

Complaint Investigation Report

[] v. []

April 7, 2017

Complaint #17.046 C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: []

[]

[]

Respondent: [], Superintendent

[]

[]

Special Services Director: []

Student: []

DOB: []

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on February 3, 2017. The Complaint Investigator was appointed on February 7, 2017 and issued a draft allegations report on February 10, 2017. The Complaint Investigator conducted a complaint investigation meeting on March 9, 2017, continued at the request of the District from the original date of February 16, 2017. On March 16, 2017, the Complaint Investigator received 178 pages of documents from the Complainant, and received a 17-page memorandum and 140 pages of documents from [] (the "District"). Interviews were conducted with the following: [], special services director for the District; [], principal and teacher for the District; [], special education teacher for the District; [], regular education teacher for the District; [], regular education teacher for the District; and [], the Student's father.

III. Preliminary Statement

The Student is [] years old and is currently receiving special education under the eligibility criterion Other Health Impairment. This complaint was filed by the Student's father, alleging

violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to provide special education, related services and supplementary aids and services sufficient to enable the Student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d);
2. Failure to provide education in the least restrictive environment by determining to place the Student in a special education classroom for five hours per week in violation of MUSER §X.2.B;
3. Failure to provide extended school year services during summer 2016 in violation of MUSER §X.2.A(7);
4. Failure to include within the Student's IEP a statement of measurable annual goals with respect to the Student's writing skills sufficient to enable the Student to be involved in and make progress in the general education curriculum needs in violation of MUSER §IX.3.A(1)(b)(ii);
5. Failure to ensure that all annual goals in the Student's IEP are measurable in violation of MUSER §IX.3.A(1)(b);
6. Failure to ensure that all annual goals in the Student's IEP are aligned with State standards and are chosen to facilitate the Student's progress toward the achievement of grade-level academic standards whenever appropriate in violation of MUSER §IX.3.A(1)(b) and the Maine DOE Policy on Standards-based IEP Goals;
7. Failure to provide adequate periodic reports of the progress the Student is making towards his annual goals sufficient to enable the Student's parent to function as an equal participant in making joint, informed decisions regarding the Student's needs, goals, services and placement in violation of MUSER §§VI.2.I and IX.3.A(1)(c);
8. Failure to fully and adequately implement the Student's IEP with respect to provision of specially designed instruction and to the Student's teachers communicating with the Student's parent regarding work completed in the resource room in violation of MUSER §IX.3.B(3).

V. Summary of Findings

1. The Student lives in [] primarily with his father, and the remainder of the time with his mother (his parents are divorced), and has been attending [] grade at [] School (the "School").
2. The Student's most recent evaluation was conducted by [], Ph.D. on July 29, 2015. The Student's scores on the WISC-V included: full scale IQ – 86; verbal comprehension – 89; fluid reasoning – 103; working memory – 76; processing speed – 86. On

the WIAT-III, the Student scored as follows: reading comprehension – 83; word reading – 89; pseudo-word decoding – 86. The Student received the following scores on the WRAML-2: verbal memory – 111 (77th percentile); attention/concentration – 70 (2nd percentile). Based on evaluation results, Dr. [] offered a diagnosis of ADHD, Inattentive Type, stating that the Student requires a significant amount of structure in order to complete tasks and struggles with self-directed activities. Dr. [] also noted that the Student’s verbal comprehension and language-based learning skills fall in the low average range and may be an area of weakness for him. Dr. [] stated that, given the Student’s attentional concerns and working memory difficulties combined with his difficulties with language-based learning, the Student would likely need the support of small group instruction. Among Dr.[]’s recommendations were: allowing the Student to utilize dictation, particularly when the goal is to assess content or creative thinking; adjust time to complete assignments; and allow the Student to correct small mistakes likely due to inattention.

3. The Student began his [] grade year with an IEP, dated March 10, 2015, that provided the following: specially designed instruction in the special education setting for 1 hour, five days per week (described as work on processing and following directions of classroom work); speech/language services for 30 minutes, two times per week (described as intending to increase the Student’s memory strategies and vocabulary); and six accommodations, five dealing with assessment and the sixth stating “Student needs to repeat, paraphrase directions/information.”

4. The March 10, 2015 IEP contained two academic goals, both addressed to reading, as follows: “By 3/9/2016 given support and instruction at his level, {the Student} will describe the overall structure (chronology, comparison, cause/effect, problem/solution) of events, ideas, concepts, or information in a text or part of a text as measured by daily lessons and teacher observations; By 3/9/2016 given support services for language curriculum, [the Student] will build reading fluency, increase word decoding and sight word skills, and improve spelling to demonstrate 85% mastery as measured by evidenced by [sic] daily work and periodic tests.” The IEP also contained three functional goals identified as speech/language and one identified as instructional which was essentially identical to the first speech/language goal. Although the IEP contained statements that “arithmetic is still an area of relative weakness,” the Student “struggles to do math...on his own,” and the Student “frequently does not remember math facts or concepts,” there were no academic or instructional math goals.

