

Complaint Investigation Report
Parents v. School
Complaint 21.063C
Complaint Investigator: David C. Webb
July 6, 2021

I. Identifying Information

Complainants: , Parents

Respondents: School (District), , Principal;
, Superintendent.

Student:

II. Summary of Complaint Investigation Activities

On May 5, 2021, the Maine Department of Education received this complaint. The complaint investigator was appointed on May 7, 2021.

The complaint investigator received 40 pages of documents from the Parents and 571 pages of documents from the District. Interviews were conducted with the following people: The Student's mother; , Principal; , Superintendent; , Special Education Coordinators; , Licensed Clinical Social Worker; , BCBA; and , Ed Techs; , regular education teacher; and , the Student's Community Case Manager/Behavioral Health Home Coordinator- Mental Health Center (MHC).

III. Preliminary Statement

The old Student primarily resides with mother in , Maine. is the educational responsibility of the ("District") where qualifies for special education and related services as a student with Autism. is diagnosed with Autism Spectrum Disorder, ADHD and disruptive mood dysregulation disorder (DMDD).

This complaint was filed by the Student's Parents ("Parent or Parents") alleging that the District violated the Maine Unified Special Education Regulations ("MUSER"). After the receipt of the Parents' complaint, a Draft Allegations Letter was sent to the parties by the Complaint Investigator on May 8, 2021, alleging twelve separate violations of the MUSER. A telephonic Complaint Investigation Meeting was held on May 18, 2021.

IV. Allegations

1. Denying the Student of a Free Appropriate Public Education (FAPE) by not ensuring that an IEP is in effect and fully and adequately implemented- including programs for transfer students- in violation of MUSER §IX.3.B;
2. Not providing behavioral intervention services and modifications designed to address the Student's behavior in violation of MUSER §XVII.1.D(1) and MUSER §IX.3.C (2)(a);
3. Not conducting a manifestation determination in violation of MUSER § XVII.1.E;
4. Not providing the parents with proper prior written notice of the District's proposals regarding the Student's educational program in violation of MUSER VI.2.I, VI.2(H); MUSER App. I (34 CFR §300.503 and MUSER App. 1 (34 CFR 300.501 (b) and (c));
5. Not properly developing or revising an IEP thereby depriving Student of a Free Appropriate Public Education (FAPE) in violation of MUSER §VI.2.J., MUSER §IX.3.C, MUSER §IX.3.D and 34 CFR 300.101(a);
6. Not considering the existing evaluation data and the academic, developmental and functional needs of the Student in violation of MUSER §IX.3.C (1)(c);
7. Not identifying within the IEP the specific special education services and supplementary aids and services to be provided to the Student in violation of MUSER §IX.3.A.(1)(d);
8. Not following required evaluation procedures in violation of MUSER §V.
9. Not ensuring that a continuum of alternative placements is available to meet the Student's educational needs in violation of MUSER §X.2.B;
10. Not preparing an IEP that is reasonably calculated to enable the Student to make progress in light of his circumstances in violation of MUSER IX(3)(A) and Endrew F. v. Douglas County School District, 137 S. Ct. 988; RE-1, 2017 WL 1066260 (Mar. 22, 2017);
11. Not ensuring that the Student's educational placement is in the least restrictive environment in violation of MUSER §X.2.B; and MUSER §VI.2.I
12. Not adequately considering the concerns of the parents in the IEP decision making process in violation of MUSER §IX.3.C(1)(b) and MUSER §VI.2(I), §VI.2(H) and MUSER App. 1 (34 CFR 300.501 (b) and (c))

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

V. FACTUAL FINDINGS

1. The Student is a _____-old, rising _____ grade student who primarily resides with _____ in _____, Maine. _____ has contact with _____ father, who resides in _____, Maine, on an every-other-weekend basis.
2. He is the educational responsibility of the _____ (“District”) where _____ qualifies for special education and related services as a student with Autism. _____ has been diagnosed with Autism Spectrum Disorder, ADHD and DMDD.¹

¹ Prior to the period covered by this complaint investigation, the Student was admitted to _____ because of safety concerns and was _____ for approximately four weeks at the start of the 2019-2020 school year due to “crisis behaviors.”

3. During the Student's _____ year (2019-2020), the Student attended school at _____ on a Superintendent's agreement.² The Student returned to the District after the superintendent's agreement was not renewed by _____ due to concerns about the Student's behaviors.
4. Pursuant to the March, 2020 written notice prepared for the Student while _____ attended _____ the team noted that _____ diagnosis of Other Health Impairment is continuing to have an adverse effect on _____ academic progress, necessitating the following provision of Special Education Services:³
 - To address the Student's functional needs in the areas of self-control/behavior/sensory regulation, _____ will receive Occupational Therapy (OT) Consult 2 times per month for 15 minutes and social work services 1 time per week for 20 minutes as related services;
 - _____ IEP will include goals and objectives in OT and social work services to evaluate _____ functional progress;
 - Special Education services will include Specially Designed Instruction in Executive Functioning Skills (5 x 20 minutes per week); This time away from non-disabled peers will provide _____ with the small group instruction _____ needs to be successful in regular education programming;
 - _____ IEP will include goals to monitor _____ progress in _____ area of need, including executive functioning skills;
 - The Student's regular education teacher noted that while _____ needs to continue to work on _____ foundational academic issues, _____ has "good skills."
 - The Student's special education teacher noted that "there were no behavioral concerns during _____ time working in the resource room."
 - Continue with the accommodations as written [with the addition of] a Remote Learning Contingency Plan; and
 - Due to the nature and severity of [the Student's] impairment, _____ will not participate with _____ non-disabled peers for the time that _____ is receiving _____ social work services.
5. The IEP developed for the Student in March, 2020 while _____ attended school in _____, provided that the Student would spend 94% of _____ time with non-disabled children and provided the following classroom supports and services, supplemental aids, and modifications⁴:

² For the purposes of this complaint investigation, the terms " _____ " and " _____ " are both used to refer to the Student's placement during the 2019-2020 school year.

