



Amended

STATE OF MAINE
DEPARTMENT OF EDUCATION
23 STATE HOUSE STATION
AUGUSTA, ME 04333-0023

PAUL R. LEPAGE
GOVERNOR

ROBERT G. HASSON, JR., Ed.D.
COMMISSIONER

**Complaint Investigation Report
Parent v. Bangor School District
Complaint 18.065C (student [REDACTED])
Complaint Investigator: Jeannette Sedgwick
March 16, 2018**

COMPLAINT INVESTIGATION REPORT¹

The Department of Education received this complaint on January 18, 2018. A complaint investigation meeting was held with both parties on January 29, 2018. The complaint investigator reviewed all documents, information, and responses from the parties.

Interviews were conducted with the complainant and [REDACTED]'s occasional caregiver on February 21, 2018. On February 14 and 28, 2018, the investigator conducted interviews with District staff. Those interviewed were the following: the Director of Special Education, the Principal at [REDACTED] School, the Student's special education teachers at [REDACTED] School and the Mary Snow School, the Student's speech and language and occupational therapy providers, the Student's adapted physical education teacher, and the Student's teacher at the Student's former school district. The investigator requested more documentation from the District on March 9, 2017. The issues in this complaint involve the appropriate educational services for the Student JG, as outlined below.

Because there has been noncompliance with special education laws and regulations, the District must complete a corrective action plan detailed below.

FACTUAL FINDINGS

1. The Student is a nine year old who qualifies for special education and related services based on the disability of autism. When he entered the District in January 2017, he was in first grade.
2. The Student's disability affects his ability to understand and use language and process sensory information, among other things. The Student uses spoken language, such as when reciting the alphabet and requesting his iPad, but also relies on non-verbal techniques to communicate.
3. When the Student entered the District, the Student's IEP contained the following services relevant to this complaint were listed on his IEP:

¹ This report was amended in accordance with the procedures outlined in the Department's Complaint Investigation Handbook: A Guide for Parents and Educators. Amendments appear in bolded text in the footnotes.

- Speech and language 3x30/week;
- occupational therapy 2/30/week;
- ABA consultation by a BCBA for 1x60 /month;
- Ed. Tech support as needed;
- 1:1 support as needed.

The Student's IEP from his previous school had not included the name or type of device for the Student's communication needs.

4. At the time the Student entered the District, the evaluations of the Student were dated December 17, 2014 (OT), December 19, 2014 (communication/speech and language), January 5, 2015 (psychoeducational), and December 2014 (Augmentative Communication).

5. The Student attended two schools in the District from January 26, 2017 to the present. He was a student in the self-contained, substantially separate classroom at the [REDACTED] School from January 26, 2017 to October 2, 2018. The [REDACTED] School educates children in grades Pre-K through grade 3. As a second grader, he received educational services at the self-contained, substantially separate program at the Mary Snow School from October 2, 2017 to January 24, 2018. The Mary Snow School educates children in grades 3-4.

6. Notice dated January 25, 2017 stated that the Student's IEP would be changed to reflect the District's program, including changing the provision of an ABA consultation from a BCBA to a consultation by a school psychologist. The District stated that the IEP program would not change with these amendments.

7. The Student's first day of school in the District was January 26, 2017.

8. On January 31, 2017, the Parent signed consent for an assessment in adapted physical education (APE). The Report was dated March 22, 2017, 45 school days after the evaluation.

9. The Student's IEP Team met on February 10, 2017 based on the Parent's request so that the Team could discuss the Student's progress. In that meeting, the Team shared, among other things, that there may have been some regression during this transition period and noted that some regression may occur after experiencing significant transition and change.

10. At the annual IEP meeting on March 28, 2017, the Team discussed the programming, special education, and related services for the Student. The District sent the IEP to the Parent on May 2, 2017, 35 days after the meeting. The Team added the accommodation of a communication device with TouchChat with Word Power.

11. From January to June 2017, the Student showed increasing negative behaviors, such as being aggressive to his sibling, flopping, and throwing materials. The District collected data and documented these behaviors as occurring multiple times each day.

12. On June 9, 2017, the IEP Team met to schedule a psychological evaluation for the Student. The Parent signed consent for the evaluation on June 31, 2017.

13. The Student attended ESY in the district during the summer of 2017. When interviewed, the Parent stated that the Student had a good experience and received all the services that were listed in the IEP during ESY.

