

Complaint Investigation Report
Parent v. South Portland Public Schools
Complaint 21.010C
Complaint Investigator: David C. Webb, Esq.
December 2, 2020

I. Identifying Information

Complainants: _____, Parents¹

Respondent: South Portland Public Schools
Kat Cox, Special Education Director; Ken Kunan, Superintendent

Student:

II. Summary of Complaint Investigation Activities

On September 23, 2020, the Maine Department of Education received this complaint. The complaint investigator was appointed on October 7, 2020.

The complaint investigator received 74 pages of documents from the Parents and 301 pages of documents from the District. Interviews were conducted with _____, Student; _____, Parent; Sandra Airoidi, Case Manager (seventh grade) and Literacy Instructor (seventh and eighth grade), Michele Laforge, _____ School Principal; Sara Helman, Instructional Strategies Administrator; Amanda Vickerson, the Student's _____ School Special Education Teacher; Sheanna Zimmerman, ELL (English Language Learner) Coordinator; Ryan Green, the Student's Earth Science Teacher; Lynn Furstrand and Patricia Emery, the Student's Tutors and Advocates.²

III. Preliminary Statement

The 15-year old Student is in the tenth grade and resides in South Portland with family. _____ is the educational responsibility of the South Portland Public Schools ("District") where _____ qualifies for special education and related services as a student with a specific learning disability (SLD).

¹ The Parents' native language is Arabic, and they only have limited understanding of the English language. An interpreter was provided to translate key documents and during interviews with the complaint investigator. References to "Parent" in the singular will refer to the Student's father, who primarily attended the IEP team meetings and participated in interviews with the Complaint Investigator on behalf of the family.

² As per the standards of practice for conducting complaint investigations, the Complaint Investigator used his discretion with regard to witness interviews, and therefore not all of the witnesses identified by the parties were interviewed as part of this investigation.

This complaint was filed by the Student’s parents (“Parents”) alleging that the District violated the Maine Unified Special Education Regulations (“MUSER”).³ After the receipt of the Parents’ complaint, a Draft Allegations Letter was sent to the parties by the Complaint Investigator on October 8, 2020 alleging 9 separate violations of the MUSER. On October 19, 2020, the Parents requested that this complaint investigation review allegations prior to the period beginning on September 23, 2019. The District responded to the Parents’ request in a letter received by the Complaint Investigator on October 22, 2020. On October 23, 2020 the Complaint Investigator determined that the investigation period shall include claims from September 23, 2018, based on 1) the Parents requests for compensatory services relating to complaints for violations within the past two years; and 2) credible allegations that they were unaware of their due process rights as a result of the District not providing them with interpreter services or written notices in their native language. The investigation period concluded on June 17, 2020, the date that the Parents withdrew consent for the Student to be in special education. The investigation will not include claims outside of the jurisdiction of this complaint investigation, including claims relating to the Student’s ELL services or 504 plan.⁴ In addition, this investigation will not include claims relating the alleged failure of the District to implement appropriate general education interventions in violation of MUSER §III.⁵ On November 12, 2020, the Complaint Investigation reporting deadline was extended by 15 days (from November 22, 2020 to December 7, 2020) due to challenges coordinating with interpreters and the addition of an additional year to the Complaint Investigation period.

IV. Allegations

1. Not adequately considering the concerns of or including the Parents in the IEP decision making process in violation of MUSER §§V1.2 (H) and (I) and IX.3.C(1)(b);
2. Failure to consider existing evaluation data and the academic, developmental and functional needs of the Student in violation of MUSER §IX.3.C (1)(c);
3. Not ensuring that the Student’s evaluations were conducted in native language in violation of MUSER §V.2.C.(1);
4. Not providing the Parents with written notices of the IEP meetings in the native language of the Parents in violation of 34 CFR 300.503; MUSER App. at 221;
5. Not ensuring that the Parents have interpreter services in their native language at IEP meetings in violation of MUSER §§V1.2 (H) and 34 C.F.R. § 300.322;

³ The Parents were assisted with this complaint by their advocates Lynn Furstrand and Patricia Emery who also helped with drafting the complaint and related documents. Both Ms. Furstrand and Ms. Emery serve as tutors for the Student as well.

⁴ The Maine Unified Special Education Regulations (MUSER) have limitations on the authority of the complaint investigation process, which revolve around a District district’s compliance with IDEA and MUSER and the provision of FAPE. See MUSER XVI.1(B)(3), 5(A)(1). MUSER § XVI.1.B specifies that the complaint must encompass the consideration and resolution of any claim or dispute "regarding the identification, evaluation, placement, or the provision of appropriate services to a child. *see also* 20 U.S.C. § 1415(b)(6).

⁵ MUSER §III (a) provides: Special education due process procedures may not be used to address parental concerns regarding the successful implementation of these general education interventions, and the failure to use general education interventions may not be used in special education due process proceedings to establish that a school has failed to meet its child find or referral obligations.

6. Not ensuring that the Student’s educational placement is in the least restrictive environment or that a continuum of alternative placements is available to meet the Student’s educational needs in violation of MUSER §X.2.B and MUSER §VI.2;
7. Not properly developing or revising the Student’s IEP thereby depriving of a Free Appropriate Public Education (FAPE) in violation of MUSER §VI.2.J.(4) and MUSER §IX.3.C and 34 CFR 300.101(a); and
8. Not fully and adequately implementing the Student's IEP in violation of MUSER §IX.3.B(3).

The Complaint Investigator reviewed all documents, information, and responses from the parties.

V. FACTUAL FINDINGS

1. The Student is a student at School. is the educational responsibility of the South Portland Public Schools (“District”) and qualifies for special education and related services as a student with a specific learning disability. The Student lives at home with mother, father, two brothers and a sister. The primary language spoken in the home is Arabic, but English is also spoken.
2. The Student immigrated to the United States in with family from and . initially attended school in before moving to Portland, Maine. The Student transferred to South Portland in .
3. The Student is diagnosed with and has an Individualized Health Plan which provides for
4. In an interview with the Complaint Investigator, the Parent stated as follows⁶:
 - He disagrees that the Student has a learning or other cognitive disability, noting that any difficulties has in school is related to missing school due to medical condition and the fact that English is not first language.
 - When comparing the Student to brothers, he noted that they have a similar language barrier issue, but he feels like there “could be something wrong” as the Student is behind, feels shy and seems to need more support.
 - The Student’s English skills started to improve in 2017. The Student has demonstrated an ability to learn English, even without an Arabic interpreter in class. He is not sure if the Student’s ability to access special education programming was impacted by a lack of interpreter or ELL services for the Student. He noted that the Student has benefitted from the use of tutors at home.

⁶ The interview was with the Student’s father, who has some ability to speak and understand English. Nonetheless, an Arabic interpreter was present for the entire interview. The Student’s father and the Student’s advocates represented that the Student’s mother has very limited English speaking or comprehension skills.