5. On March 8, 2016, the Student’s IEP Team met to conduct the annual review. The Student’s father requested that the Student remain in the regular education classroom with a 1:1 ed tech throughout the day instead of the 60 minutes per day in the resource room, that an after-school tutor be provided, and that ESY services be provided to prevent regression, reinforce concepts and develop writing skills. The rest of the Team, including the Student’s mother, did not agree with these requests and the District rejected them. The explanation provided in the Written Notice of the meeting for the rejection of ESY services is that the Student experiences typical regression that does not require significant recoupment time to regain his prior level of functioning, that ESY services are not intended for maintaining skills

or to maximize educational opportunities, and that the Student's IEP does not contain a writing goal.

6. The IEP that was developed at the meeting, dated March 8th, continued with the same services and accommodations as the previous IEP, adding one additional classroom accommodation of "Assignments completed orally, on tape or dictated." The IEP contained new academic goals as follows: "By 3/7/2017, given support services for language curriculum, CCSS.ELA-LITERACY.RI, 4.2 [the Student] will determine the main idea of a text and explain how it is supported by key details; summarize the text with at least 80%accuracy for 4 out of 5 consecutive attempts as measured by daily lessons and teacher observations; By 3/7/2017, given support service for the language curriculum, CCSS.ELA-LITERACY.RL, 4.1 [the Student] will refer to details and examples in a text when explaining what the text says explicitly and when drawing inferences from the text with at least 80%accuracy for 4 out of 5 consecutive attempts as measured by daily lessons and teacher observation." The IEP states that math is a strength for the Student.

7. The Student's IEP Team met again on May 10, 2016 to address concerns expressed by the Student's father. The issues raised by the Student's father included: that the Student's IEP goals should be written at grade level; that there should be a writing goal; that the Student should receive tutoring and ESY services; that the Student receives inflated grades, which is confusing to the Student; that the Student's school work should be dated, and that work completed in the resource room be identified as such. The Student's father also requested that all tests or classroom work being used to measure the Student's progress on IEP goals be labeled as such and sent home, along with lesson plans for the Student's time in the resource room. The District agreed to amend the IEP to provide that the Student would be reminded to date his work, that work completed in the resource room would be marked with an "R," and that tests which the Student was permitted to redo reflected both the original grade and the retest grade. The rest of the Team did not agree that the Student needed specialized instruction in writing, with the Student's teacher, Ms. [], stating that the Student's writing is comparable to his peers and that the accommodations adequately addressed any impacts from his disability.

8. On the Student's final [] grade report card, he received the following grades: Reading Level - 4; Oral Reading - 4- ; Reading Comprehension - C; Math - B; English - C; Spelling - B; Penmanship - D; Science - A; Social Studies - Satisfactory. On the Student's [] grade report card for the second quarter, the Student received the following grades: Reading Level - 5-; Oral Reading - B; Reading Comprehension - 89; Math - 85; English - 85; Spelling - 82; Penmanship - 5-; Science - 82; Social Studies - 75.

9. The STAR reading test was administered to the Student on the following dates, with the following results: February 1, 2016 - scaled score 389, instructional reading level 3.3, 26% percentile rank; May 23, 2016 - scaled score 454, instructional reading level 3.8, 34%percentile rank; November 3, 2016 - scaled score 505, instructional reading level 4.2, 35 %percentile rank; February 17, 2017 - scaled score 490, instructional reading level 4.1, 28%percentile rank. The STAR math test was administered to the Student on the following dates, with the following results: February 1, 2016 - scaled score 685, domain scores at [] grade

level, 75% percentile rank; May 23, 2016 - scaled score 739, domain scores at [] grade level, 84% percentile rank; October 26, 2016 - scaled score 734, domain scores at [] grade level, 80% percentile rank; February 17, 2017 - scaled score 753, domain scores at [] grade level, 77% percentile rank

10. During an interview conducted by the Complaint Investigator with [], Mr. [] stated the following: He is the Principal of the School, as well as a classroom teacher. This year, the Student is in his classroom in the morning for science, math and ELA grammar. The Student is doing well this year. His recent progress reports showed that he received a grade of 88% in ELA, 91% in math and 73% in science. The Student struggles a little more in science, and there have been fewer tests so far this year, but he seems to understand what the class is working on. He received a 46 on one of his science tests, but he passed all the other tests.

The Student does not retake tests. After a test, he goes over the test with the whole class and determines whether he needs to go over the material again with the class or with just some of the students. Also, before a test, he puts a study guide on line for the students, with an indication of where in the text they can find discussion of the material they will be tested on. He told the Student's father about this so that he could use that guide with the Student. He spoke with the Student about the test which he failed, and it seems that a lot of the problem was that the Student rushed through it. The Student seemed to understand the material, however, and the class will soon be doing a unit where they will be applying the same concepts.

With homework, all students have the option to redo homework, but the Student hasn't chosen to do that at all this year. The way his class is set up, he gives students their assignments and they have the last five minutes or so to start work on them, and ask any questions they may have about the nature of the assignment. Whatever the students don't complete in class becomes their homework assignment. The Student has a 45 minute study hall in his classroom this year, so he Student should be getting his class assignments finished during that time.

He hasn't noticed the Student having difficulty with focus and attention. The Student sits right in front of him (the Student requested that seat). As soon as an assignment is given, the Student starts going on it. The Student is determined to get his work done; he doesn't like to bring his work home.

