

Complaint Investigation Report
Interested Party v. Lewiston Public Schools
May 11, 2021

Complaint # 21.047CS
Complaint Investigator: Julia N. Pothen, Esq.
Date of Appointment: February 26, 2021

I. Identifying Information

Complainant: (“Interested Party”)

Respondent: Lewiston Public Schools (“District”)
Jake Langlais, Superintendent
36 Oak Street
Lewiston, ME 04240

Pamela Boucher, Director of Special Services

Named Student: (“Student”)
DOB:

Unnamed Students: (“Unnamed Student 1”)
DOB:

DOB: (“Unnamed Student 2”)

DOB: (“Unnamed Student 3”)

DOB: (“Unnamed Student 4”)

DOB: (“Unnamed Student 5”)

DOB: ("Unnamed Student 6")

DOB: ("Unnamed Student 7")

DOB: ("Unnamed Student 8")

DOB: ("Unnamed Student 9")

DOB: ("Unnamed Student 10")

DOB: ("Unnamed Student 11")

DOB: ("Unnamed Student 12")

DOB: ("Unnamed Student 13")

DOB: ("Unnamed Student 14")

DOB: ("Unnamed Student 15")

DOB: ("Unnamed Student 16")

DOB: ("Unnamed Student 17")

DOB: ("Unnamed Student 18")

DOB: (“Unnamed Student 19”)

DOB: (“Unnamed Student 20”)

DOB: (“Unnamed Student 21”)

II. Summary of Complaint Investigation Activities

On February 24, 2021, the Maine Department of Education received and opened a Systemic Complaint Request against Lewiston Public Schools from Interested Party, who is a staff member at _____ School. Therefore, the current investigation covers the period of February 24, 2020 to present. See MUSER XVI(4)(B)(3). The complaint investigator was appointed on February 26, 2021.

Systemic complaints are those that allege that a school district has a policy, practice, or procedure that has resulted in a violation of the Maine Unified Special Education Regulations (“MUSER”) and is, or has the potential to be, applicable to a group of students, named or unnamed. After the receipt of Interested Party’s systemic complaint, a Draft Allegations Letter was sent to the parties by the complaint investigator on March 3, 2021, detailing three alleged systemic violations of the MUSER. Interested Party’s complaint named one student (“Student”) whose educational rights were allegedly directly impacted by the systemic violations. The complaint also referenced other unnamed students who were allegedly impacted by the violations.

The complaint investigator held two separate telephonic Complaint Investigation Meetings on March 5, 2021 and March 8, 2021. A revised Allegations Letter was sent to the parties by the complaint investigator on March 8, 2021, further clarifying the documents and information sought by the complaint investigator to complete the investigation.¹

¹ No changes were made to the three original alleged violations of the MUSER in the revised Allegations Letter sent to the parties on March 8, 2021.

Although the regulatory time frame for the present complaint investigation extends from February 24, 2020 to present, the scope of this investigation is somewhat limited by the procedural history of a prior due process complaint filed by Interested Party. Back on January 17, 2020, Interested Party filed a separate systemic complaint against the Lewiston Public Schools, alleging four systemic violations of the MUSER. See Complaint Investigation #20.055CS. On February 3, 2020, two additional systemic complaints were filed by different complainants against the Lewiston Public Schools, alleging nine additional violations of the MUSER. Id.

Ultimately, these three systemic complaints were joined without objection by the parties, and the allegations were consolidated into ten alleged violations of the MUSER. On May 1, 2020, the Maine Department of Education published Complaint Investigation Report #20.055CS, finding non-compliance on the part of the District with respect six of the total of ten consolidated violations. The District was then ordered to complete a corrective action plan, which required compensatory education services for six

School students. Additionally, the District was required to craft a plan regarding regulatory deadline compliance, to redraft the District's procedures for adding counseling to a student's IEP, to refine the special education referral process for Response to Intervention (RTI) teams, and to engage in additional special education training.

The previous systemic complaint (Complaint Investigation #20.055CS) was also conducted by the present complaint investigator, Julia Pothen. The complaint investigator has thoroughly reviewed the prior complaint in order to ascertain which of the present allegations, if any, were previously addressed. One of the allegations in the present complaint investigation overlaps with the allegations from the previous complaint, and with respect to the repeated issue, the complaint investigator has only considered the District's conduct from the date of the previous determination (May 1, 2020) to the present. With respect to the two new allegations that were not addressed in the prior complaint investigation, the regulatory time frame of February 24, 2020 to present remains applicable.

The complaint investigator has received and thoroughly reviewed over 716 pages of documents from Lewiston Public Schools. These documents include Individualized

Education Plans (“IEPs”) and other relevant documentation, such as Written Notices and Evaluations, for the named student, as well as relevant documentation from ten unnamed students at _____ School who required social work assessments during the regulatory time frame of February 24, 2020 to present. Additionally, the documents include relevant documentation from another sixteen unnamed students at _____

School who were randomly selected by the complaint investigator to ensure a thorough review of the allegations. The District, therefore, has identified a total of 21 students who were unnamed by the complainant, but who are also the subject of this complaint investigation.² The investigator also received 14 pages of additional documents submitted by the complainant.

Interviews were conducted between March 29, 2021 and April 21, 2021. The complaint investigator interviewed the Interested Party, the Special Education Director, the Assistant Special Education Director, and the Clinical Supervisor for Lewiston Public Schools. The following school staff at _____ School were also interviewed: the Principal, the Special Education Supervisor, the Special Education Social Worker, a current Special Education Teacher, a former Educational Technician, and a current Related Service Provider. The complaint investigator also reached out to additional _____ School staff members, the School Psychologist, & the parent of the named student (“Parent”), but these individuals were unavailable or unwilling to be interviewed.³ To complete this investigation, the complaint investigator reviewed all documents provided, considered all information collected through interviews, and evaluated all written responses provided by the parties.

² Five of the unnamed students who were identified as requiring social work assessments were also randomly selected by the complaint investigator for a broader review of the IEP process.