³ It was noted in this Written Notice that the Student "recently spent time in the _____ a few weeks ago."

⁴ The initial documents produced by the District did not include the Written Notice from the March 24, 2020 IEP team meeting and left out the special education service/support section of the Student's IEP. Upon request of the Complaint Investigator, these documents were later produced. The March, 2020 Written Notice provided for specially designed instruction in Executive Functioning Skills and Occupational Therapy consultation services as noted above. The March, 2020 IEP, however, neglected to include specially designed instruction in Executive

- Occupational Therapy (OT) consultation, 30 minutes per trimester;
- Adult 1:1 Educational Technician (“Ed Tech”) Support in the regular education and special education setting, 6 hours and 45 minutes/day;
- preferential seating;
- Offer choices, frequent movement breaks, being allowed to stand behind desk rather than sit in a chair;
- Offer visual and concrete reminder of the space is supposed to be in;
- Provide access to adult support when in the regular education classroom;
- Offer time prior to and/or after the instructional part of the school day to engage in mindfulness, classroom yoga, and sensory break strategies. will go to the special education room at the end of the day, providing with a small group setting while getting ready to go home;
- Parent and student will be able to communicate with a teacher, service provider, or other representative from the SAU via email, phone, or web-based video conferencing platform for clarification, guidance, or other collaboration as needed to complete the activities;
- Upon request, skill review and learning extension activities and resources will be adapted or modified to facilitate a continuation of appropriate learning experiences;
- Provide Remote learning contingency plan;
- Provision of Programming and Specialized Instruction;
 - i. [The Student] will be provided with skill review and learning extension resources, in each of the following skill areas:
 1. Consultation for peer interactions;
 2. Sensory regulation Resources and activities aligned to the skills noted will be provided bi-weekly, as needed based on the remote learning status of the SAU: The provision of this plan will be in effect only when remote learning is the format for education delivery by the SAU. If school is completely closed and there is no delivery of education by the SAU, this plan will not be in effect.
- Method of Scoring and Progress Monitoring: Given the nature of the activities provided, scoring will be in the form of degree of proficiency in demonstration of skill. Completed work or ability to perform the skill will be evaluated based on the level of proficiency in completing the task. Such progress will then be reflected in quarterly goal and objective progress reporting;

Functioning Skills and Occupational Therapy consultation services in the “Provision of Programming and Specialized Instruction” section of the IEP. These services were only mentioned in the “classroom supports and modifications” section of the IEP. A letter from the District’s counsel dated June 16, 2021 acknowledged that the District “did not have access to a complete copy of the Student’s IEP from .”

- If work or evidence is not returned to school, student progress will be determined based on assessments of student progress upon return to school;
 - Report card grades will be handled consistent with the grading practices utilized by the SAU for standard courses;
 - Supports/Accommodations/Recommendations:
 - i. Parent and student will be able to communicate with a teacher, service provider, or other representative from the SAU via email, phone, or web-based video conferencing platform for clarification, guidance, or other collaboration as needed to complete the activities.
 - ii. Upon request, skill review and learning extension activities and resources will be adapted or modified to facilitate a continuation of appropriate learning experiences.
 - iii. Social work services:
 1. [The Student] will meet with the social worker, in a small group, to work on peer interactions.
6. The March, 2020 IEP contained goals for OT (demonstrating fine motor/visual motor and perceptual performance) and behavioral issues, including a specific goal regarding interaction with peers “in an appropriate manner through maintaining personal space and a respectful voice for an average of 80% intervals, measured over a two week period as measured by data tracking sheets and teacher interventions.”
7. A psychoeducational evaluation conducted by School Psychologist _____ in July and September, 2020, noted the following:
- Diagnosis of Attention-Deficit/Hyperactivity Disorder, Oppositional Defiant Disorder and Anxiety; (Rating scales also suggest behaviors consistent with autism);
 - [The Student] demonstrated weak academic ability. It is unclear how much Covid-19, learning from home, and summer break... [or] missed instruction due to behavior or regression is the reason for current scores. There is no clear pattern of academic strengths and weaknesses.⁵

⁵ Visualization/visual processing with an average standard score of 94. _____ earned a low average standard score of 83 on Letter Pattern Matching. Oral Vocabulary fell in low ranges with a standard score of 78. Number Series/fluid reasoning fell in low ranges with a standard score of 73. Verbal Attention or short-term working memory fell in low ranges with a standard score of 75. Phonological Processing fell in very low ranges with a standard score of 62. Story Recall or long-term retrieval fell in very low ranges with a standard score of 61. CTOPP 2 [the Student] demonstrated equally developed low average phonological ability. On Phonological Awareness _____ earned a composite score of 84. For Phonological Memory, [the Student] earned a low average standard score of 85. Rapid Non-Symbolic Naming composite score 88. BASC 3 Parent Report and BASC 3 Teacher Report, [the Student] is demonstrating behavior consistent with ADHD and Autism, with elevations on anxiety, depression and somatization. On the ABAS 2 Parent report, [the Student] was rated within average ranges on _____ overall adaptive ability, General Adaptive Composite ss=108. _____ domains all fell in average ranges, Conceptual ss=91, Social ss=91 and Practical ss=108. On the ABAS 2 Teacher Report, [the Student] was rated in low average ranges for _____ overall

