work.

She has been working with Ms. Littlefield to develop the Student's writing program. Ms. Littlefield often comes into her classroom to observe a lesson, and will then carry that lesson over to the work she does with the Student in the resource room. She has discussed dysgraphia with Ms. Littlefield. Dr. Heeren's diagnosis was the main topic of the September 1, 2011 IEP Team meeting, and many of the modifications to the Student's program were the result of that diagnosis.

16. During an interview conducted by the Complaint Investigator with Roberta Littlefield, Ms. Littlefield stated the following: She is a special education teacher at the School, and this is the third year she has been working with the Student. The Student works on both math and language arts (specifically writing) in her room. She also coordinates her teaching with Ms. Doyle, and helps her modify her assignments for the Student. Modifications include reducing the scope of the assignments, and providing prompts for him. She might ask the Student, for example, whether he checked over his capitalization and punctuation.

In writing, she is working with the Student on what makes a good sentence. The Student writes a first draft, and then they edit it together. She might prompt him to consider how he could make the sentence work better, or sound better. She might ask him whether he could add some more exciting words (adjectives or adverbs) to the sentence. She will prompt him that the piece he is writing needs a beginning, a middle section and an ending. Usually he can do these things when prompted, but he is not yet an independent writer. The Student's writing is limited to his experiences – he can write about his family and his pets, but has difficulty with other topics. He is becoming an independent reader, and this should help him with his writing. The writing program she is following this year is basically the same as what she was using last year for the Student, except that this year he is maturing, is better able to focus and is ready to listen. They are proceeding with the Student step by step.

Her writing instruction this year includes work on spelling; last year she concentrated on just the writing. She began the year using xx grade level Spelling Connections with the Student, but soon realized that the Student needed to go down one level in the program. They first focused on beginning sounds and short vowels, and are now concentrating on vowel digraphs. This is a struggle for the Student. Before this year, the Student wasn't always able to listen to how words sound, but this year he is listening better and is learning more. She can ask the Student to identify a medial vowel sound, for instance the "oi" sound, and the Student can tell her which letters make that sound. She is placing more emphasis on phonics, and has been using parts of the Wilson program to help with this process. The Student needs a lot of reviewing of rules, a lot of reteaching.

The dysgraphia diagnosis basically means that the Student is struggling with writing, and she already was aware of this and was working to remediate it. She would have spent more time on spelling this year in any event, because she knew the Student was struggling with it last year. The IEP Team reviewed and considered Dr. Heeren's report at the September 1, 2011 meeting. Ms. Kenniston asked for more specific recommendations from Dr. Heeren only because they weren't in his report.

She doesn't believe that the Student needs further assessments in regards to his writing deficits, other than the usual academic testing. The Student's tri-ennial evaluation is coming up, and the District will be working with the Parents to identify the assessments that are going to be given.

She sees a lot of growth and maturity in the Student this year. The Student is younger than his peers, and his immaturity affects his ability to form friendships in the class. Last year, the Student still socialized mainly through play based on chasing, while the other students wanted

more than this from a friendship. This year, the Student wants more from his friendships too, but he doesn't know how to go about it. He is still less mature than his peers, and doesn't know how to develop friendships. He is well liked by his classmates, however.

17. During an interview conducted by the Complaint Investigator with Kimm Kenniston, Ms. Kenniston stated the following: She has been the director of special education for the District since July 2010. When Dr. Heeren first assessed the Student in 2010, his results documented deficits in writing and spelling, so the District was already aware of this before the September 1, 2011 IEP Team meeting. In May 2010, the Student's IEP was amended to add a spelling goal, and the writing goal was expanded when the April 23, 2011 IEP was developed. The testing that Dr. Heeren performed in July 2011, reviewed at that meeting, was useful in that it identified certain specific areas (capitalization and punctuation) of difficulty for the Student, but the addition of the dysgraphia diagnosis did not really tell the District anything new. This wasn't a diagnosis of a learning disability. Dr. Heeren had been very clear that the Student had no identified psychological deficit in addition to his attentional and executive functioning deficits, and this is consistent with the many other assessments that the Student has been given. The District often receives a medical diagnosis such as "disorder in reading" or "disorder in writing" which simply confirms what was already evident to the student's teachers. She is familiar with the term "dysgraphia," and has attended workshops presented by Dr. Chris Kauffman regarding the neuropsychology of writing.