³As per the standards of practice for conducting complaint investigations, the complaint investigator used her discretion with regards to witnesses interviewed; therefore, not all of the witnesses identified by the parties were interviewed as part of this investigation. Additionally, due to an unexpected school building closure in April 2021, as well as individual quarantine requirements, as a result of the COVID-19 pandemic, and due to school vacation periods, the complaint investigator obtained home contact information for various potential witnesses. However, not all individuals were available at home and not all individuals chose to provide home contact information. The complaint investigator did not contact parents of the 21 unnamed students because there was not sufficient evidence to suggest that the unnamed students were adversely affected by the alleged violations.

III. Preliminary Statement

The systemic complaint filed by Interested Party identifies only one named student (“Student”) who currently attends _____ School in _____, Maine. The Student is _____ years old, and he is in the _____. According to records provided, the Student resides at home with his mother, his mother’s boyfriend, and his older brother in _____, Maine. However, the complaint investigator was unable to interview the Student’s parent (“Parent”) during the course of this investigation despite repeated attempts to contact the Parent by phone and mail.⁴

The systemic complaint also referenced alleged educational harm to various other unnamed students at _____ School. As described above, to ensure a thorough investigation, the complaint investigator collected special education documents for 16 additional students at _____ School. To ensure that these students were selected randomly, the District provided a list of all 92 students at

_____ School who currently receive special education services. The complaint investigator then used a random number generator to select a proportional sampling of special education students from every grade level at _____ School, including one _____ student, one _____ grade student, two _____ grade students, two _____ grade students, four _____ grade students, four _____ grade students, and two _____ grade students. The complaint investigator provided the names of the randomly selected students to the District, and the District provided the appropriate special education documents for review of all 16 unnamed students’ special education files.

This complaint has only examined the District’s policies, practices, and procedures at _____ School. As such, the determinations in this report do not reflect on the District’s practices at other Lewiston Public Schools.

⁴ The complaint investigator first made multiple attempts to reach the Parent by phone and by mail. When these attempts were unsuccessful, the investigator informed the parties and the Student’s Case Manager, in hopes of obtaining updated contact information. No alternative contact information was available at this time, and the complaint investigator made a final, unsuccessful attempt to contact the Parent by phone on April 22, 2021.

IV. Allegations

- A. The District has a practice, policy, or procedure at _____ School of producing Written Notices that are inaccurate, incomplete, and/or misleading. 34 CFR 300.503; MUSER App. 1 at 220.
- B. The District has a practice, policy, or procedure at _____ School of delaying and/or denying the provision of related counseling services. MUSER IX(3)(A)(1)(d); MUSER IX(3)(D).
- C. The District has a practice, policy, or procedure at _____ School of disregarding the consensus of the IEP Team. Specifically, the District has a regular practice of “overriding” IEP Team determinations about needed services in favor of interests that are unrelated to individual student needs. MUSER VI(2)(I).

V. Factual Findings

- 1. The named student (“Student”) is _____ years old, and he currently attends the _____ grade at _____ School.
- 2. Due to the COVID-19 pandemic, the Student presently attends _____ School in-person for two days per week (Monday and Tuesday), and he participates in remote learning for three days per week (Wednesday, Thursday, and Friday). The Student resides at home with his mother, his mother’s boyfriend, and his older brother in _____, Maine.
- 3. The Student qualifies for special education services under the category of Emotional Disturbance, based on his diagnosis with persistent depressive disorder and generalized anxiety disorder. See Student’s Individualized Education Plan (“IEP”), dated January 21, 2021; Written Notice for the IEP Team Meeting on January 21, 2021; Student’s Psychological Evaluation, dated January 20, 2021, conducted by _____, Psy.D, NCSP (Nationally Certified School Psychologist). The Student’s diagnosed emotional disturbance has an adverse effect on his educational performance.⁵
- 4. The Student’s most recent IEP, dated January 21, 2021, provides for 300 minutes per week of Specially Designed Instruction (“SDI”) in Literacy. The Student also

⁵ The Student previously lived in _____, and he qualified for special education services at his school in _____ within the category of “Other Health Impairment,” due to his diagnosis with Attention Deficit Hyperactivity Disorder (ADHD), primarily the Impulsive-Hyperactivity Type. See Student’s IEP from _____ School, dated February 11, 2020.

currently requires 60 minutes per week of counseling services.⁶ See Student's IEP, dated January 21, 2021, as amended on January 26, 2021, February 4, 2021, and March 2, 2021.

5. The Student's most recent psychological evaluation was completed on January 20, 2021. As measured by the Weschler Intelligence Scale for Children – Fifth Edition (WISC-V), the Student's verbal comprehension skills are average (37th percentile). See Student's Psychological Evaluation, dated January 20, 2021, conducted by _____, Psy.D, NCSP.
6. As part of his psychological evaluation, the Student was also administered the Connors 3rd Behavior Rating Scales, demonstrating clinically significant scores for "Emotional Distress, Upsetting Thoughts, Defiance/Aggression, Language, Math, Hyperactivity, Social Problems, Perfectionistic, Violence, and Physical Symptoms." Id. The evaluator concluded, "[The Student] will benefit from mental health counseling to address his depressive symptoms. He will require daily check-ins in regard to his suicidal ideation. He has mentioned these feelings to more than one person, and this is a critical concern at this time." Id.
7. Additionally, the Children Depression Inventory: Second Edition (CDI2) was administered at the same time, and the Student scored in the "Very Elevated" range for Emotional Problems. Id.
8. The Student was enrolled at _____ School at the beginning of the 2020-2021 school year on September 14, 2020. See Student's Daily Attendance Information, dated March 15, 2021.
9. On October 20, 2020, the Student's IEP Team met for the first time, holding a transition meeting for the Student from his prior _____ school in _____.⁷ The IEP Team agreed to adopt the special education services and goals from the Student's prior IEP, including 5 x 30 minutes per week of Literacy SDI. See Written Notice from the IEP Team meeting.

⁶ The current IEP service grid indicates that the Student previously received "3 times per month counseling," with no specified length of time per session, between February 2, 2021 and March 2, 2021. See Student's IEP, dated January 21, 2021, as amended on January 26, 2021, February 4, 2021, and March 2, 2021.

⁷ No allegation has been raised regarding the delay of the Student's special education transition from _____ between September 14, 2020 and October 20, 2020. As such, no information has been shared by the parties regarding the timing of the Student's transition meeting or regarding the special education services provided to the Student prior to his transition meeting on October 20, 2020.