14. The District conducted a psychological evaluation of the Student that was discussed at the October 2, 2017 Team meeting. The Report, dated September 5, 2017, included an observation and the Vineland Adaptive Behavior Scales – Third Edition. The psychologist reaffirmed the Student’s diagnosis of Autism Spectrum Disorder. The evaluator noted significant delays in all adaptive skill areas. The Student was below the second percentile on all measures including communication, daily living skills and socialization skills.

15. In the fall of 2017, the Student started attending the Mary Snow School in the substantially separate special education classroom. The transition to the Mary Snow School occurred because the Parent and District had concerns that the Student’s educational experience was affected by his sharing a classroom with his sibling and because the substantially separate classroom at the Mary Snow School had fewer students than in the [REDACTED] program. The change was an agreed-upon change of location of the provision of services. During this time, the District had hired a substitute teacher to cover the special education teacher’s position during the first weeks that the Student attended the Mary Snow School.

16. On October 2, 2017, the Team met at the Parent’s request to review the Student’s transition to his new school. The Parent stated that he would like a BCBA, not a school psychologist, to be involved in decisions regarding the Student’s behavior. Amendments to the IEP included adding a goal around developing sign language vocabulary. The Team also considered changing math goals to include addition and subtraction, but decided not to amend. At the November meeting, the Team agreed that home-school notes would begin to be sent home on a regular basis and the dates on the home-school notes that were provided by the Parent for this investigation demonstrate this agreement.

17. When interviewed, the Student’s teacher at the Mary Snow School stated that she had been using some ASL signs for basic communication but primarily relied on vocalizations or communication through the AT device.

18. In a Team meeting on December 19, 2017, the Parent raised issues about receiving the IEP later than allowed by the regulatory guidelines. The Parent shared concerns that the Student was not interacting with his nondisabled peers as much as possible. The Parent also disagreed with the psychological report by the District and requested another evaluation by an outside evaluator. The Parent also requested a BCBA be involved in creating a behavioral plan for the Student.

The District responded to the Parent’s request by stating the District’s school psychologist functioned as the BCBA and that District staff would provide a form to the Parent to fill out before an independent educational evaluation (IEE) could take place. At this meeting, the APE teacher reported that the Student had not been engaging in general physical education on a regular basis. The Team discussed when accommodations must be written into an IEP according to Department guidance.

19. On December 21, 2017, the Parent wrote to the school to revoke previous consent to evaluations and requested prior written notice for any new evaluation to be completed of the Student.

20. The Parent requested a complaint investigation on January 18, 2017.

21. The Student threw a mug in the classroom on January 24, 2018. With its response, the District provided a suspension report indicating the Student was suspended for that action for one day. The Student’s official attendance states that the Student had an unexcused dismissal from school. Emails and notice state that the Student was sent home, not suspended.

22. The Parent did not send the Student to school after the Student was sent home on January 24, 2018. On February 6, 2018, the Parent told the school he would not send the Student back to the school,

after which the District sent a copy of the Notice of Intent to Homeschool, a required form, to the Parent. The Parent has not filed a Notice of Intent to Homeschool with the District or the Department. The Student is still enrolled in the District.

23. Progress Reports from the past year show limited or satisfactory progress on goals in the Student's IEP.

The remaining relevant facts are discussed under each of the allegations below.

DETERMINATIONS

1. *The District has not provided specially designed instruction in a curriculum to address the unique needs of the Student to allow the Student to advance appropriately toward attaining the Student's annual goals. MUSER IX(3)(A)(1)(c); MUSER X(2). COMPLIANCE FOUND.*

The Student received instruction in substantially separate classrooms at both the [REDACTED] and Mary Snow Schools. The Student's small classrooms included students who had autism, intellectual disability, and other disabilities. Academic instruction was provided by certified and experienced special education teachers, both of whom used rewards systems, sensory devices, and a range of behavioral practices based on student data.

The dispute about the Student's special education began on January 18, 2017, after which the Student's stay-put was the classroom at the Mary Snow School. Special education and related services were available to the Student from the time the Student left the school until the present. After the Parent told the school he did not intend to send the Student to school, and after the Student became truant, the District may have considered filing for a hearing or holding another Team meeting. No noncompliance with special education law or regulation has occurred in this instance.

2. *The Student's IEP does not contain measurable annual goals, including academic and functional goals, designed to meet the Student's educational needs. MUSER IX(3)(A)(b)(ii). COMPLIANCE FOUND.*

Each of the Student's IEPs contained measurable academic and functional goals. For instance, academic goals in the Student's IEPs included reading comprehension, such as reading familiar stories using pictures and words with 80% accuracy, improving his ability to measure and tell time from a beginning first grade level to a beginning second grade level. .