As the District already had specially designed instruction programs in place for the Student in math and writing, it wasn't necessary to modify those programs in response to the diagnosis of a mild dysgraphia. At the meeting, there was confusion that arose from the Parents asking that Dr. Heeren's recommendations be implemented, as Dr. Heeren's report didn't really contain any recommendations.

This year, the Student is using the same spelling program ("Words Their Way") as the regular education students, but at the xx grade level. He receives individual writing instruction from Ms. Littlefield focusing on the process of writing, and which supports what the Student is doing in his classroom. Some of the techniques used in the Student's writing instruction include brainstorming and help with organization, punctuation and capitalization. Assessment of the Student's writing skills measured against xx and xx grade rubrics shows that the Student met 9 of 14 xx grade benchmarks in June 2011, partially meeting the remaining five benchmarks, and met 11 of 14 xx grade benchmarks in November 2011, partially meeting the remaining three benchmarks. This shows that the Student is making progress in his writing, and is not that far behind where he should be.

18. During an interview conducted by the Complaint Investigator with Jonathan Heeren, Ph.D., Dr. Heeren stated the following: He is a licensed psychologist, and was asked in 2010 to perform a psychological screening of the Student. He looked primarily at the Student's attentional issues and his reading skills. The Parents have consulted with him several times since then, and he has reviewed the Student's IEPs and attended some of the Student's IEP Team meetings. It appeared to him that the District was properly addressing the Student's reading needs and the Parents' relationship with the District seemed to be improving. He has been very supportive with the Parents of the District's program for the Student. He believed

that the District was accommodating the Student's low processing speed and organizational deficits in an appropriate manner. He thinks that the Student is in a good school, with a good team and a good IEP.

At the end of the last school year there was another IEP Team meeting with which the Parents were not happy, and they asked him to meet again with the Student over the summer. The Student's mother also told him that she was seriously considering home schooling the Student. He met with the Student and administered a few of the subtests of the KTEA, including those looking at writing as he knew that had been a concern of the Parents. His purpose in doing this screening was to support what the District was doing, as he knew they were already addressing the Student's writing skill deficit. He believed that the Student's IEP writing goal was fine, but thought that the District might find the testing data useful in developing the Student's program.

The Student did have difficulty with the writing portion of the test, with combining sentences in particular. The Student also struggled with the mechanics of holding his pencil. He chose to use the medical diagnosis "dysgraphia" to describe the Student's writing skill deficit in part because his report was copied to the Student's pediatrician, Dr. Margaret Reiley. He in no way meant to indicate that the Student had a specific learning disability as defined in special education.

As the Parents were unclear as to how much of the Student's specialized instruction was being spent on writing, he encouraged them to ask for that information at the next IEP Team meeting. He also gave to the Student's mother a list of programs which she might consider using should she follow through with her stated intention to home school the Student. He was not presenting this list as recommendations to be used by the District. He understands that the District is using the "Traits of Writing" program with the Student, and he thinks this is a good program, although the District may want to consider using something like "Step Up to Writing," which provides more explicit instruction in writing. The big issue for the Student where writing is concerned is the organizational aspect, and he believes that the District is addressing this. The "Words Their Way" spelling program is okay for the Student, but the Student may need some more direct instruction in this area.

He discussed with the Parents the Student's upcoming tri-ennial assessment, and suggested that it should include measures to assess the Student's writing and executive function. He offered to the Parents that he would be happy to discuss this with the District. Over the following two or three weeks, he and Ms. Kenniston made several attempts to make contact with one another over the telephone, but were unable to connect. In the last attempt, he had given Ms. Kenniston a specific time to call, but then had to attend a meeting at that time so that he had his phone turned off when she called. Shortly afterwards, the Parents told him that they were proceeding to due process and efforts to have that conversation with Ms. Kenniston were suspended.

He wouldn't describe the Student as immature. Although the Student appears younger than his same age peers, this is not a function of developmental delay, but of his ADHD. Due to

that condition, unlike the typically immature child, the Student will probably not grow out of his immaturity.

19. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: The Parents wanted the District, at the September 1, 2011 IEP Team meeting, to acknowledge Dr. Heeren's diagnosis of dysgraphia, and to change the Student's goals and programming to address this new diagnosis. They didn't do that. The Parents didn't know exactly what the new goals should be, but they were looking for answers to why the Student was so far behind his grade level in writing and math.