10. The IEP Team decided the Student could receive his SDI in either regular education or special education settings, and the Student’s parent expressed concerns that he was “feeling very overwhelmed with the amount of work that is being sent home.” She also shared, “[The Student] has asked to be home schooled. He can be very hard on himself. He will give up rather than feel that he is not succeeding.” Id. At this time, counseling services were not discussed or suggested, and although evaluations were ordered, no request was made for a social work assessment. Id.
11. The Student’s attendance quickly became an issue.⁸ He was absent (excused) for the first two days of school because bus transportation was not yet set up for the Student to come to school. See Student’s Daily Attendance Information, dated March 15, 2021.
12. In sum, the Student missed three days of in-person school in September 2020 (two days excused, one day unexcused), one day of in-person school in October 2020 (excused), four days of in-person school in November 2020 (all excused due to illness or quarantine), and two days of remote school in November 2020 (unexcused). In December, the Student had six absences (five unexcused, and one excused). Id. As a result, the School staff began a truancy intervention for the Student at the beginning of December 2020.
13. On December 7, 2020, the Student’s Special Education Teacher/Case Manager emailed the Special Education Supervisor, the Student’s General Education Teacher, a General Education Social Worker, and other school staff, raising concerns about the Student’s truancy. The email explained, “[The Student] has missed 15 total days, 8 of which are unexcused.” After a truancy phone conference with the Parent that day, the Student’s Special Education Teacher, the Student’s Educational Technician, the Student’s General Education Teacher, and the General Education Social Worker were informed that the Student was significantly depressed and in need of counseling support in order for him to successfully attend school. The Student’s Special Education Teacher asked in her email, “[Parent] would like for counseling to be provided, and a referral will be made to , but as a special education student, is there more we can do sooner rather than later? He has not been at school enough to even complete the evaluations that are due next month.” See Email from Special Education Teacher, dated December 7, 2020.

⁸ Due to the COVID-19 pandemic, all students in grade at School are participating in the hybrid learning model. The Student is in Cohort A, which allows for in-person school on Mondays and Tuesdays, and remote school on Wednesday, Thursday, and Friday.

14. On December 15, 2020, the General Education Social Worker emailed additional school staff members, expressing frustration and concern that no one from the Special Education Department had responded to the request from December 7, 2020 regarding counseling for the Student. The General Education Social Worker explained that, following the phone conference on December 7, 2020, she had conducted a risk assessment with the Parent's permission and identified that the Student was presenting with suicidal ideation and significant depression. See Email from General Education Social Worker to Principal (and other school staff), dated December 15, 2020.
15. The General Education Social Worker suggested an emergency IEP meeting to add counseling to the Student's IEP, and she told the Special Education Supervisor that the Parent had requested an emergency IEP Team meeting as well. Id.
16. On December 15, 2020, the Special Education Supervisor responded to the General Education Social Worker's email, stating that the IEP Team would consider adding counseling services to the Student's IEP at the previously scheduled IEP review meeting on January 21, 2021. Additionally, the Special Education Supervisor stated, "I trust that you will continue to use your professional skills and judgment to provide counseling services to the student and remain in contact with the parent as needed in the interim. Of course, if you feel the student is at imminent risk, you would make a referral to crisis, just as would happen if you (or another clinician) were providing services through the IEP." See Email from Special Education Supervisor to General Education Social Worker, dated December 15, 2020.
17. The General Education Social Worker responded to the Special Education Supervisor immediately, stating, "I will be providing counseling and would always use my professional judgment and clinical skills when working with any student. I am not sure why that comment was made in the email. I also have done numerous risk assessment and am trained and train other staff in Suicide Risk and Awareness. I am also well-aware of Crisis and the procedures and services." See Email from General Education Social Worker to Special Education Supervisor, dated December 15, 2020.
18. There is no indication that the Special Education Supervisor had any further contact with the Parent regarding her concerns between December 7, 2020 and the previously scheduled IEP review on January 21, 2021. The Student was absent seven more times between December 7, 2020 and January 21, 2021 (1 day

- excused, 6 days unexcused). See Student’s Daily Attendance Information, dated March 15, 2021.
19. On January 21, 2021, the Student’s IEP Team met to discuss the Student’s academic and psychological assessments, and the IEP determined that the Student required additional SDI in a small group setting to make progress towards his literacy goals. The Team increased the Student’s Literacy SDI to 300 minutes per week (from 150 minutes per week). The IEP Team also agreed, based on the Psychological Evaluation, that the Student has an emotional disturbance that is adversely impacting his education. See Written Notice for IEP Team on January 21, 2021.
 20. The Parent was present for the January 21, 2021 IEP Team meeting by phone, and the Written Notice summarizes her concerns as follows: “[The Parent] would like for [the Student’s] mental health to be the number one priority. She would like for him to receive 90 minutes of counseling weekly until he is at baseline, and less depressed.” Id. According to Written Notice, the Parent was concerned that the Student was suicidal, and she repeatedly discussed her uncertainty about what to do to help the Student. Id.
 21. The IEP Team also heard from the School Psychologist, who had just completed the Student’s Psychological Evaluation on January 20, 2021. The Psychologist was “very concerned” about the Student’s safety, and she felt that the Student was “reaching out for help and is now withdrawing in his lack of participating and engagement. He was quite verbal about how he is not interested in anything due to his level of depression.” Id.
 22. Eventually, the IEP Meeting on January 21, 2021 began to run longer than the scheduled time frame for the meeting, and the Special Education Supervisor ended the meeting. See Interviews with IEP Team members.
 23. Interviews with IEP Team members indicated that there is stark disagreement about the accuracy of the Written Notice that was produced following the January 21, 2021 IEP Meeting. The Student’s Special Education Teacher/Case Manager drafted the original Written Notice, reflecting that consensus could not be reached regarding the amount of counseling required for the Student, and the Special Education Supervisor ended the meeting due to the lack of consensus and the length of the discussion. A second meeting was then scheduled for one week later on January 28, 2021 to continue the discussion. See Interviews with IEP Team members.