In math, the Student knows the processes for addition, subtraction, multiplication and division. The curriculum is Everyday Math, which provides charts with the basic mathematics facts so that the Students don't have to memorize them. Nevertheless, he encourages his students to not refer to those charts. The results of the STAR assessments show that the Student has made gains every year; his most recent STAR math result was 77%, and ELA was around there too. The class has recently been working on fractions, and the Student is able to add, subtract, multiply and divide fractions.

He doesn't believe that the Student requires a 1:1 ed tech in his classroom. The Student is doing the work, and does most of it independently. Science is a little harder for the Student, but the Student is doing pretty well. During classroom discussions, the Student is able to answer questions about the material they're studying. The Student is always confident; sometimes he thinks he knows things a little better than he does. There are no problems with the Student's behavior, and he's on grade level with his peers.

In writing, the Student is on level with his peers. In math this year the students are given a lot of open ended questions, and they have to explain why they solved the problem the way that they did. The Student was initially using just a few words to explain, but now he's doing five or six lines of explanation. The Student uses complete sentences and provides details when necessary. In [] grade, the class as a whole is starting to understand the need to provide more detail in their writing; the Student is on par with the rest of the class.

11. During an interview conducted by the Complaint Investigator with [], Ms. [] stated the following: She is a special education teacher at the School, and the Student has been in her classroom since he was in [] grade. The Student is a really great kid - he's funny with a quirky personality, and she really enjoys teaching him. For the last two years, she hasn't had the Student for a particular subject; she supplies support services in ELA - reading, writing, grammar and spelling. For example, the Student's reading teacher, Ms. [], recently gave her a paper the Student had done on the book the class is reading so that he could redo it. The Student had rushed through the paper, and the information was incomplete and incorrect. She reviewed the section of the book that was the focus of the paper, and she wrote down the page numbers where the Student could find the information that was being asked about. Other than that, she didn't help the Student with the answers. Some of her work with the Student involves narrowing down the material. Some of it has to do with inference; the Student is a very concrete thinker, and inference is hard for him. They will talk about the reading, but the Student has to come to his own conclusions.

In spelling, the class is being tested on commonly used words. The other students don't know which words will be on the test, but she gets the word lists from the teacher and helps the Student learn how to spell the words. In writing, she helps the Student organize his thoughts, helps him with editing and with forming the sentences into paragraphs. He's not bad at any of these tasks when he tries. This year, the Student has done better in the morning than in the afternoon; she gets more work for the Student to redo from his afternoon class.

The Student does some of his homework in her class. A part of the problem is that he hurries through assignments so he can be finished. The Student says he doesn't like to bring work home; she thinks that the Student's father and Ms. Thompson make the Student spend a lot of time on the work at home. Overall, the Student's aptitude is low-average. She sometimes sees the Student overachieving; she thinks that the Student's father expects him to be an average student, and expects a level of achievement beyond that of which the Student is capable.

She believes that the Student is getting exactly what he needs at school – back-up services for work he has done and pre-teaching of some material. He redoes any work that is not satisfactory; redoing is what happens when the Student is going too fast. A 1:1 ed tech could

help the Student to slow down, but she thinks that the Student would resent having that support in the classroom and might be uncooperative. She thinks that if you asked the Student, he would say that he doesn't need that kind of help, and she would agree with him. The Student really wants to do his work independently; most often, when he comes into her room she goes over directions with him, does a few examples, and then says he's ready to work on his own. She worries that if he had a 1:1, there would be regression in terms of his independence. She thinks that 80% accuracy independently is preferable to 100% accuracy with full time support. She is very proud of the Student's work in reading; he now reads very well and his comprehension is pretty good when he takes the time to do it. His STAR testing shows that he's a little below grade level, but that's consistent with his cognitive level.

She doesn't believe that the Student needs specialized instruction in writing. The most recent psychological evaluation didn't mention this as an area of need for the Student. She helps him to organize his thoughts. Because the Student goes fast, he has to be reminded to go back and edit. His sentence structure is good, and he is writing paragraphs. She saw him make great leaps in writing last year.

She hasn't seen evidence of the Student regressing over the summer. Last year, she did a pre-and post-test around spring vacation and there was a negligible difference.

Last year, her father passed away and she had to be away for a week. Her ed tech took over during this time. For the Student, what he does in her class is based on what she gets from the classroom teachers. If he has no assignments to work on from the teachers, she has some back-up materials he can work on, and the ed tech knows where to find those materials. The Student continued to get his special education services while she was away. When the District needs to make up snow days, the Student gets his special education time on those make-up days just like any other day.

With regard to progress on goals, the goals are taken directly from the Common Core State Standards. The Student's progress comes directly from his classroom work. She works with his teachers to determine whether progress is being made. She checks with the teachers on a regular basis, and there are mid-quarter progress reports and report card grades. When the Student brings reading work into the resource room she can make a determination as to how well the Student is meeting the goals. She's been doing this work for 38 years, so she can do an assessment of the Student's accuracy fairly easily; she can see how much the Student missed and take a percentage to get an idea of whether he met the goal. This assessment is more in her head than written down; she doesn't take grades for the Student in her classroom, although his teachers do. She would say that the Student is meeting his 80% accuracy for summarizing and for the main idea supported by details. She also thinks he is at 80% for details and examples when explaining explicit text, but a lower percentage when drawing inferences.