The District had always said that the Student was receiving special education because of his ADHD – because he couldn't pay attention in class, they would pull him out and work with him one-on-one. This was just an extension of his general education programming, however. The classroom teacher provided the materials on which the Student is working in the classroom, and he worked on those same materials in the resource room. The Student is not receiving instructional programming that is any different than the rest of his classmates. The Parents expected the District to describe programming that would specifically address the Student's dysgraphia. At the meeting, she gave the District names of programs that Dr. Heeren had told her were appropriate for the Student, such as "Spellography," but the District didn't agree to use any of them. The "Spellography" program is designed for Students with dysgraphia, because it teaches students to recognize patterns, like which letters make the vowel sound "oi," or that "gh" can sound like an "f."

At the meeting, Ms. Kenniston said that she didn't see a dysgraphia disability in the Student, that the Student didn't have a psychological disorder. Ms. Kenniston said that she didn't know what type of dysgraphia Dr. Heeren was describing. Dr. Heeren told the Parents that dysgraphia was a learning disability and the Parents believe that the Student has that learning disability. Ms. Kenniston said that the District had no intention of doing anything to address the Student's dysgraphia until the Student's category of disability changed. When she told Dr. Heeren what Ms. Kenniston said, Dr. Heeren told her that if the District wanted to change the Student's disability category, then they would have to do more testing of the Student. She told Ms. Kenniston that Dr. Heeren had offered to discuss the testing issue with her, but Ms. Kenniston did not try to contact Dr. Heeren.

The Student's IEP just says that he is to receive 90 minutes of specialized instruction. It doesn't say how much of that is spent on math, or writing, or spelling. It doesn't say what kind of programming is being used during that instruction. At the meeting, Ms. Kenniston told the Parents that the 90 minutes is divided into 60 minutes on math and 30 minutes on writing. There was no discussion about why this was the case, or why only 90 minutes was being provided. As the Student has more trouble with his handwriting, she thinks that more time should be spent on writing than on math, and that more than 90 minutes is required. The Parents did not express these things at the meeting.

The Student needs to learn how to form a sentence, and how to write a story that has a beginning, middle and end. Ms. Doyle has never told the Parents how she teaches writing to the Student. The District has never been specific with the Parents about how the Student is

doing in school; they always say he is doing fine, meeting his goals. To the Parents' observations, the Student's writing hasn't improved since the first part of xx grade. The Parents weren't made aware that the Student had started working with "Handwriting Without Tears" this year, but this is the same program the District has been using since the beginning, and the Student still has problems forming his letters. That program was not selected with the Student's unique needs in mind.

She feels that most of the IEP Team meetings are spent talking about the Student's immaturity, that he's just not ready to learn and can't keep up with his class. The District has been saying this since the Student was in kindergarten and was struggling with forming his letters and with letter recognition. At the end of that year, the District said that the Student was too young and was not ready to go on to xx grade. Because the District believes that the Student is immature, they think that means that the Student can't learn. Just because the Student presents as immature, however, doesn't mean that he can't learn; he can learn as long as the information is presented in the right way.

VI. Conclusions

Allegation #1: Failure to adequately consider the evaluation by Dr. Heeren provided by the parents of the Student in violation of MUSER §V.3.A(1)(a)

Allegation #2: Failure to conduct an evaluation and assessment of the Student in all areas of suspected disability, including specific learning disability, in violation of MUSER §V.2.C(4)

Allegation #3: Failure to adequately consider the Student's unique, individualized needs in developing his educational program in violation of MUSER §§II.33 and IX.3.C(1)(d)

NO VIOLATION FOUND

The Parents alleged in their complaint that the District failed to give Dr. Heeren's report of August 29, 2011 due consideration as required by MUSER §V.3.A(1)(a)(requiring that the IEP Team review evaluation data including evaluations provided by parents of the child). In the complaint investigator's interview with the Student's mother, however, it became clear that what the Parents were in fact complaining about was the perceived disagreement on the part of the District with Dr. Heeren's conclusion that the Student had a mild dysgraphia. The law does not require that a school district agree with the findings or recommendations of evaluations provided by parents, only that they be considered. Included with the documents submitted by the Parents was a recording of the September 1, 2011 IEP Team meeting. As revealed by that recording, there was ample indication that the District staff at the meeting met this requirement. There was discussion, for example, about the need to increase emphasis in the Student's writing instruction on capitalization and punctuation as those areas were shown in Dr. Heeren's testing to be particular areas of weakness for the Student. The Student's low score recorded by Dr. Heeren in the area of spelling was similarly discussed, and Ms. Doyle described how the Student's spelling program was to be customized for the Student.