24. However, according to the final Written Notice for the January 21, 2020 IEP Team meeting, as edited by the Special Education Supervisor, “the Team discussed to give [the Student] 90 minutes of counseling services. They discussed 45 minutes in person and 45 minutes remote. This discussion could not be completed as the social worker assessment had not been completed. The team will reconvene next Thursday after a social work assessment is completed by the special education social worker.” See Written Notice for IEP Team on January 21, 2021.
25. Although the final version of the Written Notice reflects that the IEP Team agreed to obtain a social work assessment, multiple IEP Team members have stated that is not accurate. Multiple Team members maintain that a social work assessment was never discussed because the Student had just completed a psychological evaluation that recommended counseling, and the Student’s General Education Social Worker had just completed a risk assessment, indicating the same immediate need for counseling. See Interviews with IEP Team Members.
26. After the meeting, on January 21, 2021, the District’s Clinical Supervisor, at the request of the Special Education Supervisor, asked the Special Education Social Worker to prioritize an informal social work assessment for the Student. See Email from the Clinical Supervisor to the Special Education Social Worker, dated January 21, 2021.
27. On January 25, 2021, the Special Education Supervisor emailed the Student’s IEP Team, cancelling the Student’s follow-up IEP Meeting scheduled for January 28, 2021. She stated, “In reflection we do need to ensure that the assessment is completed prior to the meeting. We do not want to predetermine the outcome and we want to give time to a thoughtful assessment. We will reschedule the meeting to review the completed assessment, if needed.” See Email from Special Education Supervisor to IEP Team Members, dated January 25, 2021.
28. Almost immediately, the School Psychologist responded to the Special Education Supervisor’s email, asking, “Did I miss previous emails? What assessment is being completed?” See Email from School Psychologist to Special Education Supervisor, dated January 25, 2021.
29. The Special Education Supervisor replied to the School Psychologist, stating, “[Y]ou did not miss an email. The protocol is to complete a social work assessment, which is why [the special education social worker] is coming on board to complete that assessment. A meeting was scheduled too quickly as this

- did not have time to be completed.” See Email from Special Education Supervisor to School Psychologist, dated January 25, 2021.
30. On January 26, 2021, the Special Education Social Worker contacted her supervisor, the District Clinical Supervisor, following a conversation in the hallway with the Student’s General Education Social Worker. The Special Education Social Worker indicated that she felt pressured and “bullied” by the General Education Social Worker to reach a recommendation of 90 minutes of counseling per week for the Student, even though her social work assessment observations and file review had not been completed yet. See Email from the Special Education Social Worker to the Clinical Supervisor, dated January 26, 2021.
 31. The Student was absent four more times between January 21, 2021 and February 4, 2021 (all unexcused). See Student’s Daily Attendance Information, dated March 15, 2021.
 32. The Student’s IEP Team met again on February 4, 2021 to discuss the informal social work assessment, which was completed by the Special Education Social Worker on February 3, 2021. See Written Notice for the IEP Team Meeting on February 4, 2021.
 33. The informal social work assessment included classroom observations of the Student, a review of the Student’s files, and discussions with the Student’s providers. The Student’s General Education Teacher did not report any significant concerns about the Student. She described him as “friendly, helpful, and participating in class.” In contrast, the Student’s Educational Technician noted that the Student completes “little to no work” during remote instruction, confirmed that poor attendance was a barrier to the Student progressing towards his goals, and explained that the Student’s “moods vary, . . . some days he is funny and cracking jokes, and then other days he is like a shell going through the motions.” See IEP Social Work Assessment, dated February 3, 2021.
 34. The social work assessment recommended that counseling be added to the Student’s IEP in the amount of 1 x 60 minutes per week. Id.
 35. During an interview, the Special Education Social Worker maintained that the conclusions and recommendations she reached in her social work assessment for the Student were not predetermined or influenced by the District in any way. She stated that the only pressure she felt regarding her recommendations was pressure from the General Education Social Worker to provide more counseling services

- than she felt the Student required. See Interview with the Special Education Social Worker.
36. The Special Education Social Worker confirmed that she has not made a recommendation in a social work assessment for a student to receive more than 60 minutes per week of counseling. However, she stated this was not due to a requirement by the District or any kind of “cap” on counseling services at School. Instead, the Special Education Social Worker explained that each recommendation she makes is based upon her professional judgment about an individual student’s need, just as her recommendation for the Student to receive 1 x 60 minutes per week of counseling was based on her conclusions about the Student’s unique needs. Id.
37. Although the Parent was properly notified of the meeting on February 4, 2021, and although she had previously expressed a desire to attend the meeting, the Parent was unable to be reached by phone during the IEP Team meeting on February 4, 2021. See Written Notice for the IEP Team Meeting on February 4, 2021.
38. While the IEP Team agreed again on February 4, 2021 that counseling was necessary for the Student to access his special education, the Team was unable to reach consensus about the amount of counseling the Student should receive per week on his IEP. The General Education Social Worker, the Student’s Special Education Teacher, and the School Psychologist all argued strongly that 45 minutes of counseling x2 per week was appropriate, with the caveat that the IEP Team could reconvene in 90 days to assess the Student’s progress. Id.; Interview with Student’s Special Education Teacher.
39. According to Written Notice, the General Education Social Worker stated during the IEP Meeting on February 4, 2021 that she had only met with the Student two times since December 2020, including the meeting where the risk assessment was administered on or around December 15, 2020, “but could not determine goals at this time because [the social worker] is not providing counseling to him.” See Written Notice for the IEP Team Meeting on February 4, 2021.
40. Again, the IEP Team was ultimately unable to reach consensus about the Student’s needs. At the conclusion of the meeting, it was unclear whether counseling would be added to the Student’s IEP, and if so, what amount of

counseling would be appropriate. The Special Education Supervisor stated that further discussion would need to occur with the Parent.⁹ Id.

41. On February 22, 2021, the Student began receiving counseling services with the Special Education Social Worker. See Special Education Social Worker’s Service Log for the Student.
42. On March 2, 2021, the Special Education Social Worker spoke with the Parent by phone, and the Special Education Social Worker told her “we will be putting 60 minutes of counseling on the IEP.”¹⁰ See Email from Special Education Social Worker to the Special Education Supervisor, dated March 3, 2021.
43. Notably, _____ School currently employs three general education social workers and one school counselor on staff to serve its student population. _____ also currently employs one special education social worker to work directly with special education students who have counseling services added to their IEPs. The special education social worker’s role also includes completing informal social work assessments for any IEP Teams that are considering adding counseling services to a student’s IEP. Additionally, _____ has a partnership with _____ Mental Health Services, and the equivalent of 1.75 additional full-time community-based clinicians serve students right in the _____ School building. Students may receive counseling with _____, regardless of whether the student receives special education services or not. See “Students Accessing Counseling Services,” Memo from Principal to Director of Special Education; Interviews with _____ staff.