With regard to marking the Student's work completed in the resource room with an "R," she was doing that early in the school year. As things got busier, she forgot to continue with that. The Student's father never contacted her to remind her about it (in fact, the Student's father

hasn't communicated with her at all this year), or she would have resumed it; she will now return to doing it.

12. During an interview conducted by the Complaint Investigator with [], Ms. [] stated the following: She is a regular education teacher at the School. She had the Student in her class for both third and fourth grades. The Student had a very successful year in [] grade. He was one of only 16 students, and she was able to give him a lot of individual attention. The Student sat in a seat close to her, and she would prompt him when he was having trouble with focus and attention. She would go through the instructions for an assignment with him to make sure he was following them correctly. The Student was comparable to his peers in terms of completing his classroom assignments, but his accuracy depended on whether he rushed through the assignment. The Student said that he didn't want to bring work home. Sometimes the Student finished his work in the resource room; it depended on whether he needed that extra help.

The Student was not allowed to retake his tests, but he was allowed to redo homework assignments. She can recall one time when the Student turned in a test paper and she asked him to recheck his answers, but she never gave him any answers. If the Student gets a low score on a class assignment, she will give him the opportunity to re-read the directions or re-read the question he was answering. She might ask him what the question is asking, or where he could look to find the answer. This is re-teaching, not giving him the answer.

With regard to writing, the Student's skills are a little lower than grade level, though he improved tremendously over the year. The class was doing a lot of writing, and the Student did extra writing in the resource room. She gave the Student instructions and he took the assignment to the special education classroom.

The Student is a very good math student. He can explain how and why he solved a math problem the way he did. He may not have known all his multiplication facts at the beginning of the year but he could figure them out, and by the end of the year he knew them. With division, he was getting the concept and was right there with his peers. The Student was feeling very confident in math by the end of the year.

In reading, the Student improved over the year and his fluency increased. His reading aloud in class improved. When taking tests, she allowed the Student to read the test aloud and he did very well with that. His test scores improved.

She doesn't believe that the Student needs 1:1 support in the classroom. Last year's class had a lot of academically strong students, and the Student strived to keep up with them. She was able to give the Student the academic support he needed. He still needed the support he got in the resource room, though, especially for making sure he understood directions and was doing the assignment correctly.

She didn't notice any significant regression in the Student's skills when he started [] grade compared to the end of [] grade.

The week before the April 2016 vacation, she recalls that the Student went to the resource room, and there are notations in her calendar that back that up.

13. During an interview conducted by the Complaint Investigator with [], Ms. [] stated the following: She is a regular education teacher in the School in the afternoon, and in the morning she does Title I instruction. This year, the Student is in her afternoon class for reading, geography, spelling and penmanship. She knows the Student and his family outside of school; she lives nearby to them and the Student's father works for he husband. The Student is a very good student. He's easy to get along with, and doesn't present any problems. He gets along with the other students, and is a joy to have in the classroom. Her class is a split [] and [] grade class. When she is working with the [] grade, the [] grade students have work they are doing; when she starts working with the [] grade is when the Student goes to the resource room where it's quiet and he can get additional support.

In class, the Student sits right in front, and he likes sitting there. If he doesn't understand any directions or instructions, or if he's not paying attention, she's close at hand. Sometimes the Student may not be tuning in to the class when students are taking turns reading aloud from their books, as happens with other students as well. If she notices this, she looks down and points to where the class is in the book. If she plans on calling on the Student, she will let him know a little in advance. The Student often asks whether he can read next or go first. She has seen a little improvement this year in the Student's reading aloud.

When the Student gets an assignment, he likes to hurry and get it done. When he finishes, he has his own book that he is reading. The extra reading has helped him get better at decoding. Sometimes the Student may not have understood one or two of the new vocabulary words, and she will explain them to him. The Student reads pretty well; she would say he's at the top of the lowest one-third of the class in reading ability.

Comprehension is a little difficult for the Student, though he has improved somewhat in comprehension this year. Part of the problem is his difficulty in giving full and complete answers or his misunderstanding the question. If the Student is re-asked the question, he can usually get the correct meaning. He's not the only student who doesn't always get what a question is asking for. The Student is somewhat self-conscious about asking for clarification of a question, and may be better able to do this in the resource room.

The Student has to write book reports. The first one the class was assigned was probably the first book report the Student had written. She gave the class a guideline for the report, but the Student didn't quite understand how to write it up. She went over the format with the Student again, and his second report was certainly an improvement over the first one. He's now probably on his fourth book, and he's doing better with complete sentences and paragraph formation. In his rush to complete the assignment, he doesn't always get the punctuation and capitalization correct. The more he does it the better he will do. The whole class would benefit from a unit focused on writing, but the Student doesn't need individualized instruction in writing.