- He was unaware that the Student was getting special education services until after these services had begun. He did not get copies of evaluations, nor did he get copies of notices in Arabic. He said that he attended approximately eight IEP team meetings over the past two years, and that on only two occasions did the District provide an Arabic interpreter for [redacted]. He disagrees that he told any representatives of the District that he did not need an interpreter. He disagrees that he has any bias or motivation against having the Student identified for special education services.
 - He said that with regard to the Student’s medical condition, [redacted] “knows how to deal with it now, [redacted] is doing good.” The Parent stated he doesn’t feel that the Student has missed significant educational programming in the last two years because of [redacted] medical condition.
 - He said that the Student has a strong network of friends, and that [redacted] frequently goes to the community center to play games with [redacted] peers. He said that the family doesn’t have social work supports here; however, they have accessed social work and counseling services through Children’s Hospital in Boston.
5. In March 2018, an academic evaluation was completed for the Student by Sandy Airoidi, the Student’s middle school special education teacher. Results from this testing indicate that the Student exhibited low to low average nonverbal skills indicating processing weakness not attributed to English as a second language. Particular processing deficits were indicated on visual-spatial processing skills. This evaluation concluded that the Student requires specialized instruction, accommodations, and adult support with academic tasks.⁷ The evaluation further noted:
- The Student demonstrated grade/age appropriate level of conversational proficiency. [redacted] was cooperative, attentive, and focused on the tasks provided;
 - Reading, writing, and math skills are significantly below grade level expectations and have an impact upon [redacted] ability to comprehend and keep pace with the general education curriculum;
 - Recommended modifications and accommodations in the classroom include:
 - i. adult support in core subjects;
 - ii. extra time to process information;
 - iii. forewarning prior to asking questions to allow [redacted] time to formulate response;
 - iv. extend time on tasks, including assessments;
 - v. modify length of assignments and break down multi-step procedures into small portions;

⁷ This evaluation was not norm referenced based upon students for whom English is a Learned Language (ELL). The evaluator noted that careful consideration needs to be given to the Student's (ELL) status and that the amount of relevant background knowledge and exposure, particularly to vocabulary, may be affected. the evaluator opined that despite the Student’s ELL status, the results were “valid and reliable”

- vi. orally assess when necessary;
 - vii. pre-teach and re-teach vocabulary and concepts; and
 - viii. provide repeated exposure and practice for content and skills.
6. In April 2018, a psychoeducational evaluation was completed for the Student by Anthony Tourigny, M.Ed., School Psychologist for the District. Results from this testing indicate as follows:
- The Student’s WISC-V⁸ scores fell within the very low range and at the 7th percentile; however, this test is “highly loaded with language and ELL students and those from a different cultural background are at a distinct disadvantage.” Thus, this score is interpreted with ELL status and history in mind.
 - The Student’s CTOPP-2⁹ score of 84 (14th percentile) was within the Low Average range but there was some discrepancy between the three scores used to calculate this index.
 - Both the CTOPP and the WISC are not normed on students who are English Language Learners thus the scores should be “interpreted with caution and with English Language Learner identification and unique history in mind.”¹⁰
 - The Student had significant cognitive processing deficits in areas of visual-spatial processing (VSI 69; 2nd percentile) as well as a low score on the visual working memory subtest and with delayed free recall of verbally presented information.
 - Mr. Tourigny noted the presence of a specific learning disability that “has been identified in previous testing and should not be highly influenced by ELL status as the tasks are nonverbal and do not rely on prior knowledge.”
 - Mr. Tourigny noted that educators should be mindful of the Student's level of understanding of the English language, however stated that the Student’s language barriers coupled with suspected processing deficits in the area of visual-spatial processing may result in difficulties with content acquisition across the curriculum. He concluded that the Student would benefit from specialized reading instruction emphasizing reading comprehension, orthographic coding, frequent checks for understanding, multimodal means of instruction in most content areas, re-teaching and multiple exposures to important academic content and use of simplified and well-organized visual handouts so that they can be more easily scanned and processed.
7. An IEP team meeting was held on April 27, 2018 to discuss the evaluation results, Student progress and to determine eligibility. The Parent was present at this meeting, but there was no interpreter present. At this meeting, the team determined that the Student

⁸ Wechsler Intelligence Scale for Children — Fifth Edition (WISC-V)

⁹ Comprehensive Test of Phonological Processing — Second Edition (CTOPP-2)

¹⁰ The Student's verbal abilities were within the Very Low range (VCI 78; 7%) but are not factored into overall ability or areas of processing given ELL status.

met eligibility requirements under the category of Other Health Impairment (OHI) with a medical condition _____, with demonstrated deficits with reading, writing, and math skills which are significantly below grade level expectations. It was noted at this meeting that with the Student's ELL background factored in, _____ visual/spatial deficits "have been there over time, and these deficits are not reliant or loaded on language. The team determined that the Student required the following specialized instruction in order to access the curriculum and to address _____ academic and functional needs: English Language Arts (Reading and Writing) for 240 minutes per week; Math 240 minutes per week; and specialized instructional support for 340 minutes per week for reading, vocabulary, comprehension, and writing in the content areas. The team also determined that the Student would have extended time with tasks.

8. In the written notice from the April 27, 2018 IEP team meeting, it was also noted as follows:
 - Mr. Tourigny noted concerns about the Student's self-concept based upon the discussions and rating scales. The Student "is endorsing that _____ gets down on _____ and _____ is not feeling like _____ fits in socially." Mr. Tourigny recommended Social Work services to help the Student deal with _____ feelings about _____ medical condition and the emotional impact it has on _____.
 - The Parent reported that they have a tutor coming to the home to work with the Student for four hours per week and he believes _____ scores have improved. _____ reading and writing have improved from the time that _____ attended _____ previous school in Portland.
 - Mr. Tourigny added that while the Student's spoken and receptive language skills seem to be intact (based upon _____ WIDA scores), the team may wish to consider speech and language evaluations to determine if there is a need for services to address phonological awareness and word retrieval issues.
 - The Parent also noted that "it is hard for [the Student] to know certain words because _____ didn't start here with English. It is good that we are looking at things early and getting an idea of what _____ needs for next year." The Parent also noted that the Student in the past has missed school due to appointments at Boston Children's Hospital and _____ is worried that the Student's language is "lower than the others."
9. The IEP developed for the Student at the April 27, 2018 meeting noted that while the Student had limited English proficiency, _____ did not have language needs that needed to be addressed in the IEP. This IEP provided the following specifically designed instruction, classroom supports and services, supplemental aids, and modifications:
 - Adult support in core subjects;
 - Break down tasks into smaller portions;
 - Provide repeated exposure and practice for content and skills;
 - Pre and re-teach vocabulary and content material;

- Consider only essential elements of content; assess only on high leverage ELTS (English Language Testing Service);
- Allow content to be read to [the Student] as needed;
- Provide simple visuals with explanations;
- Extended time on tasks, including assessments;
- Modify length of assignments to demonstrate proficiency rather than quantity; and Frequent check ins for attention, focus and comprehension;
- Provide written class notes and study guides;
- Allow graphic organizers for written tasks, scribe when appropriate;
- Allow Student to restate information and directions to verify comprehension;
- Allow the use of audiobooks or text to speech;
- Allow the use of a multiplication chart and/or calculator in math when performing multi-step procedures;
- Access to specialized apps;
- Assess with multiple choice or word bank -Allow [the Student] extra time to process information;
- Forewarn the Student prior to asking questions to allow time to formulate response;
- Orally assess when necessary and allow word banks and multiple choice assessments; and
- For assessments, provide a human reader, small group, extended time, verify directions, and scribe.