⁹ Shortly after the February 4, 2021 IEP Team Meeting, on February 11, 2021, the Special Education Social Worker and the Special Education Supervisor reached the Parent by phone to discuss the results of the informal social work assessment and to discuss the February 4, 2021 IEP Team meeting. The Parent requested that the General Education Social Worker join the conversation, but the Special Education Supervisor wished to continue the phone call without the General Education Social Worker. As a result, the Parent hung up the phone. See District’s Response to Complaint 21.047CS. The Special Education Social Worker was unable to speak to the Parent again until March 2, 2021.

¹⁰ The Student’s current IEP indicates that the Student previously received “3 times per month counseling,” with no specified length of time per session, between February 2, 2021 and March 2, 2021. See Student’s IEP, dated January 21, 2021, as amended on January 26, 2021, February 4, 2021, and March 2, 2021. It is unclear whether these counseling services were delivered because the General Education Social Worker has provided no counseling service logs to the complaint investigator or to the Principal, despite the Principal’s request. See Email from the Principal to the General Education Social Worker, dated March 17, 2021. Additionally, there appears to have been little to no communication between the Special Education Social Worker and the General Education Social Worker following the February 4, 2021 IEP Team meeting about what services the Student should receive and what IEP goals those services would target. The General Education Social Worker was also provided no information about if and when the Student would begin counseling with the Special Education Social Worker. See Interview with General Education Social Worker; Emails from General Education Social Worker seeking additional information after the February 4, 2021 IEP Team Meeting.

44. After the Interested Party's prior systemic complaint (#20.055CS), the District revised its policies and practices regarding adding counseling to a student's IEP in compliance with the Corrective Action Plan. See Complaint Investigation Report #20.055CS, dated May 1, 2020.

45. The District's current six-step policy for adding counseling to a student's IEP was approved by the Maine Department of Education, and it requires the following:

- a) "IEP Team discusses potential need for counseling/social work on the IEP. Team documents in [Written Notice] that they are requesting an informal counseling/social work assessment.
- b) Special Ed supervisor emails building Special Ed clinician to request informal counseling/social work assessment.
- c) Special Ed clinician reviews record, talks with IEP team members, observes student and/or meets with student to determine if counseling is necessary for student to access their IEP. This process should be timely (approximately 2 weeks) as to not delay the start of service, if indicated.
- d) Special Ed clinician documents assessment and recommendation on Social Work assessment form, and emails assessment to IEP team coordinator to bring to the IEP team to review.
- e) The IEP team reconvenes to discuss the recommendation of the Special Ed clinician and determine whether to add counseling services to the Student's IEP. The decision of the IEP team controls even where the clinician recommends against adding services to the IEP. If the team does not reach consensus, the decision is made by the school official with written authority to commit personnel and financial resources at the meeting pursuant to MUSER VI.2(I).

Exception: If the clinician recommends that counseling services be added to the IEP and the parent is in agreement with that recommendation, the IEP can be amended without a meeting though the issuance of a Written Notice to document the amendment.

- f) The determination of the IEP team is documented in a written notice." See District's Policy for Adding Counseling to IEPs.

46. A number of recent email communications shed light on the District’s application of the above-stated policy. On January 15, 2021, the Student’s General Education Social Worker emailed the Director of Special Education as follows: “I am just seeking clarification on if there is any flexibility in regards to the Special Education Social Work Evaluation? Can a Social Work Evaluation/Assessment occur prior to a scheduled IEP meeting if the parent and the team working with the student are in agreement with such a need (counseling), if a student clearly is showing an inability to access his/her education?”¹¹ See Email from General Education Social Worker to Director of Special Education, dated January 15, 2021.
47. The Director of Special Education responded on January 19, 2021, stating, “All evaluations related to eligibility for special education services and special education programming should originate through the IEP team process and be documented by a written notice...of course agreements can be made outside of the IEP team process (such as for an assessment or evaluation of some kind), but those decisions should be made through a discussion of the IEP supervisor, the case manager, and the parent only, and documented through a written notice....No determinations about the need for services should be made outside of the team process.” See Email from Director of Special Education to General Education Social Worker on January 19, 2021.
48. After the Special Education Supervisor cancelled the Student’s IEP Meeting on January 28, 2021, the General Education Social Worker sent an email with her concerns to the Director of Special Education. The Director responded, “The special ed supervisor is tasked with upholding the law and following district protocols, and that is her responsibility to do so within an IEP meeting, in this case upholding the district’s process to complete the social work assessment first. I understand that all are invested in what is best for the student. However, we do need to let the process play out as outlined in our procedures and to allow each of the providers to complete the process using their professional judgement.” See Email from Director of Special Education to General Education Social Worker, dated January 27, 2021.

¹¹ For clarification, this email was sent prior to the Student’s IEP Team review on January 21, 2021. Although the General Education Social Worker does not reference the Student by name, she explained during an interview with the complaint investigator that the basis for her inquiry was a concern that the District would require a social work assessment at the January 21, 2021 IEP Team Meeting, further delaying the provision of counseling services on the Student’s IEP. At the time of her email, the General Education Social Worker was unaware of the results of the School Psychologist’s Evaluation, which was completed on January 20, 2021. See Interview with General Education Social Worker.