The Student likes to be included in the whole class, but he never complains about going to the resource room. She thinks he likes to get his work done there. There might be fewer students there and he can concentrate better. He doesn't seem embarrassed about it; she thinks he's grateful for it. It's probably quicker and easier for him to do some of the work there. If an assignment involves looking up vocabulary words, for example, she will have him take it to the resource room; any assignment except penmanship he can do there. If a test is coming up, Ms. [] will review with him and help him prepare for it. If there is a special event in the classroom, if she's showing the class a movie, for example, she will have the Student stay in her classroom.

She doesn't think a 1:1 ed tech in her classroom would be as helpful to the Student as the resource room. He likes to be out of the classroom to concentrate on the work. The more relaxed atmosphere in the resource room with fewer students helps him tune in to the work better. Support in the classroom might make the Student feel singled out and embarrass him.

The Student's geography grades for this quarter were mostly in the upper 70s. The vocabulary in the geography text is challenging for fifth grade. She tries to water it down, not just for the Student but for the whole class. The Student doesn't get graded any differently than the other students. The Student can redo assignments if he gets a low grade, but the other students can do that too. The Student often hurries and doesn't quite understand what a question is asking. If she does a second check-in, asks him whether his answer is a complete answer, he will say "Not really" and then give a complete answer. She doesn't give him the answers, but shows him where he can find the answer. Other students need this help too. She will say to them "The answer is on this page; you need to find it."

14. During an interview conducted by the Complaint Investigator with [], Ms. [] stated the following: She has been the director of special services director for the District since the Student was in [] grade. The Student continues to be supported in much the same way, though the areas have changed –from describing the main idea to higher level thinking, for example. She would agree that the Student's resource room program is essentially a guided study hall. In the past, the Student had comprehension difficulties and needed a level of support that special education provided. He also receives speech/language services. The Student's cognitive abilities are average to low average. He has made steady progress in his main area of academic weakness, given his attentional difficulties. If he has a comprehensive evaluation, she's not sure what the Team would decide as far as special education services going forward.

She doesn't think that 1:1 adult support is appropriate for the Student based on his disability and needs. There's nothing in terms of his academics that would support that, and there are no behavior issues. The pull-out services in a smaller setting with special education staff help the Student with comprehension and focus.

Regarding ESY, there is no evidence of significant regression or lack of recoupment for the Student. The Student's mother has him for the summer, and she obtains educational services for him through []. That is her choice.

She believes that the Student's goals are measurable; they state a percentage over time, and state how they are going to be assessed. Measurements are based on the work the Student brings to the resource room from the regular education classroom and on Ms. []'s observations of the Student's work. When the goals were developed last year, they were based on grade level (fourth grade) standards.

12. During an interview conducted by the Complaint Investigator with the Student's father, the Student's father stated the following: The Student's scores on STAR testing show he has been consistently one grade level behind, and on the MEA last year he scored "Below State Expectations." The Student may be making overall progress, but it is not efficient. This year, the Student went from a STAR reading test scaled score of 505 in November to 490 in February. The District has to develop some different kind of program for the Student.

He believes that the Student should be receiving tutoring after school and during the summer so that the Student can get on grade level. The Student's one hour in the resource room is chaotic – there are students of different ages doing different work. He thinks the Student doesn't like being in that room with students of different ages; the Student says that he likes being in his classroom where everyone is doing the same work. Ms. [] went into the resource room and she saw the Student just sitting there not doing any work while the other students were moving around a lot. The Student says that he prefers to do work in the regular education classroom because the resource room is too noisy.

He believes that the Student should be receiving full time support from a 1:1 ed tech in the regular education classroom, instead of being pulled out to the resource room. The ed tech would keep the Student on task. Mr. [] has said that he has been teaching the [] grade students when the Student will interrupt to ask for assistance, and he will have to stop teaching the sixth graders so he can help the Student. If an ed tech were there, the Student wouldn't have to ask Mr. [] for help. He has spoken with the Student about this idea and the Student liked it; the Student doesn't like missing things in the regular classroom while he is in the resource room.

In the past, the School has lowered expectations for the Student, like giving him fewer spelling words. He pushed against that and now the Student is doing what the rest of the class is doing and he's excelling; spelling is one of his strongest subjects. The Student gets 1:1 help on spelling during his speech/language sessions. He is not aware that the Student prepares for spelling tests with Ms. [], or that only the Student is given the spelling words in advance of the test while the other students are not.

In regard to ESY services, he believes that the Student needs these services in order to catch up to grade level. The one year that the Student received ESY, in 2014, his STAR reading score increased nearly 50 points; he went from being one grade level behind in June to only ½ grade level behind in September. In 2015, the Student's STAR score dropped nearly 50 points between end of May and October, and he went from one year behind to 1 ½ years behind. Last summer, the Student's STAR reading score increased by 50 points over the summer and the Student stayed about one grade level behind, but he went from designation "On Watch" to "Intervention."

The Student's reading goals are at the [] grade level while the Student is in [] grade. The goals are level 4.1 and 4.2 (beginning of [] grade), but they were developed in March of the Student's fourth grade year, and continued into [] grade. At the recent IEP Team meeting they talked about setting [] grade level goals, but next year he will be in sixth grade. He believes that the law requires that the Student's goals be aligned with his grade level standards. He also believes that the Student is capable of reading at the f[] grade level, although he is not reading at that level currently, and that the Student should have had reading goals at the fifth grade level by the time that the Student reached the end of fourth grade. The Student is progressing in reading, but has remained consistently one grade level behind.