Specially Designed Instruction

- Specially Designed Instruction (SDI) in English Language Arts (Reading and Writing) for 235 minutes per week, Math 235 minutes per week, and specialized instructional support for 235 minutes per week in reading, comprehension, and modification of social studies content.

Related services

- Social work services-social group-one time per week for 40 minutes

Least Restrictive Environment-Under this IEP, the Student spends 60% of time with non-disabled children.

10. An IEP team meeting was held on September 14, 2018 as part of the Student's annual review. The Parent was present but there was no interpreter present at this meeting. At this meeting, the team determined that the Student met eligibility requirements as a

student with a specific learning disability.¹¹ The team determined to increase the level of specialized instructional support in reading, writing and comprehension of core content material to 320 minutes per week. Levels of SDI and accommodations in all other areas were maintained as identified in the April 2018 IEP.

11. An IEP team meeting was held on November 15, 2018 in order to amend the most recent IEP. There was no interpreter present at this meeting for the Parent. At this meeting, the team determined that the Student would no longer receive social work services as had “met social work goal.” The team determined that would receive 15 minutes per month of social work consultation.
12. An IEP team meeting was held on December 14, 2018 in order to amend the most recent IEP. There was no interpreter present at this meeting for the Parents. At this meeting, the team determined that it would reduce the Student’s specialized instructional support in reading, writing and comprehension of core content material from 320 minutes per week to 100 minutes per week. The written notice stated that this meeting and the reduction in service time was part of “a parent request to amend the Student’s service time in IEP.” The team determined that would receive 15 minutes per month of social work consultation.
13. The written notice prepared in connection with the December 14, 2018 meeting noted that although the Student “made gains”, the gains have been due to intense specialized instruction and supports and that “remains significantly below grade level expectations.”
14. An IEP team meeting was held on March 6, 2019 in order to amend the most recent IEP. There is no record of an interpreter present at this meeting for the Parent. At this meeting, the team determined that the Student “no longer requires 235 minutes of specially designed instruction in reading, comprehension, and modification of social studies content.” The team determined that would receive 235 minutes per week of specialized instruction in mathematics; 100 minutes per week of specialized instruction in reading, writing, and comprehension of core content material; 235 minutes per week of specialized instruction in reading and writing and 30 minutes per month of social work consultation between case manager and social worker.
15. The written notice prepared in connection with the March 6, 2019 meeting noted:

the Student has been working extremely hard in Social Studies and writing, meeting goals/targets in both. engagement, participation and work all supported the change. was able to write in an organized, clear way. We were working (during revisions) to add more detail, but was doing better with that. general grammar and basic conventions of writing has also improved to a

¹¹ Although the September 14, 2018 written notice stated that the student’s eligibility was as a “student with a specific learning disability,” the IEP prepared in connection with this meeting continued to identify the Student’s eligibility under the category of “other health impairment”

level where we feel writing will not hold back from grade level tasks in Social Studies and Science.

16. An IEP team meeting was held on June 4, 2019 as part of the Student's annual review and transition planning for school. There was no interpreter present at this meeting for the Parent. The IEP noted that while the Student has "limited English proficiency," did not have language needs that needed to be addressed in the IEP. This IEP maintained the classroom supports and services, supplemental aids, and modifications as determined in the Student's previous IEP. The Student's specially designed instruction was modified as follows: A decrease of 25 minutes per week of specialized instruction in mathematics (from 235 to 210 minutes per week); A decrease of 25 minutes per week of specialized instruction in reading and writing (from 235 to 210 minutes per week); an increase of 110 minutes per week of specialized instruction in reading, writing, and comprehension of core content material (from 100 minutes per week to 210 minutes per week); addition of special education consultation 1 time per week for 15 minutes Physical therapy consultation once per month for 30 minutes; addition of social work services (social group) six times per quarter for 60 minutes and daily special transportation to and from school.

Under this IEP, the Student spends 65% of time with non-disabled children.

17. In the written notice prepared in connection with the June 4, 2019 meeting, it was noted:

Despite the Student's gains, remains significantly below grade level expectations. The gains have been due to intense specialized instruction and supports. Without that, if given grade level material, the Student would struggle...

The Student's evaluation results "are suggestive of a student with a significant cognitive processing deficit in the area of visual-spatial processing. This area has been identified in previous testing and should not be highly influenced by ELL status as the tasks are nonverbal and do not rely on prior knowledge. Furthermore, ability on the nonverbal visual-spatial index was significantly discrepant from ability on the nonverbal fluid reasoning index. team should discuss the presence of a specific learning disability at this time...[the Student] also presents with some fairly significant internalizing symptoms within the school setting, particularly anxiety and depression. While these are manifested differently across some classroom settings there does appear to be academic and social impact as a result of internalized symptoms.

18. An IEP team meeting was held on October 2, 2019 at the Parents' request and to review post-secondary goals and ninth grade transition services. The written notice from the October 2, 2019 IEP team meeting documented statements made by the Parents'

advocates requesting the addition of social work services to the Student's IEP to address self-esteem and mood due to s medical condition. Ms. Emery, the Student's advocate, stated that the Student "should be identified as a student with multiple disabilities (learning disability and Other Health Impairment) due to medical needs." An interpreter was not present at this meeting; however, it was noted: "it is important in future meetings that an interpreter be provided."

19. At the October 2, 2019 meeting, it was determined that a self-advocacy and stress management goal would be added to IEP, along with thirty minutes a week of social work services to help the Student address needs regarding medical condition.
20. An IEP team meeting was held on November 20, 2019 at the Parents' request and to review post-secondary goals and ninth grade transition services. An Arabic interpreter was present at this meeting. At this meeting, the Parent (through advocates) expressed concern that the Student was challenged by homework and was struggling to understand the content area vocabulary in science and history. At this meeting, it was determined that an additional planning and organizing goal would be added to the Student's IEP.
21. An IEP team meeting was held on January 29, 2020 at the Parents' request and to review post-secondary goals and transition services. An Arabic interpreter was present at this meeting. At this meeting, the Parent stated that while the Student likes attending school, he felt that the Student was not getting the support needed though IEP and that he wanted to see improve English skills. No changes were made to the Student's IEP at this meeting, however the team arranged for a meeting between the family and the ELL Director to discuss necessary ELL services.
22. An IEP team meeting was held on February 12, 2020 at the Parents' request and to review post-secondary goals and transition services. There was not an Arabic interpreter at this meeting. At this meeting, it was determined that the Student's SDI support in reading, writing and comprehension would be decreased from 210 minutes per week to 105 minutes per week. The written notice stated that the Parent requested that SDI be reduced to allow for the Student to enroll in an ELL reading class to support English skills.
23. On June 6, 2020, the Parents revoked consent for the Student to receive special education services and supports.
24. In an interview with the Complaint Investigator, Sara Helman, Assistant Special Education Director, stated as follows:
 - She has been working with the Student since June 2019. She recalled that at the June, 2019 IEP team meeting there was no interpreter present, but that she believed that the Parent was able to understand the content of the meeting, in light of the comments made by him at this meeting. She noted that the Parent would occasionally ask for clarification, but that it seemed that he understood the content of information presented.