49. As part of this investigation regarding the provision of counseling services, the District also provided a list of all students at _____ School who underwent an informal social work assessment between February 24, 2020 and present. See Records for Unnamed Students 1-10. The complaint investigator reviewed relevant special education documents from all ten students who required a social work assessment during this time frame, including the named Student in this present complaint.
50. Two of the ten students (Unnamed Student 2 and Unnamed Student 3) were referred for social work assessments prior to the conclusion of the systemic complaint investigation #20.055C on May 1, 2020 (and prior to the effectuation of the District's revised policy for adding counseling to a student's IEP). As such, the social work assessment process for these two students was not considered.
51. One of the remaining eight students (Unnamed Student 7) did not undergo an informal social work assessment because the District's Clinical Supervisor was present for the student's eligibility meeting. During the IEP Meeting, the Clinical Supervisor reviewed the recent psychological evaluation, as well as input from the IEP Team. The IEP Team added social work services during the IEP meeting based on the Clinical Supervisor's assessment in the moment. No social work assessment was completed. See Unnamed Student 7's Written Notice from IEP Meeting on December 10, 2020.
52. Of the remaining seven students who were assessed through the informal social work process, the named Student experienced by far the quickest turn-around time between the request for a social work evaluation and the completion of the evaluation (9 days). The other six students all had a longer social work evaluation process, which generally lasted between four and six weeks. See Social Work Evaluations for Unnamed Students 1, 4, 5, 6, 8, and 9. For these seven students, social work assessments recommended counseling be added to the IEP for six students and recommended against counseling as a related service for only one student. Five of the six students who had recommendations to add counseling to their IEPs experienced a significant delay (approximately 3 to 4 weeks or more) before the recommended counseling services were added to the Student's IEPs.¹²

¹² Importantly, the majority of the unnamed students who underwent social work assessments were also already engaged in counseling services with a general education social worker or with _____ Health Services at _____ School while their social work assessments were pending. However, because the students were receiving counseling outside the special education process, there is no indication about the frequency or objectives of those counseling sessions, nor any measures to ensure that counseling services were consistently delivered to the students.

53. Several of the seven student files discussed above also indicate that a recent psychological evaluation had occurred immediately prior to the IEP Team's request for an informal social work evaluation. For example, Unnamed Student 1, who qualifies for special education services based on the category of emotional disturbance, with a diagnosis of Disruptive Mood Dysregulation Disorder, was recommended to receiving counseling services in his psychological evaluation on January 24, 2021. The IEP Team then requested a social work assessment on January 26, 2021. His social work assessment was completed on March 3, 2021. As of March 17, 2021, the services were not yet added to Unnamed Student 1's IEP. See Unnamed Student 1's Social Work Assessment, dated March 3, 2021; Summary of Social Work Assessments, provided by the District on March 17, 2021. Unnamed Student 1 continues to receive counseling services through a counselor. See Written Notice of IEP Team Meeting for Unnamed Student 1 on January 26, 2021.
54. As another example, Unnamed Student 5's IEP team requested a social work evaluation on January 26, 2021. Unnamed Student 5 carries a number of diagnoses that qualify him for special education services, including atypical depressive disorder (low self-esteem, withdrawal). Unnamed Student 5's social work evaluation was completed six weeks later, on March 10, 2021. But his social work evaluation noted that, as early as an IEP Team meeting on 11/20/20 "[Unnamed Student 5's] mother expressed that her primary concern was to get social work put on the IEP because [her son] struggles with peer interactions." See Unnamed Student #5's Social Work Assessment, dated March 10, 2021. The social work assessment recommended counseling for this student, but his next IEP Team Meeting was not held until March 25, 2021 to review the results of the assessment. See Summary of Social Work Assessments, provided by the District on March 17, 2021.
55. During an interview with the complaint investigator, the Special Education Supervisor explained the process for drafting Written Notices at School. First, a student's case manager, who takes notes during the IEP meeting, drafts the Written Notice and saves the draft in Adori, the online case management system utilized for all special education students served by the District. The Special Education Supervisor (or another LEA representative who was also present for the IEP meeting) then reviews the Written Notice and makes any necessary changes. If needed, the Special Education Supervisor discusses proposed changes with the Case Manager, but this does not occur frequently. Once a Written Notice is finalized, the Special Education administrative staff ensure that copies of the written notice are sent to parents and other IEP Team members who do not have access to Adori. The final version of each Written

- Notice remains available in Adori to the Student's Case Manager. See Interview of the Special Education Supervisor; District's Response to Complaint 21.047CS.
56. This procedure for Written Notices was also confirmed during all interviews with other relevant staff members at _____ School and the District. See Interviews with _____ and District staff.
57. The Special Education Supervisor has confirmed that, during the relevant time period for this complaint investigation, she has never received a single request from a parent or staff member to correct a Written Notice due to inaccurate, incomplete, and/or misleading information. See Interview with Special Education Supervisor; Email from Special Education Supervisor to Director of Special Education, dated March 16, 2021. The Supervisor did recall one or two occasions where a clerical error with a Student's IEP or a prior Written Notice was subsequently discovered by the Special Education Supervisor, by a Student's IEP Team, or by other Special Education staff. In those rare instances, the clerical error was corrected and documented with Written Notice to the IEP Team. See Interview with Special Education Supervisor.
58. During interviews with Special Education staff members at _____ School, aside from the Written Notice from the named Student's IEP Team Meeting on January 21, 2021, no one provided a single additional example of a Written Notice that was inaccurate, incomplete, and/or misleading during the time frame of this complaint investigation. See Interviews with _____ staff.
59. As part of this investigation regarding the process for reaching consensus within IEP Team meetings, the District provided special education file documents for sixteen randomly selected students, as requested by the complaint investigator. See Special education documents for Unnamed Students 2, 4, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21.
60. After a complete review of all the provided documents for these sixteen unnamed students, including Written Notices, evaluations, and IEPs, the complaint investigator did not observe a single, additional example of an IEP Team being unable to reach consensus regarding the special education needs of a student. All randomly selected files seemed to reflect a collaborative decision-making process. Of course, there were a number of examples in Written Notices where a parent or provider expressed concern about a student's lack of progress or where suggestions were made to revise a student's goals or services. However, all differences of opinions appeared to be resolved by the conclusion of the IEP

Team meetings, as reflected in Written Notices and subsequent IEP amendments.
Id.

61. Anecdotal evidence collected through interviews indicated the same. Every staff member and District staff member interviewed for this investigation indicated that the named Student's IEP debate on January 21, 2021 & February 4, 2021 was the only instance they could recall where the school representative had stepped in to make a decision about services because the IEP Team was unable to reach consensus. See Interviews with School and District staff members.

Other relevant facts are included in the determinations below.

VI. Determinations

- A. The District has a practice, policy, or procedure at School of producing Written Notices that are inaccurate, incomplete, and/or misleading. 34 CFR 300.503; MUSER App. 1 at 220. **No systemic violation found.**

The IDEA requires advanced written notice be provided to parents any time a District or IEP Team proposes to change (or refuses to change) the provision of special education services of a child. See 34 CFR 300.503. Maine similarly requires that parents be informed "at least 7 days prior" to a change in services that provide a free appropriate public education to special education students. See MUSER App. 1 at 220.