- Ratings on the Parent and Teacher Autism Spectrum Rating Scales (ASRS) Short Form, scores fell in the Elevated Score range (99th percentile). On the Social Responsiveness Scale (2nd ed.) (“SRS-2”) Parent and Teacher report indicated scores that fell in severe limits. Scores in this range indicate deficiencies in reciprocal social behavior that are clinically significant and lead to severe interference with everyday social interactions. Such scores are strongly associated with clinical diagnosis of an autism spectrum disorder.
- The BASC-3 items endorsed by [the Parent] resulted in clinically significant Hyperactivity, Aggression, Conduct Problems, and Attention Problems scale scores...it may be the case that emotional distress is causing [the Student] to act out, or that negative feedback related to behavioral issues is resulting in these internalizing problems.
- Recommendations relating to the Student’s behavior issues include:
 - i. Provide training for all of those interacting with [the Student] on students exposed to significant traumatic events. At the very least, teacher will want to read about trauma, behaviors related to trauma and how to meet a student's needs in the classroom impacted by trauma.
 - ii. [The Student] will benefit from a clear schedule along with classroom expectations. These will have to be taught to and reviewed on a consistent basis. Additionally, may find a visual schedule helpful in navigating day. A morning and afternoon check-in and check-out were considered successful during year. school may want to consider continuing that activity.
 - iii. It's essential to seek professional treatment for [the Student] as soon as PTSD symptoms emerge. The disorder responds very well to therapies delivered by qualified mental health clinicians, but if left untreated, can cause long standing emotional distress, relationship problems and academic failures for your child. These difficulties can continue well into adulthood if they are not properly addressed.
 - iv. Consistent scheduling is important; establish a consistent routine. Teach [the Student] to use schedule. Include easy and difficult tasks as well as preferred and non-preferred tasks.
 - v. Consider the importance of maintaining a functional approach to problem behavior. One wants to efficiently identify interventions with a higher likelihood of success. Determine the function of the problem behavior rather than the shape of the behavior.
 - vi. Ensure that [the Student] has the needed materials at the beginning of each class.

adaptive ability, General Adaptive Composite ss=86. Conceptual fell in low average ranges ss=86. Social fell in low average ranges ss=81. Practical fell in average ranges ss=92.

- vii. Help [the Student] devise a daily list of things that need to get done. Record and prioritize items and discuss when and how [the Student] will accomplish meeting these goals
 - viii. Minimize extraneous distractions.
8. Pursuant to the written notice prepared in connection with the September 30, 2020 meeting, the IEP team made the following determinations:⁶
- The Student “will meet with the social worker for ten minutes in the morning and ten minutes at the end of the day”;
 - Evaluations in both speech and OT were agreed to by the mother...if [the Student] would benefit from receiving those services.
 - “The team agreed that [the Student] would benefit the most from being in the regular education classroom with modifications to help [the Student] succeed...”
9. An IEP developed for the Student on October 1, 2020, provided that the Student would spend 46% of [the Student's] time with non-disabled children and provided the following classroom supports and services, supplemental aids, and modifications⁷:
- Ed tech support, sensory breaks, writing supports and assistive technology to increase written output (if needed);
 - Specially designed instruction (“SDI”) SDI in ELA (English Language Arts) and math for 45 minutes per day; SDI in RTI (response to intervention) Literacy four times per week for 40 minutes;

⁶ Team members attending the September 30, 2020 meeting were not identified within the Written Notice.

⁷ Modifications included:

- Preferential seating
- Non-distracting hand fidgets during listening activities -Weighted lap pad during independent work times
- Offer choices
- Frequent movement breaks such as delivering a note to the office or walking to the fountain to get a drink
- being allowed to stand behind [the Student's] desk rather than sit in a chair. If [the Student] has difficulty remaining behind [the Student's] desk, often times a rectangle drawn on the floor with masking tape provides a visual and concrete reminder of the space [the Student] is supposed to be in.
- Noise-reducing headphones or gum, as needed
- Placing hand on shoulder when providing instruction and asking [the Student] to repeat back to ensure attending and understanding prior to starting a task.
- Incentive chart to improve participation and independence with classroom tasks.
- Access to adult support when in the regular education classroom [and] playground
- time prior to and/or after the instructional part of the school day to engage in sensory break strategies.
- [the Student] will go to the special education room in the afternoon to work in a quiet, structured space one-on-one with an individual, which will provide [the Student] with a distraction free environment.
- Parent and student will be able to communicate with a teacher, service provider, or other representative from [the Student's] school via email or phone for clarification, guidance, or other collaboration as needed to complete the activities.

- In section 7 of the IEP, the position responsible for SDI is “Special Educator/Special Education Ed Tech” and the location identified on the IEP for the SDI is “Special Ed.”;
 - Social work one time per week for 20 minutes (in small group to work on peer interactions);
 - Occupational Therapy (OT) one time per week for 30 minutes;
10. The Student’s October 1, 2020 IEP did not include a behavioral goal relating to the Student’s peer interactions as contained in March, 2020 IEP. The removal of this goal was not mentioned in the Written Notice prepared in connection with this IEP.
 11. An OT evaluation conducted by _____, MS OTR-L on November 3, 2020 recommended that the Student receive direct OT services, noting that the Student required frequent cueing to stay on task and that _____ had deficiencies in letter formation, placement and spacing which impacts _____ written communication.
 12. The Student’s IEP Team met on December 3, 2020 due to “teacher and parent concerns.” The Written Notice for this meeting stated that “the team agreed to a change of location in the afternoon to help with behavior issues in the afternoon....[the Student] will work upstairs in the spare special education room to help with focus on material.” This Written Notice does not identify members attending this IEP team meeting nor does it identify the date that the notice was sent to the Parents.
 13. The Student’s IEP Team met again on December 16, 2020 due to teacher and parent concerns. The Written Notice stated that prior to the December Christmas break “[the Student] would have a behavior plan developed to help _____ succeed in school.” This Written Notice Team does not identify members attending this IEP team meeting nor does it identify the date that the notice was sent to the Parents.⁸
 14. The Student’s first trimester report card indicated “emerging” to “developing” performance levels in ELA with “developing” progress in math, social studies and science. _____ teacher noted that “tries best and produces good work with help as needed...I am starting to see some improvement in _____ reading!”
 15. The Student’s IEP Team met again on January 27, 2021 at the Parent’s request and to review and implement recommendations for the Student from _____ OT evaluation completed in November, 2020. At this meeting, the team also agreed to implement the behavior plan developed for the Student. The Written Notice did not identify when it was sent to the parents.
 16. The Student’s Behavior Plan dated 1/4/2020-3/3/2021⁹ provided in relevant part as follows:

⁸ The District did not produce copies of amended IEPs reflecting changes determined by the December 3 and December 16, 2020 IEP team meetings.

⁹ _____, who developed this behavior plan in December, 2020, noted that the actual date should read 1/4/2021-3/3/2021.

- Targeted behaviors: “Calling out in class, shutting down (i.e.,[sic] sits down and stops responding when told to go to the office by classroom teacher), running away from the adults, and taking mask off and throwing it when upset.”
- Methods to respond to targeted behaviors: redirection, sensory room breaks, cool down periods, reminders/explanations and positive strategies.
- Dealing with unstructured times (lunch and recess)
- Teacher emails to the Parents every Friday with updates and during the week as needed.

17. A speech/language evaluation conducted by _____, MA CCC-SLP in February, 2021 concluded that the Student would benefit from speech/language accommodations in the classroom setting. She based her recommendation on the following results:

- Clinical Evaluation of Language Fundamentals-5 (CELF-5) Average subtest scaled scores fall between 8 and 12 (mild [impairment] to average range);
- Sentence Comprehension: (SS - 8 , 25th percentile, Average) - "This was an area of strength for [the Student], with errors relating primarily to prepositions”;
- Word Structure: (SS - 6. 9th percentile, Low) - "the Student's score fell just below average range. errors related to the following grammatical structures: irregular plurals, regular and irregular past tense, future tense, pronoun use (objective possessive and subjective), and contractible and uncontractible copula/auxiliary verbs”;
- Formulated Sentences: (SS - 9, 37th percentile, Average) - "the Student presented with a score in the average range, and this subtest was a relative strength for the Student. struggled to use conjunctions that were offered, although made attempts. [The Student’s] sentence structure was simple throughout the subtest, although demonstrated some use of adjectives and adverbs”;
- Recalling Sentences: (SS - 8, 25th percentile, Average) - "[the Student’s] scores on this subtest fell within average range. had the most difficulty repeating sentences with subordinating clauses ...[and] repetitions often contained the gist of the meaning but involved simple word substitutions or deletions”;
- Core Language Score: (SS - 86, 18th percentile, Average, - 0.75 from mean);
- Expressive Language Index: (SS - 87, 19th percentile, Average, - 0.75 from mean);
- Language Structure Index: (SS - 85, 16th percentile, Borderline, - 1.00 from mean);

18. Speech Language Pathologist _____ recommended the following accommodations in her February 2021 report:

- Use of graphic organizers to support sequencing skills paired with visuals to facilitate comprehension;
- Direct practice to combine ideas using compound and complex sentences indicating cause and effect;

- Model expansions of sentences with complex and compound sentences incorporating appropriate sequence words and vocabulary;
 - Direct models and instruction to make inferences about what reads;
 - Direct models and instruction about perspective taking and considering what others' may be thinking;
 - Visual support and multiple exposures to new academic vocabulary words; and
 - Provide many opportunities to identify, describe, and use new vocabulary words.
19. The Student's IEP Team met on March 3, 2021 to "discuss the results of recent speech evaluation to add in any necessary accommodations to IEP". The Written Notice provided as follows:
- The accommodations recommended in the speech evaluation would be added to IEP.¹⁰
20. A psychological evaluation of the Student was conducted by _____, PhD on February 21, 2021. In her February 25, 2021 report, Dr. _____ noted the following:
- Achenbach Child Behavior Checklist: Significantly Elevated Scales (greater than 97%)- Anxious/Depressed, Withdrawn/Depressed, Social Problems, Thought Problems, Attention Problems, Rule Breaking Behavior, Anxiety Problems, Oppositional Defiant Problems, Conduct Problems, Depressive Problems, Attention Deficit Hyperactivity Problems. Borderline Elevated Scales (93-97th%)-Aggressive Behavior.
 - Autism Spectrum Rating Scales:
 - i. Social Communication - SS 70 Very Elevated
 - ii. Unusual Behaviors- SS 70 Very Elevated
 - iii. Self-Regulation- SS 80 Very Elevated
 - iv. Total Score- SS 78- Very Elevated
 - Vineland-3:
 - i. Communication- SS 75- 5th percentile
 - ii. Daily Living Skills- SS 71, 3rd percentile
 - iii. Socialization-SS 67, 2nd percentile
 - iv. Adaptive Behavior Composite SS 70, 2nd percentile
 - Wechsler Intelligence Scale for Children-Fifth Edition
 - i. Verbal Comprehension SS 81
 - ii. Visual Spatial SS 84
 - iii. Fluid Reasoning SS 94
 - iv. General Ability SS 81
21. In her February 25, 2021 report, Dr. _____ added a diagnosis of Disruptive Mood Dysregulation Disorder (DMDD), in addition to _____ diagnosis of Autism Spectrum

¹⁰ Each of the Accommodations from the Speech/Language report was included within in the Student's March 3, 2021 IEP.