Functional goals on the Student's IEPs include communication goals, such as accurately combining two to three icons to make a request or describe his feelings given his communication device and support. The District has included goals to improve receptive language skills, such as following 2-step directions and using a communication device. Written Notice and the discussions during IEP Team meetings demonstrate that staff took into account the Student's abilities and needs and focused on both the academic and functional goals of the Student. Given the Student's needs and abilities described in the 2014 testing, the goals are appropriate for the Student.²

² The Department's review shows that the District provided the IEP to the parent within the regulatory timeframe in accordance with MUSER VI(2)(H).

3. *The Student's IEP lacks appropriate modifications or supports for the Student to advance in the annual goals on the Student's IEP and to make progress in the general education curriculum. MUSER IX(3)(A)(1)(d); MUSER IX(3)(C)(1)(d). Specifically, the complainant refers to the following:*

- (a) *lack of a trained paraprofessional for the Student. COMPLIANCE FOUND.*
- (b) *assistive technology. COMPLIANCE FOUND.*
- (c) *behavioral supports. COMPLIANCE FOUND.*

(a) The Parent believes the Student would perform better in the classroom if he had a 1:1 aide specifically dedicated to him. The District reported that the two educational technicians working with the Student at the Mary Snow School have seven and eleven years of experience and that the educational technicians who worked with the Student at the [REDACTED] School were similarly qualified. The District's goal for the Student is for him to work in a 2:1 setting with access to an Ed. Tech. all day.

The Parent requested 1:1 support in a December 2017 IEP Team meeting. The Team discussed the fact that the Student received appropriate coverage because there were times when the Student and another student worked jointly with one Ed. Tech. and it was preferable for the Student to become accustomed to working with several people. The documentation does not show that a 1:1 aide is necessary for the Student to make progress. The IEPs and amendments show that the Student has appropriate access to support by an educational technician in classroom instruction, classroom assessment, and district and state assessments.

(b) The Parent had reported to the Team his concern that the Student did not have access to his communication device, particularly after receiving information about the IPAD in the home/school reports. Certain home-school reports indicate that after receiving the reward of the IPad as a preferred activity, the Student would have difficulty transitioning back to academic work. The District reported that access to games on the IPAD had been an incentive but that the incentives would sometimes change.

Based on the IEPs and interviews with District staff, the Student has access to his IPAD as a communication device throughout the day. To communicate, the Student uses his IPad and other methods of communication, such as some limited signing and some vocalization. Staff at the Mary Snow School reported that when the Student became frustrated and threw his communication device, staff would hold the device for him, maintaining his access to communicate.

(c) MUSER IX(3)(C)(2)(a) requires that when a child's behavior impedes the child's learning or that of others, the Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

The Parent's perspective is that the Student would not have acted out if he were receiving proper instruction and effective communication tools. The Parent stressed that the Student's behavior was not escalated to this extent when he entered the District and that the District's lack of behavioral plan contributed to the Student's behaviors, particularly at the Mary Snow School. The District's perspective is that the Student's behaviors were caused by changes in schools and home life and that the District's qualified personnel, including the school psychologist, were providing appropriate services.

Documentation shows that during the past year, the Team noted that the Student's behavior had changed. Some members of the Team expressed to the Parent that some regression could be the result of changes in the Student's life. His home-school notes from both schools show that the Student was sad and crying while at school.

Staff at the Mary Snow School wrote that "work was impacted by behavior" and described an increase in behavioral problems beginning in November 2017. The behavioral data shows spikes in work avoidance and other behaviors during certain periods, but also shows an overall increase in frequency and intensity of negative behaviors.

The documentation also shows that teachers and service providers observed the Student's negative responses to work requests and attempted to find new reward systems. Behavioral supports on the Student's IEP during this time include psychological services consultation 60 minutes each month. Staff reported that there was an array of objects and methods for sensory breaks, which occurred frequently throughout the day.

However, a violation of law involving behavior occurred. At the December 2017 IEP Team meeting, the Parent repeatedly requested ABA services for behavioral analysis, stating that BCBA providers had been provided in the past. The Parent requested an IEE at this meeting. The District delayed providing the independent educational evaluation at public expense and did not file a due process complaint to defend the public evaluation. **The District did not comply with MUSER V(6)(B).**

4. *The Student's IEP lacks appropriate instruction for the Student to make progress in the general education curriculum.* MUSER IX(3)(A)(1)(d); MUSER IX(3)(C)(1)(d). **COMPLIANCE FOUND.**

See discussion of allegations 1-2.