The Student's reading goals are also not measurable. Ms. [] has stated that her assessments of the Student's performance on the goals are all in her head; they are subjective, not measurable. Mr. [] has also stated that he bases assessments of the Student's performance on opinion, that they are not objective. He has never received any data to support the progress reports he gets for the Student's IEP goals.

He believes that the Student should have a writing goal on his IEP so they can track the Student's progress, and that he should be receiving specialized instruction in writing. He has asked the District to conduct a writing evaluation of the Student so he can determine what the Student's writing program should look like. He believes that the Student is below grade level in writing. He has another child in fourth grade, and the Student's writing is below what that other child is doing. He has also gone on line to look at writing samples of fifth grade students, and the Student is not working at that level. The writing sample submitted by the District for this investigation is not the Student's independent work – he helped the Student with that assignment.

The Student's IEP was amended to require that work completed by the Student in the resource room be marked with an "R," but that hasn't been happening. He did not notify anyone at the School about that until he filed this complaint; he thinks that it shouldn't be his job to tell them to follow the IEP.

The Student told him that, during the week in April 2016 when Ms. [] was out of school, he didn't go to the resource room at all. He doesn't know why that was. When the School has make-up days for snow days, they are on Saturday and are only for ½ day. The Student has told him that he doesn't go to the resource room on those days. He believes that this has happened at least twice during the past year. If the Student had a 1:1 ed tech, then he would be getting his special education services whenever he attended school.

VI. Conclusions

Allegation #1: Failure to provide special education, related services and supplementary aids and services sufficient to enable the Student to advance appropriately toward attaining his annual goals and to be involved in and make progress in the general education curriculum in violation of MUSER §IX.3.A(1)(d)

NO VIOLATION FOUND

There is no dispute that the Student has, over the course of the relevant time period (February 3, 2016 to February 3, 2017), made reasonable progress in the regular education curriculum. Over the one year period covered by the complaint, the Student's reading level (as measured by STAR assessments) went from 3.3 to 4.1 and his math grade level advanced from 4th to 5th. Although the Student remained approximately one grade level behind in reading, the measure is one of progress rather than absolute achievement; he is, after all, receiving special education based on a disabling condition creating an adverse effect on his educational performance (more on this below). Furthermore, the Student's cognitive profile from his most recent psychological evaluation places him below average, and his reading scores may reflect this limitation as well as any effect of his disability.

The U.S. Supreme Court has very recently revisited the standard by which educational programs provided to children with disabilities, embodied in their IEPs, is to be judged. In *Endrew F. by Joseph F. v. Douglas County Sch. Dist. RE-1*, # 15-827, 580 U.S. _____ (2017), the Court held that, to meet its obligations under IDEA, a school district must offer an IEP "reasonably calculated to enable a child to make progress in light of the child's circumstances." The Court notes that this is a fact-intensive analysis, geared to the particulars of a given child's abilities and disabilities. The Court underscores that this standard is couched in terms of what is reasonable, not what is ideal. Judged by this standard, the Student's program satisfies the statutory obligation

Allegation #2: Failure to provide education in the least restrictive environment by determining to place the Student in a special education classroom for five hours per week in violation of MUSER §X.2.B

VIOLATION FOUND

The Student's father offers a further challenge to the IEP in terms of whether it provides education in the least restrictive appropriate educational environment. Specifically, the Student's father asserts that the Student, rather than being pulled out for 60 minutes per day into the special education classroom, should remain in the regular education classroom for the full day with full-time support from an ed tech. Although School staff may well be right that the Student would rather go to the resource room for an hour than have an adult sit with him in the regular classroom throughout the day (the Student's father disagrees), the latter is less restrictive in that the Student would remain in the regular education classroom. The School staff responded to this proposal by stating that the Student's level of need is not great enough to warrant full-time support in the classroom; that the services being provided in the resource room are adequate to address the Student's needs. This necessitates, then, an examination of just what services are being provided to the Student in his special education program.

Over the time period relevant to this investigation, the Student's IEP has provided two special education services: specially designed instruction in the special education classroom for 60 minutes per day, and speech/language services for 60 minutes per week. As the Student is not identified as a student with a speech/language disability (or a student with multiple disabilities including speech/language), the latter services are related services rather than primary services (they are entered into the wrong section of the grid on the IEP). Related services are

defined as “developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.” 34 CFR §300.34. Accordingly, it is the specially designed instruction which constitutes the Student’s special education services.