The required content of Written Notices is outlined in MUSER App. 1 at 220. In sum, Written Notices must include a description of the action regarding the referral, evaluation, identification, programing and placement the District proposes or refuses to take and an explanation of those decisions, a description of the information relied upon to make those determinations, a description of other actions that were considered and rejected, other relevant descriptions, and a summary of the comments made by the parents. Id. A Written Notice is not a transcription of the IEP Team meeting, nor must it include a summary of all discussions by the IEP Team.

Additionally, MUSER XIV(8) provides parents with the right to seek the correction of educational records, including Written Notices, that are inaccurate or misleading. Once a parent has made a request for an amendment to a Written Notice, the

District must either decide to amend the information, as requested, within a reasonable period of time, or inform the parent of the refusal to amend.

The present complaint alleges that _____ School has a practice of producing inaccurate, incomplete, and/or misleading Written Notices. However, there is no evidence that the District has a practice of violating the requirements of IDEA or MUSER with respect to the content of Written Notices. Importantly, the District issues a written notice following any IEP Meeting, using the Maine Department of Education’s required form. While special education case managers are asked to draft Written Notices based on their notes from each IEP Team meeting, it is ultimately the responsibility of the District to ensure that Written Notices are accurate and complete. To do so, the District has a practice of reviewing Written Notices within Adori’s IEP software to make edits that ensure clarity, accuracy, adherence to special education regulations, and grammatical correctness. Written Notices remain available to special education case managers within Adori, and the case manager continues to have access to the Written Notice until it is sent out to IEP Team members by the Special Education Administrative Assistant.

Additionally, the Special Education Supervisor, the Director of Special Education, and the Assistant Director of Special Education have not been made aware of a single request to amend a Written Notice as allowed by MUSER XIV(8) during the time period of the complaint investigation. Other than the seemingly unique issue of whether the named Student’s Written Notice for the January 21, 2021 IEP Team meeting accurately reflected the IEP Team’s decision to seek a social work assessment, there has been no dispute about the content of Written Notices between February 24, 2020 and the present.¹³

As such, the District’s policies, practices, and procedures comply with federal and state regulatory requirements, and therefore, **no systemic violation is found.** See 34 CFR 300.503; MUSER App. at 220.

¹³ The dispute about the named Student’s IEP Team decision to seek a social work assessment is addressed in the determination of the next allegation below.

- B. The District has a practice, policy, or procedure at _____ School of delaying and/or denying the provision of related counseling services. MUSER IX(3)(A)(1)(d); MUSER IX(3)(D). **Systemic violation found with respect to the District’s practice of mandating informal social work assessments.**

Children in Maine, ages birth to twenty-two who have disabilities, may not be excluded from the benefits of services to which they are entitled under the IDEA. 34 CFR 300.34; MUSER XI. The Maine Department of Education (“MDOE”) shall ensure the provision of appropriate services, regardless of the nature and severity of a child’s disability or developmental delay. MUSER I(2).

Federal and State law entitle all children with disabilities to a free appropriate public education (“FAPE”) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. See 34 CFR 300.101; 34 CFR 300.531; MUSER I. FAPE requires special education and related services that are reasonably calculated to enable the child to make appropriate progress in light of the child’s unique circumstances. See *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017).

MUSER VI(2)(I) carefully outlines the IEP decision making process:

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding: (1) the children’s needs and appropriate goals; (2) the extent to which the child will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and (3) the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP Team must consider the parents’ concerns and the information that they provide regarding their child in determining eligibility; developing, reviewing, and revising IEPs; and determining placement. Id.

In *Endrew F. v. Douglas Cty. Scho. Dist.*, 137 S.Ct. 988 (2017), the Court found that an IEP must be created in such a way that the Student is able to make progress in accordance with his own unique needs. Id. at 999. Of course, it is the IEP team that is best situated and that is tasked with considering the child’s academic growth, the child’s progress towards grade-level proficiencies, the child’s behaviors that may interfere with

their growth, and additional information and input provided by the child's parents. See MUSER V(2)(B); MUSER VI(2)(J).

As written and approved by the Maine Department of Education, the District's current policy regarding adding counseling to a student's IEP properly encourages the use of an informal social work assessment as a mechanism for determining whether counseling should be added as related service on a student's IEP. The currently policy emphasizes the decision-making power of the IEP Team, as the providers who are best understand each student's unique needs, to accept or reject the recommendations of the informal social work assessment. The current policy demands clear communication between the Special Education Supervisor, the District Clinical Supervisor, and the Special Education Social Worker, and it requires evaluations to be completed as quickly as possible to address the student's needs. Additionally, the policy correctly makes allowances for a student's IEP to be amended without requiring an additional IEP Team meeting if the District and the parents are in agreement about adopting the recommendations of the informal social work assessment. The policy, as written, does not violate MUSER.

Nonetheless, the District's *application* of this policy for adding counseling to a student's IEP runs counter to federal and state regulations. By mandating the use of an informal social work assessment in all circumstances (even when the IEP Team determines that a social work assessment is unnecessary), the District's practices have tied the hands of the IEP Team members and improperly limited the ability of IEP Teams to determine a student's unique needs. Because the District has a practice of requiring a social work assessment, regardless of whether a student has just completed a mental health assessment with the School Psychologist and regardless of whether an IEP Team has reached unanimous consensus about the counseling needs of a particular child, the District has limited the IEP Teams' ability to ensure FAPE for its students.

The named Student's case provides a helpful example of how the IEP decision-making process was effectively hijacked by the practices of the District. First, when the Parent, the Student's Special Education Teacher, and the Student's General Education Social Worker all requested an emergency IEP Team meeting to address the Student's depression (and the adverse impact it was having upon the Student's ability to attend

school, especially to engage in remote learning), the Special Education Supervisor and the Director of Special Education refused to move the previously scheduled review date forward from January 21, 2021. Even though the General Education Social Worker inquired about the possibility of completing an informal social work assessment prior to the IEP Meeting on January 21, 2021, the Director of Special Education insisted that this was a social work evaluation should be ordered by the IEP Team, during the IEP process, even though the scheduled meeting would not occur for more than six weeks after the original concern about the Student's needs was raised on December 7, 2020.