5. *The Student does not have access to an augmentative communication device and IPAD as called for in his IEP.* MUSER IX(B)(3). **COMPLIANCE FOUND.**

See discussion in allegation 3(b). The Student's IEPs call for technology in the classroom, which was provided to the Student. The District used technology as a part of a whole language approach with the Student.

6. *The Student does not receive adequate or appropriate communication instruction in American Sign Language (ASL) which he is accustomed to using for communication in the classroom.* MUSER IX(B)(3); MUSER X(2)(A)(2). **COMPLIANCE FOUND.**

The Parent shared with the Team that he uses sign language for basic communication at home. The Student's teacher from his former District stated that last year, the Student did not fully understand ASL communication but does understand some simple words for demands or tasks. That teacher used ASL as part of a whole communication system with the Student.

Documentation shows that staff at the [REDACTED] School provided the Parent with a schedule of signs that would be introduced to the Student each week. However, the use of ASL as part of the whole language approach at the Mary Snow School is not as clear. The District provided little information about sign language provision by educational technicians or others from October 2017 to the present. The Student's current teacher, who is not certified in ASL, reported that the Student did not spontaneously use ASL but would use the signs for "help" and "please" when prompted.

In all, as part of a whole communication approach, the District provided adequate instruction in ASL that was appropriate for the Student's needs. Additionally, the District recently added a goal for ASL in the IEP created in December 2018: "given direct instruction, visual and verbal cues/models and practice [Student] will be introduced to American Sign Language weekly as completed by the following short term objective... Given visual and verbal cues/models of two American Sign Language vocabulary works per week [Student] will be introduced to American Sign Language weekly, as measured by implementation of developed calendar and teacher." There is no violation of law or regulation.

7. *The District has not considered the communication needs of the Student, specifically with regard to the provision of personnel who are trained in sign language.* MUSER IX(3)(C)(2)(d); MUSER X(2)(A)(2). **COMPLIANCE FOUND.**

As discussed above, the District has considered the communication needs of the Student, The IEP Team at the [REDACTED] School used ASL with the Student even though the teacher was not trained in ASL. The Student's IEPs contain several measurable goals regarding communication, such as "Given classroom based materials, discussions and themes, [Student] will improve expressive communication skills to become a more effective and functional communicator through various communication modes (augmentative voice output device, sign, verbal approximations)...". The Student was making satisfactory progress in that goal in the spring of 2017. The staff at the Mary Snow School, who are not trained in ASL, may not have used ASL with the Student as fully as the Parent would have wished. The Team may wish to discuss this at future meetings.

8. *The Student's IEP is not being implemented, particularly with regard to physical education that should occur three times each week.* MUSER IX(3)(B)(3). **COMPLIANCE FOUND.**

The Parent signed consent for an APE evaluation on January 31, 2017. The District's APE evaluation, which was conducted by the APE teacher, completed the report on March 7, 2017 and the report was presented to the Parent at the IEP Team meeting on March 28, 2017, after the regulatory timeline. The report consisted of an observation by a special education teacher and the Ohio State University Scale of Inter-Gross Motor Development (SIGMA). The recommendation from that report was that the Student participate in APE once a week for 30 minutes in addition to his regular physical education classes with his peers.

The IEP Team met for an annual review on March 28, 2017, and met again on June 9, 2017. The resulting IEP contained APE for 30 minutes one time a week. The schedule provided by the District confirms that the Student received 1x30 of APE on Friday afternoons.

9. *The District has not developed an appropriate behavior plan for the Student, including positive behavioral interventions and supports and other strategies, to address the Student's behavioral issues.* MUSER IX(3)(C)(1); MUSER IX (3)(C)(2)(a). **COMPLIANCE FOUND.**

As discussed above, the District and Parent considered the Student's previous behavioral plan that had been developed at the Student's previous district. The Team determined that the program at the [REDACTED] School put into place all of the actions recommended on the behavioral plan.

The Student did not have a behavior plan at the Mary Snow School. Certain behavioral interventions, such as tokens and rewards and sensory breaks, were built into the day in the special education classroom. These behavioral strategies did not appear to work for those few weeks from November 2017 to January 2018. See response to allegation 3(c). The decision to write a behavioral plan is a decision for the IEP team and the Student's Team may wish to discuss the appropriateness of a plan for the Student when the Student returns to school.

10. *When the Student moved into the District, the District did not follow the Student's IEP, particularly the sections written to address the Student's behavioral issues, communication goals and supports, and assistive technology.* MUSER IX(3)(B)(5). **COMPLIANCE FOUND.**³

³ The record demonstrates that the District has complied with MUSER IX(3)(B)(5).