In 34 CFR §300.39(b)(3), specially designed instruction is defined as “adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction— (i) To address the unique needs of the child that result from the child’s disability; and (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.” The benefit being provided to the Student from his time in the resource room is based on there being fewer students and less noise (although the Student’s father disputes that) so that the Student can better concentrate, and support provided by Ms. []. That support consists of repeating to the Student instructions delivered in the regular education classroom, making sure that he understands them, helping the student find the location in source material where he can find answers to assigned questions, and helping the Student prepare for classroom tests. It is not at all clear that any of that constitutes adaptation of the content, methodology or delivery of instruction to the Student. Rather, it appears (and Ms. [] agreed with this) that the Student is being provided with 60 minutes per day of a guided study hall, to help him study and help him with his assignments, along with several classroom (seating at the front of the room, checking in to assure understanding of directions) and testing accommodations. Ms. [], at the March 8, 2016 IEP Team meeting stated “I don’t need to provide instruction because he’s getting instruction from Ms.[] and it’s... level appropriate.”

Eligibility for special education and related services rests on three bases: the existence of a disability, adverse effect on educational performance as a result of the disability, and a need for special education services to redress that adverse effect. While the Student has been diagnosed with a disabling condition (ADHD), which arguably is having an adverse effect on his educational performance (the Student is performing somewhat below grade level in some ELA areas), it appears that he is able to access and progress in the general education curriculum with the provision of a number of general education interventions and without provision of special education services.

As corrective action, then, the District will be directed to review the Student’s eligibility for special education services and, if found eligible, to reconsider whether the services are capable of being delivered without removing the Student from the regular education classroom.

Allegation #3: Failure to provide extended school year services during summer 2016 in violation of MUSER §X.2.A(7)

NO VIOLATION FOUND

MUSER §X.2.A(7) sets forth the standard by which an IEP Team is to determine whether a student requires extended school year (ESY) services as follows: “*The need for [ESY] services is demonstrated by means of: (a) A review by the child’s IEP Team of relevant information including, but not limited to, progress reports and relevant assessments, parent*

report, observations or documentation; (b) Consideration by the child's IEP Team of the significance of the child's disability, progress toward IEP goals; and (c) Consideration of the impact of previous service interruptions, if applicable, and the probability that the child is unable to recoup, in a reasonable amount of time, skills previously mastered." (italics in the original).

The Student's IEP Team considered the Student's progress and the previous effects of service interruptions. The Student's record with respect to regression over the summer break showed significant regression occurring in reading in 2015, although no regression in math. The Student's teachers reported, however, on the Student's rate of recoupment after the summer break, stating that the Student quickly regained the skills that he had lost. The STAR reading test in the middle of the year (February 1, 2016) showed that the Student had gained more than 90 points and was now reading at a grade level ½ year above where he had been at the end of third grade (3.3 compared to 2.9). This supports the determination that the Student had been able to recoup his previously mastered skills in a reasonable amount of time.

Allegation #4: Failure to include within the Student's IEP a statement of measurable annual goals with respect to the Student's writing skills sufficient to enable the Student to be involved in and make progress in the general education curriculum needs in violation of MUSER §IX.3.A(1)(b)(ii)

NO VIOLATION FOUND

The Student's most recent psychological evaluation did not test the Student's writing ability. Based on the diagnosis of ADHD, however, Dr. [] recommended writing accommodations for the Student such as use of dictation, typing rather than writing, and use of templates. The previous evaluation, dated March 14, 2014, when the Student was in [] grade, found that the Student's writing skills were variable – he had difficulty with spelling and did not use capitalization and punctuation consistently, but his writing was legible and he was “well able to create and write full sentences.”

The reports of his teachers were that the Student's writing was on a par with or slightly below that of his peers. They all seemed to agree that the Student was making good progress with writing, and that the key was getting the Student to slow down and take the time to edit his work.

Based on the information available to the District, particularly that the Student appeared to be making good progress with the current program, it was reasonable to not include a writing goal and specially designed instruction in writing in the Student's IEP. The District noted, in its response to the complaint submitted for this investigation, that it intends to seek a full evaluation of the Student to include an assessment of the Student's writing ability. Information from such an assessment should make any determination about the Student's need for services in this area much more reliable.

Allegation #5: Failure to ensure that all annual goals in the Student's IEP are measurable in violation of MUSER §IX.3.A(1)(b)

Allegation #7: Failure to provide adequate periodic reports of the progress the Student is making towards his annual goals sufficient to enable the Student's parent to function as an equal participant in making joint, informed decisions regarding the Student's needs, goals, services and placement in violation of MUSER §§VI.2.I and IX.3.A (1)(c)

VIOLATION FOUND

The Student's academic goals are reproduced in paragraph 6 above. Although they are stated in terms of a measurable task, requiring 80% accuracy on 4 out of 5 consecutive attempts, there is no data in the Present Levels of Academic Performance that reflects the Student's ability to perform these tasks at the start of the IEP term. The problem lies in how the Student's performance against these goals is measured. Ms. [] relies on her overall intuitive sense of the Student ability to perform, rather than using and/or developing assessments that allows her to quantify the Student's performance. For example, in measuring the Student's ability to summarize text accurately, six key elements of the text could be identified that would be required in an accurate summary. Then, if the Student included five of the six elements in his summary he would meet the goal; moving from including four on average to five would represent progress. Without objective data of this kind, the Student's father was unable to gauge the meaning and validity of the progress reports.