Then, after the January 21, 2020 IEP meeting finally occurred, the Special Education Supervisor unilaterally determined that a social work assessment was needed, according to District practices. After ending the meeting on January 21, 2021, the Supervisor amended the Written Notice from the January 21, 2020 IEP Team meeting to reflect the District's practice of *requiring* an informal social work evaluation in all situations. The confused and concerned responses of the IEP Team members after being notified that the January 28, 2021 IEP Team meeting was being cancelled due to the need for a social work assessment are telling. The IEP Team was no longer in control of the decision-making process, as intended by MUSER VI(2)(I), and therefore, the IEP Team was no longer able to discuss and determine the Student's immediate, unique educational needs. Although the IEP Team seemed to reach a clear consensus on January 21, 2021 that counseling related services were necessary for the Student to benefit from his special education, the Student did not begin to engage in consistent counseling with the Special Education Social Worker until March 2, 2021 (approximately three months after the initial concern was raised by the Parent and the Student's Special Education teacher on December 7, 2020).

Notably, there was no indication from the investigators review of the unnamed student files that any other IEP Team was required to seek an informal social work assessment, against the IEP Team's consensus. In fact, Unnamed Student 7's IEP Team added counseling to his IEP without an informal social work assessment because the Clinical Supervisor was present at Unnamed Student's eligibility meeting on December 10, 2020. However, the District' email communications, as laid forth in the fact section above, as well as statements made by District and School staff during interviews, indicate

that the District has a practice of mandating informal social work assessments, regardless of the other data available to the IEP Team and regardless of the IEP Team's consensus about whether an informal social work assessment is needed. As such, a **systemic violation is found** because this practice has adversely impacted the named Student and has the potential to adversely impact other students at _____ School.

Finally, the District has argued that the practice of mandating an informal social work assessment prior to adding counseling related services to a student's IEP does not delay or deny the provision of counseling services because general education social workers are available to provide services during the evaluation process. However, other counseling, occurring at a frequency and/or fashion outside the control of a student's IEP Team, is not an adequate substitute for the IEP Team's determination about related counseling services. The named Student's situation provides good example of this. While it appears that, on January 21, 2020, the Student's IEP Team remained undecided between providing the Student with 60 minutes per week of counseling or 90 minutes per week of counseling on his IEP, the Student instead received only two sessions of counseling between December 7, 2020 and February 4, 2021 and received (at most) 30 minutes of counseling per week from his General Education Social Work between February 4, 2021 and March 2, 2020.

To be clear, if a student's IEP Team determines that an informal social work assessment is needed, and the IEP Team is satisfied that a student is receiving outside counseling from _____ Mental Health Services or a general education social worker while the brief evaluation process is completed, that is completely within the IEP Team's decision-making prerogative to seek an informal social work assessment.¹⁴ It is also within the District's power to suggest informal social work assessments as a best practice for making counseling determinations, as described by the District's current policy. However, the IEP Team must be empowered to make individualized determinations about which assessments are required for a student and which services are necessary to

¹⁴ Relatedly, despite the arguments of the complainant, this investigation found no evidence that the District's informal social work assessments have a predetermined outcome in terms of whether to recommend counseling on a student's IEP or the amount of counseling recommended by the social worker.

achieve FAPE. IEP determinations must remain solely focused on the individual circumstances of each student. See MUSER IX(3)(A)(1)(d); MUSER IX(3)(D)

- C. The District has a practice, policy, or procedure at _____ School of disregarding the consensus of the IEP Team. Specifically, the District has a regular practice of “overriding” IEP Team determinations about needed services in favor of interests that are unrelated to individual student needs. MUSER VI(2)(I). **No systemic violation found.**

MUSER VI(2)(I) states, “The IEP Team should work towards consensus, but the SAU has ultimate responsibility to ensure that a child is appropriately evaluated; that the IEP includes the services that the child needs in order to receive FAPE; and that the child’s placement is in the least restrictive educational placement. It is not appropriate to make evaluation, eligibility, IEP, or placement decisions based upon a majority “vote.” If the team cannot reach consensus, the SAU must provide the parent with prior written notice of the school’s proposals or refusals, or both, regarding their child’s educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing or a State complaint investigation.”

In the review of a large sampling of randomized special education files, there was no indication that the District has a practice, policy, or procedure at _____ School of disregarding the consensus of the IEP Team. Instead, Written Notices revealed a collaborative IEP Team decision-making process at _____ School. Furthermore, no further examples of the District “overriding” an IEP determination about needed services were brought to the attention of the complaint investigator by anyone who was interviewed. Indeed, the sole example of an IEP Team being unable to reach consensus at _____ School between February 24, 2020 and the present was the unique situation regarding the named Student that is fully addressed in the above allegation.

As such, there is **no systemic violation found** that the District disregards the consensus of IEP Teams at _____ School.

VII. Corrective Action Plan

1. For the named Student, whose counseling services were delayed due to the District's practice of mandating a social work assessment before adding counseling services to an IEP, the District must provide the following:

- 2 hours of compensatory counseling services by the Student's special education clinician, as determined by the Student's IEP Team.

A plan to provide compensatory counseling services for the named Student is due to the Department by **July 1, 2021**.

2. The District must clarify the *application* of its policy regarding adding counseling to a student's IEP to reflect deference to IEP Team Decision Making Process. No changes are required to be made to the written policy, unless the District elects to do so. A brief plan for communicating the change in policy application to special education staff members and related service providers at _____ School is due to the Department by **June 1, 2021**.

3. The District must conduct training with the Special Education Director, the Assistant Special Education Director, the District Clinical Supervisor, the Special Education Supervisor at _____, the Special Education Social Worker(s) at _____, and the Principal of _____. The training must be provided by an attorney or member of the Department and must review the following regulatory provisions:

- MUSER VI(2)(I)
- MUSER IX(3)(A)(1)(d)
- MUSER IX(3)(D)
- MUSER XI, "Social work services"

A training agenda and sign-in sheet with attendees is due to the Department by **September 1, 2021**.

Dated: May 11, 2021

Julia N. Pothen, Esq.
Complaint Investigator