- She recalled that at one point the Parent told her that [redacted] didn't want or need an interpreter at the IEP team meetings. She does not believe that this information has been documented.
- She did not recall any procedural safeguard notices being given to the Parents in Arabic with regard to the Student until May 2020.¹²
- She said that the Student was not tested in [redacted] native language, and that some of the tests were not available in Arabic. She stated that in her experience, because the tests are so standardized, it is usually not effective or the "best practice" to translate these evaluations.
- She nonetheless believes that there were significant other indicators that supported the conclusion that the Student has a learning disability, separate from any limitations with [redacted] vocabulary. For example, the Student has demonstrated to her that [redacted] struggles with concepts and needs supports to "crack the code of reading".
- She noted that the Student demonstrated to her that [redacted] had good English skills, and that [redacted] would let others know when [redacted] didn't understand something.
- With regard to the Student's health plan and medical condition, she noted that for the first few weeks of [redacted] school the Student did have a few issues with restroom breaks and missing portions of [redacted] class, but by October, 2019, she believed that [redacted] had [redacted] medical issues under control and that [redacted] did not miss significant amounts of class time.¹³
- With regard to the reduction of the Student's specially designed instruction time in December, 2018, March of 2019 and February of 2020, she said that while she and other members of the team felt like the Student still needed the level of support in place prior to the reduction, the decision was made to reduce [redacted] time after hearing from the Parent who had concerns about the Student being in special education and the impact that [redacted] SDI had on [redacted] ability to access [redacted] regular education classes.¹⁴

25. In an interview with the Complaint Investigator, Michele Laforge, the [redacted] school principal for the District, stated as follows:

- She became involved with the Student's case due to [redacted] health plan, but then stayed involved with regard to [redacted] special education and general education programming. She would frequently see [redacted] in the hallway and felt that special education program and supports were working for [redacted].

¹² She recalled that a procedural safeguard notice was given to the Parents in Arabic concerning their older son in January of 2019. No procedural safeguard notice in Arabic was provided to the Complaint Investigator.

¹³ During the 2019-2020 school year, the attendance records indicate the Student was absent for two days during Quarter 1 (October 22 and 23-sick) and one during Quarter 2 (December 19 for an appointment).

¹⁴ Ms. Helman was unable to point to any reference in the written notices that the Team was making this change at the request of the Parent and against the judgment of other team members.

- She could communicate pretty well with the Parent. She recalls that the Parent said that he did not need an interpreter to attend at IEP team meetings when one was offered to him.
26. Sandra Airoidi was the Student’s case manager during seventh-grade year and literacy instructor for seventh and eighth grade years. In an interview with the Complaint Investigator, Ms. Airoidi stated as follows:
- The Student is very hard working and never complained to her.
 - The Student had strong oral communication skills and was able to converse effectively in English with her and with peers. She noted that the Student was “very street wise” and had “great peer relationships.”
 - Despite the Student’s strong oral communication skills, she believes that does have a learning disability with regard to literacy skills in reading and writing, unrelated to English language skills. She noted that on the “word attack” program, the Student had great difficulty reading “nonsense” words and phonemically sounding out the words. This conclusion is supported by the Student’s “visual-spatial processing” score, which fell within the “extremely low” range and which is not directly related to English vocabulary skills.¹⁵
 - She said that while the Student made progress during the time that she worked with , continued to have difficulty with reading and word decoding, and that was “way below” grade level, as evidenced by the Student’s lexile score of 367 in November, 2019.
 - She believed that it was difficult for the Parents to accept that the Student had a learning disability. She said that the Parent would initially decline services, but then he would agree to some services. She said that the reductions in the Student’s services were at the Parent’s request to push for mainstream programming.
 - She believes that the Student could have benefitted from more instruction. She was “heartbroken” when services were reduced and remembers telling the Parent that she felt that it was not the right decision to reduce the Student’s specially designed instruction.
27. In an interview with the Complaint Investigator, Sheanna Zimmerman, English Language Learner (ELL) coordinator for the District, stated as follows:
- She began working with the Student when transferred from the Portland School District in the Student’s seventh grade (2017-2018) year.
 - The Student was a fluent English speaker when arrived from Portland, although needed support in reading fluency and phonics.

¹⁵ Visual-spatial skill testing includes evaluation of skills like copying simple block designs or identifying missing pieces of a puzzle.

- The Student’s reading and writing challenges were significantly more pronounced than her other ELL Students with similar backgrounds. Her conclusion about the Student’s unique literacy challenges is supported by WIDA test results and slower progress, as compared to other Arabic speaking students within the District. She also is able to review state-wide data with regard to other students who are not native English speakers.¹⁶
- The Student’s most recent WIDA test results, updated on May 22, 2020, indicate that the Student was “on track” with goals.
- She co-taught with the Student’s regular education teachers, and regularly coordinated with the Student’s special education teachers and ed techs. As part of her work, she helped the Student’s teachers understand the Student’s cultural background, English language development, and techniques she used with the Student, such as repetition, slowed speech and language clarifying. She also facilitated conversations with the Student’s family. She had frequent conversations with the Student’s father and recalls that he told her that he did not need an interpreter at IEP team meetings.
- She does not feel that additional ELL classes would help the Student in light of reading and writing challenges.

28. In an interview with the Complaint Investigator, Amanda Vickerson, the Student’s school special education teacher, stated as follows:

- She began working with the Student upon entry into school in the fall of 2019. She noted right away that was very polite and hard working.
- The first couple of weeks of school were “a bit stressful” due to the Student’s health plan and accessing the rest room. After this brief period, medical needs didn’t interfere with educational programming.¹⁷
- The Student’s conversational English was “really good.” The Student’s ELL needs were not as great as need for help with written literacy skills, such as grammar and sentence structure.
- Part of her role was to coordinate with the Student’s regular education teachers to check in on progress and to make sure that accommodations were being implemented. She said that from her perspective, the Student was getting accommodations in both special and regular education programming. For

¹⁶ WIDA scores are based on a possible proficiency range of 1.0 (entering-lowest level) to 6.0 (reaching-highest level). The Student’s 2019 WIDA scores were in the proficiency level 4.1 and 3.2 for listening and speaking (developing and expanding) and 1.8 and 2.4 for reading and writing (entering and emerging) The Students 2020 WIDA scores were in the proficiency level 4.6 and 1.9 for listening and speaking and 2.8 and 3.2 for reading and writing. Ms. Zimmerman said that there was a glitch in the speaking score for many students in 2020, therefore the lower score was not reflective of the Student’s actual speaking skills when the test was taken.