Disorder in light of the Student's presentation, history and test results. Dr. noted that the Student's social challenges are due to severe emotional dysregulation, and further noted that "With a diagnosis of DMDD, [the Student] no longer qualifies for a diagnosis of oppositional defiant disorder." Dr. recommended the following:

- Ongoing specialized instruction as part of an IEP continues to be recommended.
- A 1:1 educational technician in school to maintain and peers' safety, as well as a bus monitor, given severe impulsivity;
- Continue receiving occupational therapy in school;
- Behavioral incentive system in place so that has the opportunity to engage in preferred activities when participates in/completes non-preferred work;
- A functional behavioral assessment to occur so that educators can better understand [the Student's] challenging behaviors in the classroom;
- A good prevention plan to decrease the triggers that lead to challenging and avoidance behaviors. To do this, teachers would be encouraged to journal about [the Student's] behaviors including when they happen, what happened before the behavior, and what happened after the behavior;
- Once triggers are identified, changes can be made to prevent behavior. For example, increased structure with a visual schedule can be developed, task demands can be changed, and sensory breaks can be given;
- Be very careful/thoughtful about when and how to provide [the Student] with corrective feedback in school;
- Start [the Student] off with academic work that has mastered (80% of work) and include more difficult work (20% of work) once has correctly answered items/questions;
- Use the cue, prompt, reward approach for helping [the Student] engage with difficult material;
- Plan out [the Student's] school day in light of better regulation in the morning hours (most Important academic work in the morning, specials and/or thematic learning in the afternoon

22. Dr. recommended the following accommodations:

- Provide directions one at a time... If multi-step directions are used, provide them in written format as well;
- Repeat/rephrase instructions as needed;
- Recognize inconsistent performance is likely due to attentional weaknesses.
- Adjust time to complete assignments or projects, as needed;
- Give opportunities to correct small mistakes or errors likely attributable to inattention;
- Give options to take tests in a quiet, distraction-free environment;
- Alternative seating;

- Frequent and scheduled movement breaks; and
 - A general approach of 'quality' over 'quantity' would be recommended along with the following specific strategies:
 - i. Increased time to complete tasks including quizzes, tests, and exams;
 - ii. Providing a method of prompting the student to increase time awareness;
 - iii. Eliminating unnecessary clerical tasks (e.g., transcribing math problems from a textbook to a work sheet);
 - iv. Making use of brief response formats;
 - v. Eliminating timed tests;
 - vi. Reducing the number of tasks required to demonstrate competence; and
 - vii. Monitoring time spent on homework and adjusting assignments as necessary.
23. The Student's IEP Team met on March 3, 2021 to review recent speech evaluation. The Written Notice from this meeting noted the following:
- The team agreed that the accommodations recommended in the speech evaluation would be added to IEP;
 - At the Parent's request, the team agreed to amend the IEP so that the Student's behavior goals were included in IEP;
 - At the Parents request, determined to review the possibility of the Student attending , Maine;
 - The Team agreed to meet again after receipt of the Student's updated psychological evaluation.
24. The amended IEP developed for the Student following the March 3, 2021 IEP team meeting provided that the Student would spend 46% of time with non-disabled children. The accommodations recommended in the speech evaluation were added to IEP. The Student's behavior goals that related to the Student's relationship with other students were added back to IEP. Specially designed instruction and other supports and accommodations remained the same as the Student's October 1, 2020 IEP. There were no progress reports indicated within this IEP.
25. The Student's IEP Team met on March 11, 2021 to review Dr. 's recent psychological evaluation and to discuss a placement change for the Student. The Written Notice from this meeting proposed the following:¹¹
- The Student would be placed in the " " program (self-contained room) due to the Student's DMDD diagnosis and behavioral needs;
 - Social work services would be added up to 60 minutes per week per Dr. 's recent diagnosis of Disruptive Mood Dysregulation Disorder (DMDD);
 - The Student's behavioral plan needed to be changed;

¹¹ This Written Notice was not sent to the Parents until April 21, 2021.

- Classroom accommodations [would be provided] in a specially designed classroom; and
- The Parent agreed to implement [the amended] IEP immediately.

26. The amended IEP developed for the Student following the March 11, 2021 IEP team meeting provided that the Student would spend 8% of time with non-disabled children and provided the following classroom supports and services, supplemental aids, and modifications:¹²

¹² Modifications/Accommodations/supports included:

Classroom/playground:

- Preferential seating;
 - Non-distracting hand fidgets during listening activities -Weighted lap pad during independent work times;
 - Offer choices;
 - Frequent movement breaks such as delivering a note to the office or waking to the fountain to get a drink;
 - being allowed to stand behind desk rather than sit in a chair. If [the Student] has difficulty remaining behind desk, often times a rectangle drawn on the floor with masking tape provides a visual and concrete reminder of the space is supposed to be in;
 - Noise-reducing headphones or gum, as needed;
 - Placing hand on shoulder when providing instruction and asking to repeat back to ensure attending and understanding prior to starting a task;
 - Incentive chart to improve participation and independence with classroom tasks;
 - Access to adult support when in the regular education classroom-playground;
 - repeating/rephrasing instructions as needed;
 - recognizing inconsistent performance is likely due to attentional weakness;
 - adjusting time for [the Student] to complete assignments/projects as needed;
 - giving [the Student] opportunities to correct small mistakes or errors likely attributable to inattention;
 - providing [the Student] with the option of taking tests in a quiet, distraction free environment - provide alternative seating - 1:1 educational technician in school to maintain and peers' safety;
 - development of a prevention plan to decrease triggers that lead to challenging and avoidance behaviors;
 - thoughtful about corrective feedback to [the Student] in school;
 - Use cue, prompt, reward approach to help [the Student] engage with difficult material - Plan out [the Student's] day in light of better regulation (most important academic work in morning, specials and/or thematic learning in afternoon);
 - Supports to address processing speed deficits such as:
 - Increased time to complete tasks including quizzes, tests, and exams;
 - Providing a method of prompting the student to increase time awareness;
 - Eliminating unnecessary clerical tasks (e.g., transcribing math problems from a textbook to a worksheet) and making use of brief response formats;
 - Eliminating timed tests, reducing the number of tasks required to demonstrate competence;
 - Monitoring time spent on homework and adjusting assignments as necessary;
- time prior to and/or after the instructional part of the school day to engage in sensory break strategies. will work in the program during the school day to work in a quiet, structured space one-on-one with an individual, which will provide with a distraction-free environment; and Parent and student will be able to communicate with a teacher, service provider, or other representative from via email or phone for clarification, guidance, or other collaboration as needed to complete the activities.