Allegation #6: Failure to ensure that all annual goals in the Student's IEP are aligned with State standards and are chosen to facilitate the Student's progress toward the achievement of grade-level academic standards whenever appropriate in violation of MUSER §IX.3.A(1)(b) and the Maine DOE Policy on Standards-based IEP Goals

NO VIOLATION FOUND

The Student's father objected to the use of fourth grade standards for the Student who was entering fifth grade. There is, however, no requirement that a student's IEP goal be based on a grade level standard in all cases. The Department has issued a policy statement with regard to the use of grade-level standards in the development of IEP goals. That policy provides as follows:

In developing academic goals for a student's IEP, the IEP Team should consider each grade level standard as to whether: a) The student can reasonably be expected to meet that standard in the coming year without need of SDI or accommodation, in which case it should not be referenced in the IEP; b) The student can reasonably be expected to meet that standard in the coming year with accommodations in the regular education setting, in which case the accommodations should be described with sufficient specificity in Section 5 of the IEP; c) The student can reasonably be expected to meet that standard in the coming year with SDI (including consultation by a special education teacher in the regular education classroom), and possibly accommodations as well, in which case an IEP goal must be written for that standard which references the SDI and accommodations to be provided in connection with that goal (Example: By June 20, 2014, given a digital graphic organizer to record passage details, Charles will determine a theme of a story, drama or poem from details in the text with 100 percent independence on weekly assignments in ELA classes as measured by student work samples.) (MLR: ELA 4.RL.2) ; or d) The student cannot

reasonably be expected to meet that standard in the coming year even with the provision of SDI and accommodations, in which case the standard should be broken into its components in order to identify its critical elements and those subskills which represent weaknesses for the student. IEP goals must be written addressing those elements and sub-skills, referencing any non-grade level standard that addresses those sub-skills at that level of development, referencing the SDI and accommodations to be provided in connection with those goals, and targeting a reasonable expectation of progress in the development of those sub-skills.

At the time that the Student's March 8, 2016 IEP was developed, the Student was assessed as reading at the 3.3 grade level. The Student's IEP Team determined that the Student was not capable of meeting the [] grade reading standard within the IEP term, but instead based reading goals on the [] grade standard, identifying the elements of determining the main idea supported by details, summarizing text, and drawing inferences as key skills in moving the Student towards ultimately meeting grade level standards. In doing so, the District properly followed the Department's policy.

Allegation #8: Failure to fully and adequately implement the Student's IEP with respect to provision of specially designed instruction and to the Student's teachers communicating with the Student's parent regarding work completed in the resource room in violation of MUSER §IX.3.B(3)

VIOLATION FOUND

The Student's father asserts that the Student did not receive services in the special education classroom during April 2016 when Ms. [] was away, and during make-up snow days. The basis for this assertion is the Student's report that he didn't go to the resource room on those days. Ms. [] stated that the Student did go to the resource room on snow day make-up days, and the Student's father was very uncertain as to how many such days were at issue. Ms. [] also stated that there was coverage for her in the resource room during the week she was away, and Ms. [] confirms that the Student attended the resource room during that week. The Student's report to his father on this issue is not a sufficient foundation upon which to base a finding of violation.

As to the marking of the Student's work completed in the resource room, Ms. [] acknowledged that she had forgotten to continue to follow this procedure. As it is identified in Section 5 of the Student's IEP, the District is required to comply. It must be pointed out, however, that the Student's father's complaint in this regard rings somewhat hollow in that he failed to put the District on notice that this procedure wasn't being followed. Providing a student with an educational program that meets his needs is a collaborative effort on the parts of the school district and parent. It does not serve a student's interests for a parent to recognize a breach in performance on the district's part and use it only to score points in a due process proceeding. If receiving the marked papers had value to the Student's father, he should have notified Ms. [] that she had stopped doing it so that she could correct her process.

VII. Corrective Action Plan

At the next meeting of the Student's IEP Team, to be held within 30 days of the District's receipt of this Report, the Team shall consider whether to conduct evaluations of the Student in speech/language, writing and an assessment of academic achievement, as well as any others deemed relevant to a determination of the Student's eligibility. Upon the completion of those evaluations, the Team shall review the Student's eligibility for special education, completing the Form for the Determination of Adverse Effect and paying particular attention to Section III of the Form. In the event that the Team determines that the Student is eligible, the Team shall develop an IEP that provides special education services to the Student to meet his identified needs. The District shall provide to the Department a copy of the Written Notice of the meeting to consider evaluations and of the meeting to review those evaluations, as well as any IEP that is developed as a result.

Further, the District shall, within 60 days of the District's receipt of this Report, arrange to conduct professional training in the writing of measurable IEP goals, to be conducted by a duly qualified professional not an employee of the District with expertise in relation to that activity, and to be attended by all District special education personnel. The District shall provide notice to the Department and to the Student's father, within 30 days, of the scheduling of that training, including the identity and qualifications of the person retained to conduct the training. At the completion of that training, the District shall provide to the Department and to the Student's father a list of attendees at the training, with a copy of any written materials used in connection with it.

Finally, the District shall, within 30 days of the District's receipt of this Report, provide to the Department and the Student's father, written assurance that the Student's schoolwork completed in the resource room shall be marked in accordance with the provisions of Section 5 of the Student's IEP.