¹⁷ Ms. Vickerson said that she spoke with the Student’s other teachers last year who similarly reported that the Student’s medical issues didn’t interfere with learning or class attendance.

example, she worked with the Student's regular education history teacher to lower expectations and grading to a sixth-grade level.

- She acknowledged that the Student struggled in science class, which is common for many ninth graders due to some of the reading and homework challenges. At the Parent's request, she was able to move the Student to a different science class due to some difficulties with initial teacher.
- She feels that "99%" of the Student's literacy issues are from disability and are not related to lack of understanding of the English language. She said that when she worked with the Student, she would have to "repeat and repeat", which is not typical of kids learning English.
- The Student told her that did not like ELL class, that was put in a very basic class due to literacy skills but that "felt stupid" because verbal communication skills were so much stronger than other students in class.
- After the school moved to remote learning in the spring of 2020, she worked with online every day, including helping with mainstream classes. also worked with the ed techs three or four times per week.
- She was impressed with motivation and organizational skills, noting that would make own appointments with her.

29. In an interview with the Complaint Investigator, Ryan Green, the Student's ninth grade earth science teacher, stated as follows:

- The Student transferred to class in late October of 2019 after starting the year with a different earth science teacher. (Ms. Flynn) He understood that the reason for the change was that the Student and Ms. Flynn were "not a good fit" for one another.
- There was an ed tech assigned to class who provided support to the Student, as well as other students, during the first half of the 2019-2020 school year. The Student was assigned own 1:1 ed tech after the second quarter until the Covid school closure in March 2020.
- He provided accommodations for the Student as identified on IEP, including providing class notes, adjusting reading levels, providing graphic organizers, providing extra time, providing frequent check ins and explanations, reading out loud, paraphrasing assignments, providing word banks, providing additional visual supports, pre and re-teaching and providing extra time for assignments.
- Earth science class does not have a lot of "reading assignments." Rather, assignments would be more visual. For example, he assigned a project involving 'plate tectonics' which involved diagrams, photographs and matching. He noted that the Student still struggled with non-reading assignments like this.
- For projects that did involve reading, he made a point to adjust the reading level to a lower grade level or to verbally go over and paraphrase with the Student. He noted that while he didn't have a lot of verbal interactions with the Student, he

noticed that the Student had good peer relationships and got along with other students.

- Despite the accommodations and supports, he felt that the Student “didn’t have a great grasp of material and was not able to keep up with the pace of the class. He was not sure if this was related to a learning disability or lack of English language skills.

30. In an interview with the Complaint Investigator, the Student stated as follows¹⁸:

- feels that doesn’t have a learning disability and that special education classes did not help. feels that time in special education “cheated” from time in regular education or ELL classes, which feels have been helpful.
- English skills have gotten better, and hasn’t needed an interpreter since 2018.
- missed a lot of class and learning time prior to the last year or two from medical appointments in Boston, but the last year has been better and feels that did not miss a lot of time in school.
- is currently going to school in person on Tuesdays and Fridays and is doing on-line learning on Mondays and Thursdays. Lynn Furstrand still helps, but is not getting any other support at school.
- enjoys basketball and plays at the community center on a regular basis. is hoping to go to college and study business and perhaps open own shoe store.

31. In an interview with the Complaint Investigator, Lynn Furstrand, the Student’s tutor and advocate, stated as follows:

- She has been an educator for over 50 years and has experience teaching “at every level.” In addition to being an advocate for the family in this case, she has tutored the Student, primarily with reading skills, since 2017 for several hours per day after school and during the summer. She currently works with a number of other ELL students and has not been trained or certified as a special education teacher or ed tech.
- While she recognizes that some individuals from “may not recognize disabilities,” She doesn’t feel that the Parents are rejecting special education due to their concerns about the Student being stigmatized due to a learning disability. She noted that other members of the Student’s family have disabilities, including the Student’s uncle.

¹⁸ The Parent, through his advocates, requested that the Complaint Investigator speak to the Student. This was independently confirmed in a follow up conversation directly with the Parent. At no time during the phone call did the Student demonstrate any difficulty understanding or expressing clearly with regard to the questions asked during the interview.

- With regard to the Student’s low “visual/spatial” scores in evaluations, she attributed this to cultural differences with Arabic students and the fact that the Student didn’t have opportunity to do puzzles when was younger.
- Although the family has not done any independent testing, she believes that the Student does not have any kind of learning disability. She attributes the Student’s challenges to the fact that missed so much education in early years, up through sixth grade year, due to medical condition.¹⁹ Additionally, she notes that it is more difficult for Arabic speaking people to learn English than individuals who speak a different language.²⁰
- The Student’s challenges have been exacerbated by the District failure to give the Student assignments at reading level. She said that the District gave the Student lessons and assignments at a “high grade nine” level, including biology materials at a tenth-grade level. She said that with the exception of Mr. Kahill, (the Student’s history teacher), the District has refused to “get that material down to level” or to make accommodations in lesson plans. She said that her knowledge of whether or not accommodations were followed is based on what brought home from school and that the Student told her that was not given extra time.
- She is planning to file a complaint on behalf of the family with regard to the Student’s 504 plan and failure to receive appropriate ELL services.

32. In an interview with the Complaint Investigator, Patricia Emery, the Student’s tutor and advocate, stated as follows:

- She has 30 years of experience as a teacher and is a certified special education teacher. She has worked with the Student from the fall of 2019 until the school Covid closure in March 2020. She met with every Tuesday for two hours per week to work on “core subjects.”
- The Student’s spoken English is good, but reading and writing skills are “a challenge... and can get overwhelmed.” History and science classes were difficult for the Student. She feels that did get help from specially designed instruction in math, but otherwise didn’t receive any benefit from special education programming. She believes that the District never adjusted reading assignments to level. She believes that absences from school when was younger and the fact that English is not first language is the primary reason, is not on grade level.²¹ She feels that needs additional ESL services. She

¹⁹ She noted that while the Student did miss class time from an infection in the fall of the 2019-2020 school year, has not missed a significant amount of time in school during the past two years.

²⁰ She does not speak Arabic and noted that it is not necessary for the Student to learn English from an Arabic speaking teacher.

²¹ She said that during the time that she worked with the Student, absences “weren’t bad”

noticed, however, an improvement in reading skills during the time that she worked with .

- She does not believe that Anthony Tourigny’s April, 2018 evaluation was wrong, however she believes that the Student’s low “visual spatial” scores in evaluations were impacted by the fact that the Student didn’t have an opportunity to do puzzles or work with educational toys when he was younger. She has not done any research to know if the Student’s lack of working with puzzles or educational toys would impact visual/spatial test scores.