Moreover, contrary to the Parents' assertion that the District did not accept Dr. Heeren's diagnosis for the Student of dysgraphia, there were several times during the meeting when dysgraphia was referenced by staff members in a way that made it clear that it was accepted. There was discussion about the fact that children with dysgraphia benefit from being taught the rules of writing. Ms. Kenniston mentioned her familiarity with Dr. Chris Kaufman (a neuropsychologist whose powerpoint had been given to the Parents by Dr. Heeren and was included in the documents they submitted) and his work on the effect of ADHD and executive function deficits on writing. The Parents' confusion on this point arises from their more central confusion as to whether Dr. Heeren was diagnosing a specific learning disability of the Student. As was made clear by Dr. Heeren, both in his interview and in the materials he provided to the Parents that were submitted by them to the investigator, this is not the case. According to Dr. Heeren, the dysgraphia diagnosis relates to the effect of the Student's ADHD, particularly his executive function deficit, on the Student's ability to write. This distinction was what Ms. Kenniston was trying to communicate to the Parents at the meeting when she quoted Dr. Heeren as having said that the Student did not have a psychological deficit, and stated that dysgraphia had different criteria. As the District had already conducted testing that supported a determination that the Student did not have a learning disability, and as Dr. Heeren was in agreement with that conclusion, there was also no violation with respect to the allegation that the District had failed to conduct further testing in that area.

Finally, the Parents further allege that the Student's program is not tailored to his unique, individualized needs. This assertion arises in part from their belief that the diagnosis of dysgraphia represented a significant departure from previous understanding of the Student's condition, which was that he had ADHD which manifested, in part, in a difficulty with the process of writing. In fact, this is precisely what Dr. Heeren meant by his use of the term dysgraphia. Thus, the District reasonably did not treat this as a new diagnosis requiring a substantial alteration of the Student's educational programming.

As to whether the Student's educational program adequately addresses his unique needs, the Student has two goals¹ that relate to writing instruction, and receives 30 minutes daily of individualized instruction in writing. Furthermore, there is ongoing collaboration between the Student's special education teacher and general education teacher, to further tailor the instruction the Student receives to his needs. Thus, although the Student is working from the same spelling program as the other students, his word list is not the same. It not only features words from the xx grade list rather than the xx grade, but also features words of particular relevance to the Student and words that help the Student recognize various phonological patterns. Ms. Littlefield is incorporating elements of the Wilson program as she makes the Student's spelling instruction more phonics-based.

The Student's IEP contains numerous accommodations that address writing, such as reducing the size of writing assignments and extra time for homework. Ms. Doyle's writing lessons, which are already differentiated in nature, often allow her to work individually with the Student. Ms. Doyle described a process whereby the Student orally rehearses with her what

¹ It must be noted that the first of these goals is a very complex, multi-part goal that would better be broken down into its component parts.

he intends to write, and they develop a framework for the piece of writing which he will then flesh out on his own. This process appears to be well designed for the Student's particular needs. Dr. Heeren, who had reviewed the Student's IEP and attended several of his IEP Team meetings, was supportive of the Student's educational program.

Mention must be made of the breakdown in communication and trust that appears to have occurred between the Parents and the District. Beyond the matter of whether the Student has a learning disability, the Parents were unaware that certain programming elements that they considered important were already in place, such as a phonics-based approach to spelling (one example given by the Student's mother, the "oi" sound, had recently been a focus of Ms. Littlefield's work with the Student), and emphasis on teaching the Student that a piece of writing needs a beginning, middle and ending. The District should work harder at sharing with the Parents more of this information, but the Parents should work harder at hearing what the District staff members say, engaging in open, non-combative dialogue. The accusation by the Student's mother that Ms. Kenniston failed to contact Dr. Heeren, when in fact she had returned several of his phone calls, suggests there is too great a willingness on the Parents' part to see the District as the enemy, rather than a collaborative partner in providing an effective education to the Student.

VII. Corrective Action Plan

As no violations were found, none is needed.