Social work services:

- SDI in ELA, math and social/emotional instruction in the _____ Program for six hours each day;
- SDI in RTI Literacy in the regular education classroom four times per week for 40 minutes;
- Social work one time per week for 20 minutes; and
- OT one time per week for 30 minutes.
- (there were no progress reports indicated within this IEP)¹³

27. The Student's initial _____ program following the March 11, 2021 IEP team meeting was outlined in a five page document called "Plan for [the Student]. This "Plan" provided a detailed schedule, broken down into 20 to 30 minute segments for each day of the week. It also provided a "positive reinforcement" plan where the Student is able to earn up to five stars for positive behaviors, with a reward of _____ choosing a preferred activity. The Student received OT and social work services during this time and attended recess, lunch, and specials with _____ regular education peers.

28. A "Log Entry" form tracking the Student's behaviors noted seven different behavior incidents over the course of the 2020-2021 school year.¹⁴

-meet with the social worker, in a small group, to work on peer interactions.

Language:

- Use of graphic organizers to support sequencing skills paired with visuals to facilitate comprehension;
- Direct practice with combining ideas using compound and complex sentences indicating cause and effect;
- Modeling expansions of sentences with complex and compound sentences;
- incorporating appropriate sequence words and vocabulary;
- Direct models and instruction to make inferences about what _____ reads;
- Direct models and instruction about perspective taking and considering what others may be thinking;
- Visual support and multiple exposures to new academic vocabulary words; and
- Multiple opportunities to identify, describe, and use new vocabulary words.

¹³ An IEP progress report dated June 15, 2021 was provided to the Complaint Investigator indicating as follows: OT-adequate progress; math-limited progress; reading-limited progress; behavioral-limited progress.

¹⁴ 05/06/2021 _____ - On 4/26/2021. in the van going home, The Student was again making threats to "bring a shotgun to school and killing people." _____ also hit another student and the ed tech. These have been on-going issues. The Student was suspended for up to 10 days. pending a risk assessment. The assessment was scheduled for 5/4/2021, but the family refused to come to the assessment.

04/16/2021 _____ - - The Student has been in the _____ program for several weeks. During that time, _____ has had some successful interactions, but has continued to regularly make threats to staff members, including "I'm going to ****ing shoot you." On 4/15/2021. _____ continued these threats and hit a staff member, causing her to be injured, Mrs. _____ assigned a think day. Mr. _____ contact the parents and explained that after vacation, further behaviors like this will result in a suspension from school pending a risk assessment.

02/24/2021 _____ - - The Student is continuing to swear on the bus, despite being placed in the front of the bus by the driver. _____ was also very mean to _____ last night. This morning, a parent called and said The Student was saying. "I'm going to ****ing shoot you," to her son. At this point, another option is needed. An ed tech went home with The Student on the bus today. A van option was also provided to the parent.

02/04/2021 _____ - - The Student had a significant meltdown. Was refusing to do what the teacher asked to do and giving orders, and then would not go upstairs, as is _____ plan. _____ was offered several other options, including a walk and the sensory room. When I got there, and told _____ needed to do what _____ was told, _____ again had a fit, threw a boot at other students, and a staff member. And screamed that _____ was "calling the ****ing police on us," in front of most of _____ classmates. _____ was assigned in -school suspension for Friday, Feb 5. _____ was

29. On April 7, 2021, the Student’s behavior plan was modified by Ms. . The updated plan added more specific behavior categories including “potential triggers” and responses and suggestions for providing positive feedback and long-term skill building.
30. On April 26, 2021, the Student was suspended for “up to 10 days pending a risk assessment” for making “threats of bringing a shotgun to school and killing people.” The suspension was documented on a “ School Student Suspension Worksheet” of the same date. This worksheet also noted that the Student “hit another student and a staff member while getting in the van to go home at the end of the day. These have been on-going issues for [the Student].” The worksheet noted: “Requirements for return to school: Completion of the risk assessment, followed by an IEP meeting to create a plan for [the Student] to return to school safely for and others.”
31. The Student’s spring 2021 NWEA scores indicate as follows: Mathematics-low achievement, 3rd percentile; Reading-low achievement, 2nd percentile.
32. During the school year, the Student was removed from classroom or sent home early on the following days: November 13, 2020; Removed to the office; December 4, 2020: sent home early; January 26, 2021: removed to the office; February 4, 2020: half day in-school suspension; February 5, 2021: in-school suspension; March 5, 2021: sent home early; April 16, 2021: “think day”; April 26, 2021: 10-day suspension (4/27, 4/28, 4/29, 4/30, 5/3, 5/4, 5/5, 5/6, 5/7, 5/10)
33. A “ School Incident Worksheet” dated June 4, 2021 documented an incident where the Student “called another child a ‘bitch,’ and ... attempted to punch her twice. A staff member was able to block one punch; the other hit her...On the bus going home, [the Student] said ‘that little had better keep mouth shut or I’m going to bring my shotgun to school and get him,’ referring to the school principal.” The incident worksheet noted that “to keep [the Student] and the other students safe, the Student will be in the second classroom with an ed tech or teacher for the rest of the year (6.5 days). will do lunch, specials and recesses individually.”¹⁵
34. In an interview with the Complaint Investigator, the Parent stated:

unable to complete the day and had to stay in the office. ON the bus ride home with ed tech support, continued to swear and attempted to hit other students.