VI. DETERMINATIONS

- **Not ensuring that the Student’s evaluations were conducted in native language in violation of MUSER §V.2.C.(1);**

NO VIOLATION FOUND due to the evaluations being conducted outside of the Complaint Investigation period.

The Student was last evaluated for special education eligibility with an academic evaluation in March 2018 and psychoeducational evaluation conducted in April, 2018. Both of these evaluations were conducted outside the two-year investigation period covered by this investigation, commencing on September 23, 2018. Therefore, there is no determination of a violation of MUSER §V.2.C.(1).²²

- **Not providing the Parents with written notices of the IEP meetings in the native language of the Parents in violation of 34 CFR 300.503; MUSER App. at 221;**
- **Not ensuring that the Parents have interpreter services in their native language at IEP meetings in violation of MUSER §§V1.2 (H) and 34 C.F.R. § 300.322; and**
- **Not adequately considering the concerns of or including the Parents in the IEP decision making process in violation of MUSER §§V1.2 (H) and (I) and IX.3.C(1)(b)**

PROCEDURAL VIOLATIONS FOUND; DENIAL OF FAPE FOUND

²² The Parents’ advocate stated in an interview that the Student’s triennial evaluations should have been conducted in the fall of 2018, which could have placed them within the two-year investigation period. MUSER §V.1.B provides in relevant part that reevaluations shall occur *at least once every 3 years*, unless the parent and the local educational agency agree that a reevaluation is unnecessary. [34 CFR 300.303] (emphasis added). Under this provision, the IEP team is free to conduct reevaluations more frequently than every three years, if determined appropriate. The Parents pointed to no authority that required the District to wait until the conclusion of the three-year period to conduct a reevaluation of the Student.

MUSER §§V1.2(H) (5) provides, in relevant part, that the public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents “whose native language is other than English.” *See also* 34 CFR §300.322 (e).

34 C.F.R § 300.503 also addresses notice issues and provides:

(c) Notice in understandable language.²³

(1) The notice must be:

(i) Written in language understandable to the general public; and

(ii) *Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.* (emphasis added)

The Maine Department of Education Administrative Letter #23, dated March 12, 2019, clarifies the requirement to ensure Parents’ meaningful access to IEP information. In this letter, the Department referenced a 2016 *Dear Colleague Letter* from OSEP which states, in relevant part:

...A student’s IEP, must be accessible to Limited English Proficient (LEP) parents, but that does not necessarily mean that all vital documents must be translated for every language in the district. For example, a timely and complete oral interpretation or translated summary of a vital document might suffice in some circumstances. A district must; however, be prepared to provide timely and complete translated IEPs to provide meaningful access to the IEP and the parental rights that attach to it. This is because a parent needs meaningful access to the IEP not just during the IEP meeting, but also across school years to monitor the child’s progress and ensure that IEP services are provided.

In the present case, the evidence supports the conclusion that the requirements of MUSER §§V1.2(H) (5) and §300.503(c)(2) (i), (ii) and (iii) have not been met. First, the Parent stated that he did he get copies of notices in Arabic. He said that he attended approximately eight IEP team meetings over the past two years and that on only two occasions did the District provide an Arabic interpreter for him.²⁴ The Parent’s statements are supported by the record. Of the nine IEP team meetings held during the two-year period of this Complaint Investigation, an Arabic

²³ The School administrative unit (SAU) must provide written notice to parents at least 7 days prior to the date the school administrative unit proposes to initiate or to change the identification, evaluation, or educational placement of a child...or a free appropriate public education (FAPE) to a child... 34 CFR §300.503.

²⁴ During the Complaint Investigator’s interview of the Parent, it was clear that the Parent had some basic English communication skills, however an interpreter was needed in order for the Parent to understand the more detailed and complex discussions regarding the Student’s IEP and educational/support programming. The Parent denies that he told any representatives of the District that he did not need an interpreter.

interpreter was present for the Parent at only two of these meetings.²⁵ In addition, there is no documentation or other evidence that the Parents were provided with procedural safeguards or IEPs in the Parents native language. Sara Helman, Assistant Special Education Director, did not recall any procedural safeguard notices being given to the Parents in Arabic with regard to the Student until May, 2020.²⁶ Finally, at an IEP team meeting held on October 2, 2019, the team realized that the Parents were not able to fully participate due to their language barrier when it was noted in the written notice that: “it is important in future meetings that an interpreter be provided.”²⁷

The District’s failure to provide interpreter services to the Parent directly impacts the Parents’ ability to actively participate in the Student’s IEP process. MUSER §§VI (2)(B) and (H) provide, in relevant part, that the IEP team must ensure that parents are afforded the opportunity *to participate* in all IEP team meetings. (emphasis added). MUSER §IX.3.C provides that an IEP Team must consider both the concerns of the parents when developing each child’s IEP. As noted by the U.S. Supreme Court in *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 53 (2005), “The core of the IDEA is the cooperative process that it establishes between parents and schools.”

In the present case, at least one of the Parents attended all of the IEP team meetings scheduled during the Complaint Investigation period. The Parents contributed to the discussion at these meetings and “Parent concerns” were routinely noted in the written notices corresponding to the IEP team meetings. In several instances, it is clear that the District was attempting to meet the requests of the Parent. In particular, at IEP team meetings held in December 2018, March of 2019 and February of 2020, the team reduced the amount of specially designed instruction “at the Parents request.”

However, by not having an interpreter present at these meetings, the Parents were at a significant disadvantage and were not afforded the opportunity to fully participate. In fact, the Parent stated that he was “unaware” that the Student was getting special education services until after these services had begun. Because of the lack of interpreter and translation services, it is not clear if the Parents decision to reduce instruction time was based on their full understanding of the programming benefits that were being offered to their son through IEP.

While the District’s failure to provide this notice constitutes a procedural violation, there must also be a finding that this procedural inadequacy was severe enough that it deprived the Student of a FAPE. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 994 (1st Cir. 1990). In the

²⁵ An Arabic interpreter was present at the IEP team meetings held on November 20, 2019 and January 29, 2020.

²⁶ The District apparently did not keep a copy of the procedural safeguard notice translated in Arabic that was given to the Parent, as no copy of this notice was provided to the Complaint Investigator. The Parent said that he did not get copies of notices in Arabic.

²⁷ While an interpreter was provided for the following IEP team meeting on November 20, 2019 and January 29, 2020, there was no interpreter present at the February 12, 2020 IEP team meeting.

present case, the record supports a finding that this procedural inadequacy was severe enough that it deprived the Student of a FAPE by essentially removing the Parents from full participation in the IEP team process, resulting in haphazard changes and reductions to the Student's instruction and supportive services.