See discussion of behavioral plan above. The Parent's perspective is that when he entered the District, he trusted that the consultation by the District's school psychologist would be equal to the consultation services by a BCBA that were on the Student's previous IEP. At the time he filed the complaint, however, he believed the services were not adequate to meet the Student's needs.

The written notice dated January 25, 2017 stated that the Amendment to the Student's IEP would change from an ABA consult from a special educator and BCBA to a consult by a school psychologist and that the IEP program would not change with these amendments. Because these two types of service providers can create behavioral plans under MUSER, the District did not change this service.⁴ Assistive technology has been provided to the Student and on the Student's IEPs, as discussed above. **The District has complied with MUSER IX(3)(B)(5).**

11. The District is not providing special education and related services in the least restrictive environment (LRE). MUSER X(2)(B). Specifically, the Student is not educated in the LRE because the Student has not attended school since January 24, 2018.

- (a) *is taught in corner of the room away from other students; COMPLIANCE FOUND.*
- (b) *spends only 9% with non-disabled peers; COMPLIANCE FOUND.*
- (c) *is receiving instruction with children two grades higher than the Student's grade. COMPLIANCE FOUND.*

(a and c) When interviewed, the Parent indicated that the classroom at the Mary Snow School was not the proper placement for the Student because he was learning by himself and he was in a classroom with older students.

The Student's programming within the Mary Snow substantially separate classroom resulted from a discussion in October about the Student's educational needs and experience at the [REDACTED] School's substantially separate classroom, where the Student's sibling was also being educated. Documentation shows that the Student exhibited some behaviors toward the sibling such that the sibling's education was being affected. This behavior was different than the "roughhousing" behavior described by the friend of the family who watches the siblings from time to time.

The transition to the Mary Snow School initially took place as an agreement between the parent and district because of concerns that the Student was affected by sharing an academic program with a sibling at the [REDACTED] School. The Special Education Director had told the Parent that other third grade students had worked successfully in this smaller environment. The Parent agreed to the Student trying this setting.

The classroom is two rooms that are separated by a small hallway. In one of the rooms, in a corner, there is a desk where the Student sits when receiving 1:1 instruction. Students who are older than the Student attend this classroom. Documentation does not indicate that the Student is receiving instruction with Students who have educational needs two grades higher than the Student. The Students in the classroom have various disabilities and all are taught in accordance with each Student's IEP. The physical set up of the classroom does not indicate that the Student receives instruction solely in a corner or solely at that desk; rather instruction is provided with other children with disabilities within the substantially separate classroom.

⁴ MUSER XI states that a "psychologist licensed by the Board of Examiners of Psychologists may provide consultation services to children, school staff members and parents; evaluation services for children; behavior management including assisting in designing, implementing, evaluation and modifying positive behavioral intervention strategies...". MUSER XI also states that a BCBA "designs and supervises behavior analytic interventions and is able to effectively develop and implement appropriate assessment and intervention methods...".

(b) Details about the Student's instructional environment demonstrates that the Student's placement, a substantially separate classroom, is the least restrictive environment, particularly in light of the Student's percentage of time outside of that classroom as discussed in the December 2017 Team meeting. At that meeting, the Team examined the Student's schedule and calculated the time he would be with neurotypical peers. The Team discussed the Student having breakfast with the students who are in general education. The District stated that data would be taken at breakfast to see if that option would work for the Student.

The District also reported at the December meeting that the Student experiences lunch and recess with his non-disabled peers. The District explained some safety concerns about the Student participating in certain APE activities with his peers. The time with peers was recalculated and the amended IEP reflected the increased time with non-disabled peers.

CORRECTIVE ACTION PLAN

1. The District must immediately provide information about and fund an independent evaluation that was requested by the Parent. Written notice with the information about the IEE must be provided to the Department by **March 29, 2018**.

2. The Student's current IEP Team must meet and provide written notice to the Department by **March 29, 2018** to discuss how the District will implement the Student's current IEP and engage the Student in his educational experience beginning no later than March 29, 2018.

3. The District must conduct in-person training for all special education staff and special education administrative personnel at the [REDACTED] School and the Mary Snow School. In-person training must be held by **April 18, 2018**. Agendas and sign in sheets that specify names and title must be submitted to the Department by **April 18, 2018**. The following topics must be reviewed:⁵

a. District responses to requests for IEEs. MUSER V(6)(B).

⁵ Because the District complied with the regulatory timeline for providing IEPs to the Parent, the District need not include the provisions of MUSER V(6)(B) in its training.