12/04/2020 - - The Student has had many issues in the last week, disrupting class, insubordinate, and running, etc. refuses to comply. was sent home for the rest of the day. Parents contacted.

09/24/2019 - - More issues on bus, and in the the hallway. Removed from regular bus pending results of an evaluation. The Student will take special transportation for the time being. Parent contacted.

09/05/2019 - - Bus warning; not keeping hands to . Also issues with misbehavior. Parent contacted. Mom is meeting with counselor. Will contact school with more information.

¹⁵ While this worksheet was sent to the Complaint Investigator after the document deadline, there was no corresponding IEP or Written Notice relative to the change in the Student’s placement and interaction with regular education peers.

- The Student resides with _____ in _____ She and the Student’s biological father share parental rights for the Student and has contact with the Student on an every-other-weekend basis.
- The Student started the 2019-2020 school year at _____ School but transferred to _____ School in October 2019 due to the Parents’ concerns about the District not following the Student’s IEP. Prior to starting school at _____ in September, 2019, the Student was _____, causing _____ to be _____ for three weeks in September. She did not immediately disclose the details of the assault to District staff.
- The Student had a “pretty good” year in _____ where _____ had a “solid behavior plan.” The Student was not permitted to return to _____, however, due to _____ outward “fixation” on another girl at school _____.
- She “reluctantly” agreed that the Student would return to the District in September, 2020. In August 2020, the Parent requested a transfer Student IEP Team meeting. She said that the District “dropped the ball” by not having an earlier transition meeting or even a copy of the Student’s IEP from _____ prior to the Student’s starting classes. She said that Mr. _____ “rushed” the September 30, 2020 IEP team meeting which only lasted for about 15 minutes. As a result, she was not able to express her concern that a coordinated behavior plan needed to be in place for the Student.
- The lack of a coherent behavior plan has had a significant negative impact on the Student. Instead, when the Student misbehaved, the District would send _____ home or have _____ attend for a half day. There was no plan to understand the source of the Student’s behaviors or to provide alternative options for the Student to de-escalate.
- While she felt that she had no choice but to agree to the _____ program, she does not think that it was an appropriate placement for the Student. She said that the Student’s behaviors have regressed since _____ has been in the program and that _____ is more physically aggressive towards others including staff. She also feels that _____ has learned bad behaviors from other students attending the program. She feels that the Student needs 1:1 support and is good in a small group with frequent breaks and staff who are well trained.

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35. In an interview with the Complaint Investigator, _____, Home Coordinator for _____ Mental Health Center (MHC), stated as follows:

¹⁶ The Parent did not think that the Student’s behavior while _____ attended _____ was significantly inappropriate to justify the decision to not allow _____ to return. She noted that the primary reason that _____ couldn’t return was because the girl _____ was fixated on happened to be the _____, who complained to the superintendent about the Student returning.

- She has been working with the Student and family since August, 2019, and her responsibilities have included coordination between the parents and school with regard to the Student's needs. She said that she has attended all of the Student's IEP team meetings during the past year. She also regularly communicates with the Student, teachers and the Parents.
 - She said that the Student attended school in during the 2019-2020 school year due to the Parent's dissatisfaction with the District's programming for the Student at the District. She said that the Student did "pretty well" while attending school at where there was a behavior plan in place for the Student and staff that was more responsive to the Student's needs. She said that while the Student did make threats towards other students and staff, they were not as pronounced as those that is currently making. She also noted that did not have violent outbursts while attended school in . She said that was not allowed to return to due to becoming "fixated" with another female student in the district.
 - When the Student returned to the District in the fall of 2020, she said that the District was unprepared to address behaviors. She said that the IEP team meetings were very short, and did not address academic or behavioral needs. She said that District did not have the Student's most recent IEP from nor did staff have a copy of the Student's behavior plan. She said that she e-mailed a copy of this plan to the District Principal (Mr.) in September of 2020 and wasn't sure if shared it with other staff working with the Student. She said that while she has not observed the Student in class, she does not believe that the District has adequately developed its own behavior plan nor has it appropriately responded to behaviors. She noted that a typical response to the Student's misbehavior is to isolate or send home.
 - She said that in her opinion, in order to succeed, the Student needs 1:1 support in a small group setting, with trained staff and frequent breaks. She is concerned that other children in the program have similar "bad behaviors" and that some of those bad behaviors could rub off on .
36. In an interview with the Complaint Investigator, , one of the Student's ed techs, stated as follows:
- She is an Ed Tech III with four years of experience and began working with the Student at the end of February, 2021.
 - She has safety training, but no other training to work with students with behavior issues.
 - When she started working with the Student, prior to placement in the program, she would help with regular education assignments for "as long as could tolerate" and then if got agitated or exhibited threatening

behaviors, she would go with [redacted] to a separate room. She said that [redacted] had to be removed from class for exhibiting these behaviors on a “pretty much daily” basis.