- **Failure to consider existing evaluation data and the academic, developmental and functional needs of the Student in violation of MUSER §IX.3.C (1)(c);**
- **Not ensuring that the Student's educational placement is in the least restrictive environment or that a continuum of alternative placements is available to meet the Student's educational needs in violation of MUSER §X.2.B and MUSER §VI.2;**
- **Not properly developing or revising the Student's IEP thereby depriving of a Free Appropriate Public Education (FAPE) in violation of MUSER §VI.2.J.(4) and MUSER §IX.3.C and 34 CFR 300.101(a); and**

NON COMPLIANCE FOUND; DENIAL OF FAPE FOUND

MUSER §VI.2.J.(4) provides that one of the Major IEP Team Responsibilities is to develop or revise an Individualized Education Program to provide each identified child with a disability a free appropriate public education. MUSER §IX.3. B(3) and C provide in relevant part:

C. Development of IEP.

(1) In general. In developing each child's IEP, the IEP Team, subject to subparagraph (3), must consider:

- (c) The results of the initial evaluation or most recent evaluation of the child; and
- (d) The academic, developmental, and functional needs of the child.

The First Circuit Court of Appeals has declared that "the IDEA entitles qualifying children to services that target 'all of [their] special needs,' whether they be academic, physical, emotional, or social." *Lenn v. Portland Sch. Comm.*, 998 F.2d 1083, 1089 (1st Cir. 1993) "Educational performance in Maine is more than just academics." *Mr. and Mrs. I v. Maine School Administrative District No. 55*, U.S. Court of Appeals, First Circuit 06-1368 06-1422 107 LRP 11344, March 5, 2007.

In *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 989 (1st Cir. 1990), the First Circuit Court held:

Congress indubitably desired "effective results" and "demonstrable improvement" for the Act's beneficiaries. *Burlington II*, 736 F.2d at 788. Hence, actual educational results are relevant to determining the efficiency of educators' policy choices...The key to the conundrum is that, while academic potential is one factor to be considered, those who formulate

IEPs must also consider what, if any, “related services,” 20 U.S.C. § 1401(17), are required to address a Student’s needs. *Irving Independent School Dist. V. Tatro*, 468 U.S. 883, 889-90 (1984); *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir.), cert. denied, 464 U.S. 864 (1983).

Among the related services which must be included as integral parts of an appropriate education are “such development, corrective, and other supportive services (including psychological services . . . and counseling services) as may be required to assist a handicapped child to benefit from special education.” 20 U.S.C. § 1401(17).

There is a two-part standard for determining the appropriateness of an IEP and placement. First, was the IEP developed in accordance with the Act’s extensive procedural requirements? Second, was the IEP reasonably calculated to enable the child to receive “educational benefits”? See *Board of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley* (“*Rowley*”), 458 U.S. 176, 206 (1982); *Lessard v. Wilton-Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 27 (1st Cir. 2008). “Adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.” *Rowley*, 458 U.S. at 205.

The Supreme Court recently explained its *Rowley* standard by noting that educational programming must be “appropriately ambitious in light of a student’s circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” *Andrew F. v. Douglas County School District RE-1*, 2017 WL 1066260 (Mar. 22, 2017).

MUSER §VI.2.I provides that the SAU has ultimate responsibility to ensure that the child’s placement is in the least restrictive educational placement. MUSER §X.2.B. further defines the criteria for the determination of the Least Restrictive Environment and provides:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, shall be educated with children who are not disabled, and special classes, separate schooling, or other removal of students with disabilities from the regular educational environment shall occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [20 USC 1412(a)(5) and 34 CFR 300.114]

Each SAU must ensure that a continuum of alternate placements is available to meet the needs of children with disabilities for special education and related services. The continuum required must include the alternative placements in the definition of special education under 34 CFR 300.39 (instruction in regular classes, special classes, special

schools, home instruction, and instruction in hospitals and institutions); and make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with the regular class placement. [34 CFR 300.115] *see also A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 330 (4th Cir. 2004).

The First Circuit Court of Appeals has declared that determinations about least restrictive programming are unavoidably part of the determination of an “appropriate” program for a student. *See Lenn v. Portland School Committee*, 998 F. 2d 1083, 1090 n.7 (1st Cir. 1993) (questions about least restrictive programming are “an integral aspect of an IEP package (and) cannot be ignored when judging the program’s overall adequacy and appropriateness.”). The educational benefit and least restrictive environment requirements operate in tandem to create a continuum of educational possibilities. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 928, 993 (1st Cir. 1990). Supplementary aids and services must be provided within the regular classroom and placement in a more restrictive setting should only be considered when those services cannot be achieved satisfactorily. MUSER §X.2.B.

Because there is no “bright-line rule on the amount of benefit required of an appropriate IEP,” courts and hearing officers must use “an approach requiring a student-by-student analysis that carefully considers the student’s individual abilities.” *Ridgewood Bd. of Educ.*, 172 F.3d at 248 (decision-maker must “analyze the type and amount of learning” that a student is capable of when determining whether “meaningful benefit” has been provided). Whether a program provides a “meaningful benefit” however, must be individualized, based upon each student’s potential for advancement. *Polk v. Central Susquehanna Interm. Unit 16*, 853 F.2d 171, 180 (3d Cir. 1988).

MUSER §VI.2.J.(4) provides that one of the Major IEP Team Responsibilities is to develop and *revise* an Individualized Education Program. (emphasis added). A school district is obligated, within a reasonable period of time, to review and develop a programming alternative once it becomes clear the student's IEP is not working. *M.C. ex rel. JC v. Central Regional School District*, 81 F.3d 389, 396-97 (3d Cir.), cert. denied, 519 U.S. 866, 136 L. Ed. 2d 116, 117 S. Ct. 176 (1996).

MUSER §IX.3.C (1)(c) provides that in developing each child's IEP, the IEP Team must consider the results of the initial evaluation or most recent evaluation of the child. In *School Union #51* 26 IDELR 1193, 26 LRP 4557, (Maine, 1997), the Hearing Officer found that a school district denied a 15-year-old ninth grader a FAPE when it failed to review an evaluation of the student. In the *School Union #51* case, the Hearing Officer held:

It is the responsibility of the PET to review all the existing evaluations in developing the program for a student... It appears from the record that the Speech/Language evaluation of September 1996 was never reviewed by the PET. This evaluation contains some excellent concrete academic recommendations that were never discussed and thus

are not in the I.E.P. where they belong.

In the present case, the Parents, through their advocates, allege that the District improperly evaluated and identified the Student with a Specific Learning Disability. They argue that this evaluation failed to take the Student's English language deficits or medical absences into account. As a result, the Parents argue that the Student never should have been provided with special education programming and supports. Instead, they contend that should have received additional ELL supports and section 504 accommodations. The Parents contend that they unknowingly "went along" with the Student's special education programming because the District neglected to provide interpreter services and translated documents for them. Finally, the Parents argue that even though the Student should not have had an IEP, the District failed to properly implement the IEP that was developed for .

As noted above, it is clear that the District neglected to provide interpreter services and translated documents for the Parents. However, the evidence supports a finding that the District did consider the results of the Student's evaluations which made note of English language challenges. In addition, at least initially, the District developed an "appropriately ambitious" program in light of circumstances.

Anthony Tourigny, M.Ed., the School Psychologist for the District, noted in April 2018 evaluation that the certain parts of evaluation (CTOPP and the WISC) were not "normed on students who are English Language Learners" and that therefore the Student's scores should be "interpreted with caution and with ELL identification and unique history in mind." On the other hand, he concluded that the Student did have "significant cognitive processing deficits in areas of visual-spatial processing" which he noted "should not be highly influenced by ELL status as the tasks are nonverbal and do not rely on prior [English language] knowledge."

This conclusion with regard to the nature of the Student's disability is supported by the record. Sandra Airoidi, the Student's middle school case manager and literacy instructor, said the Student's learning disability was evidenced by low scores on the "word attack" program and difficulty reading and sounding out "nonsense" words, which are not directly related to English vocabulary skills. Amanda Vickerson, the Student's school special education teacher, stated when she worked with the Student, she would have to "repeat and repeat... which is not typical of kids learning English." Sheanna Zimmerman, ELL coordinator for the District, said that the Student's reading and writing deficits were significantly more pronounced than her other ELL Students with similar backgrounds. She noted that the Student's literacy challenges were corroborated by WIDA test results which showed slower progress as compared to other Arabic speaking students within the District.

While Patricia Emery, the Student's tutor and advocate, didn't dispute Anthony Tourigny's April, 2018 evaluation, however, she believes that the Student's low "visual spatial" scores were impacted by "lack of experience with puzzles and educational toys" when was younger. Ms. Emery had no research or empirical evidence to support this hypothesis. Although

the Parent stated that he doesn't believe the Student has a learning disability, he feels like there "could be something wrong" as the Student is behind and seems to need more support than brothers, who have similar language barrier issues.

The record also shows that the IEPs prepared during the 2018-2019 school year provided a variety of supports and modifications and specially designed instruction to provide an appropriately ambitious program in light of circumstances. IEP offered modifications and supports in core subjects along with specialized instruction in English language arts, math and additional instructional support in reading comprehension.

The written notice prepared at the December 14, 2018 IEP team meeting noted that Student "made gains" attributed "to intense specialized instruction and supports." Nonetheless, it was noted on this report that the Student "remains significantly below grade level expectations of specialized instruction in reading, writing, and comprehension of core content material." At the June 4, 2019 IEP team meeting, it was again noted that the Student's gains have been due to intense specialized instruction and supports but that "remains significantly below grade level expectations [and] would struggle if was given grade level material."

Beginning in June of 2019, the District began to make revisions in the Student's IEP that do not appear to be supported by academic, developmental and functional needs. Although the Student remained "significantly below grade level" with "significant cognitive processing deficit in the area of visual-spatial processing" as noted at June, 2019 IEP team meeting, the team decreased the Student's specialized instruction in mathematics, reading and writing by 25 minutes per week in each subject. At the February 12, 2020 meeting, it was determined that the Student's SDI support in reading, writing and comprehension would be decreased from 210 minutes per week to 105 minutes per week.

Sara Helman, Assistant Special Education Director, acknowledged that she and other members of the team felt like the Student still needed the level of support in place prior to these reductions. The decision was made by the team, however, after hearing from the Parent who had concerns about the Student being in special education and the impact that special education classes had on ability to access regular education and ELL classes.

As noted, the District has the ultimate responsibility to ensure that a child's placement is appropriate and too review and develop a programming alternative once it becomes clear the Student's IEP is not working. The District was also responsible to ensure that a continuum of alternate placements was available to meet the Student's needs. Ultimately, the Student was denied a FAPE as a result of the District's decision to reduce programming at a time when continued to have deficits and when remained significantly behind peers.

- **Not fully and adequately implementing the Student's IEP in violation of MUSER §IX.3.B(3).**

NO VIOLATION FOUND

MUSER §IX.3.B(3) addresses an SAU's responsibility to implementation a student's Individualized Education Program, providing in relevant part as follows:

Each school administrative unit shall implement a child with a disability's Individualized Education Program as soon as possible following the IEP Meeting but no later than 30 days after the IEP Team's initial identification of the child as a child with a disability in need of special education and supportive services. All identified children with disabilities shall have a current Individualized Education Program in effect at the start of each school year.

If a school unit is unable to hire or contract with the professional staff necessary to implement a child's Individualized Education Program, the SAU shall reconvene an IEP Team to identify alternative service options. This IEP Meeting shall occur no later than 30 days after the start of the school year or the date of the IEP Team's development of the IEP. The IEP Team shall determine any amendments to the IEP necessary to reflect the inability to commence services as originally anticipated by the IEP Team. MUSER §IX.3.B(3)

The Parents argue that the District failed to properly implement the Student's IEP. As an example, they state that there was no adult support in the Student's ninth grade earth science class. The record does not support this claim. Ryan Green, the Student's earth science teacher, stated that there was an educational technician providing support to the Student at all times, including a period of time when the Student was assigned own 1:1 ed tech after the second quarter until the Covid school closure in March, 2020.

The Parents also assert that Mr. Green failed to modify assignments to comport to the Student's reading level. Mr. Green stated in during interview with the Complaint Investigator that while earth science class does not have a lot of "reading assignments," he would either modify the Student's reading levels to a lower grade level or paraphrase assignments for the Student out loud. He said that he would also provide extra time for the Student, and "pre" and "re-teach" the Student with respect to his assignments.²⁸

Amanda Vickerson, the Student's school special education teacher, stated that part of her job is to coordinate with the Student's regular education teachers, to check in on progress and to make sure that accommodations were being implemented. She recalled

²⁸ The written notice from the June 4, 2019 IEP team meeting noted a comment made by the Student's world history teacher that the Student "attempted to read a few sentences from a 4th grade reading level text, and could not get through it..."(emphasis added).

that she specifically worked with the Student's regular education history teacher to lower expectations and grading at a sixth-grade level.

VII. CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

1. The District shall schedule training for all appropriate staff members in order to review state and federal regulations with respect to IEP Team responsibilities concerning the provision of notices of and other documentation to Limited English Proficient (LEP) parents and Students, including the provision of interpreter and translation services.
2. Written assurance from the Superintendent that a plan is in place for this training, along with a copy of the staff training curriculum, trainers and staff members attending the training shall be submitted to the Department by December 15, 2020.
3. If after receiving and reading this report the Parents' consent to the District providing special education services for the Student, the District shall:
 - a. Provide the Parent with an Arabic translator for all IEP team meetings;
 - b. Provide the Parent with an oral or written translation of all vital documents relating to the Student's special education programming including the IEP, written notices, advance written notices, evaluations and procedural safeguard notices;
 - c. Convene the Student's IEP team within 30 days after any said Parental consent to determine the Student's need for evaluations, including the need for evaluations that must be conducted in the Student's native language. Following said evaluations, the IEP team shall reconvene to determine placement, instruction, accommodations, and supports for the Student; and
 - d. Determine what, if any, compensatory education and services must be provided to the Student by the District for equity in light of the District's reduction of special education services and supports to the Student during eighth and ninth grade school years which resulted in a denial of a FAPE for the Student.