- On occasion, [redacted] would not be able to tolerate being alone with her in the pull-out room and she would then implement the behavior plan. While there was no specific behavior tracking plan, she sends emails to [redacted] to let her know about the incidents of problem behaviors.
- While she regularly checked in with the Student’s social worker, she did not attend the social work sessions and didn’t know if [redacted] was working on peer relationship skills.
- She also worked with the Student after [redacted] was placed in the [redacted] program in April, 2021. She said that this program had three to four other students who also need more intensive support on social/emotional issues. The Student would interact with [redacted] non-disabled peers, with adult support, during [redacted]’s “specials”: recess, lunch and art class.
- She noted that even after [redacted] started the [redacted] program, the Student’s behavior was “on a downward spiral” and [redacted] started to be more physically aggressive with her and around non-disabled classmates. She said that she still sees that [redacted] is very aggressive and became “fixated” with her; constantly having to touch her or give her a hug, while at other times punching her or trying to tackle her. She has also noticed that [redacted] threatening behaviors have become more specific. Previously, [redacted] would just threaten to bring a gun to school; now [redacted] is specifically saying [redacted] is going to shoot certain individuals.

37. In an interview with the Complaint Investigator, [redacted], the Student’s special education teacher/case manager from September 2020 through March, 2021 stated:

- This is her first year working as a special education teacher. When she started working with the Student in September of 2020, she did not know much about [redacted]. She said that the Student “probably did not” receive special education services in September when [redacted] started at the District.
- She was not aware of the Student’s executive functioning skills programming that was in place while [redacted] attended [redacted] during the 2019-2020 school year.
- She was not sure why the peer interaction goals contained in [redacted] March, 2020 IEP were not included in [redacted] October 2020 IEP, except that it could have been a mix up in the ADORI system.¹⁷
- The Student received [redacted] specialized instruction in ELA and math in the regular education classroom with [redacted] ed tech ([redacted], ed tech I) until [redacted] afternoon placement changed to the resource room beginning in December, 2020. She didn’t review the Student’s work and didn’t know specifically what the ed tech

¹⁷ ADORI is a cloud based IEP/document management system used for keeping and sharing student data.

was doing with . Her communication with the Student's ed tech would be about how a particular day was going.

- She said that the Student's behaviors were "getting out of control" in October and November and as a result she was asked to develop a behavior plan. She said that she is currently taking classes on behavior issues, she does not have any specific behavior training. To complete the behavior plan, she researched similar plans and met with , the Student's regular education teacher. She said that the school psychologist was not available to help with this, which she said was "challenging." She did not know if the District had a plan to consult with another psychologist. She had "no idea" about behavior tracking and didn't include anything specific on tracking the Student's behavior in the plan that she developed.
- She said that the behavior plan was implemented in mid-March, 2021.¹⁸ She was not sure why the plan was delayed and assumed that the plan had been implemented shortly after she created it.

38. In an interview with the Complaint Investigator, , the Student's regular education teacher stated:

- She has been working as a regular education teacher in Maine for five years. While she has obtained a minor in special education in college, she is not a certified special education teacher or ed tech. She began working with the Student at the end of August, 2020.
- The Student did not receive any SDI or special education services prior to the implementation of IEP following the September 30, 2020 IEP team meeting.
- She did not see any of the Student's IEPs or other written materials until the transition meeting at the end of September, 2020, however she did speak informally with , the Student's case manager, at the start of the 2020-2021 school year. She also met briefly with the Student's mother. The only preparation that she made for the Student in her class as a result of this meeting with Ms. and the Parent was to arrange for the Student to have preferential seating.
- During the month of September, 2020, Ms. said that the Student was doing "really well" with regular education curriculum. Once the Student's IEP was in place in October, 2020, she said that she made modifications to her regular education program for the Student and (the Student's ed tech III) would "oversee" the delivery of this instruction to the Student. She noted that although the Student's academic progress was "low", she observed interest in learning and feels that has great potential if behavior can be managed.

¹⁸ She noted that the date of the behavior plan that she developed had a typo and should read January 4, 2021-September 30, 2021.

- Beginning in November, the Student began to have behavior and attention difficulties, especially in the afternoon. Examples of the problem behaviors included hitting and shoving other students, fixating on guns and running around in class. She spoke to the Student's mother about these concerns. She said that she would document the behaviors on a daily basis through e mails to Ms. She said that a decision was made to switch academic programming to the morning session, and have the Student work individually in a separate space with 1:1 ed tech in the afternoon.
- When Ms. developed a behavior plan for the Student in December, 2020, she offered input with regard to the types of behavior that she was seeing in class. She did not receive any specific behavior training but would refer to Mr. who seemed to have some success in dealing with the Student's behaviors. She that the behavior plan was implemented in January, 2021.
- She believes that the Student's medication changes may have been the reason for some of more challenging behaviors. She said that the Parents did not communicate well about the medication changes.

39. In an interview with the Complaint Investigator, , BCBA, stated:

- A lot of reactions by District staff to the Student's behavior actually increased the likelihood that the Student's challenging behavior would continue, making things worse. For example, when staff responded to the Student's "refusal" behaviors by removing from the classroom or sending home, learns that negative behavior can help avoid tasks that doesn't want to do.
- She also noted that the District placed a lot of responsibility for the Student on teacher, who is also acting as an incoming special education director at the same time she was tasked with building the program and serving as the Student's 1:1 support.
- The Student doesn't understand about how to gain and maintain friendships and would benefit from social work services that focused on peer interaction skills. When other kids move away from during times of negative behavior, behaviors increase. She noted that it is especially important to implement a positive behavior support plan that specifically provides direction for behaviors that are to be encouraged.
- She believes that the Student is a "bright kid" and that there were missed opportunities for the District to provide social work/peer interaction skills at school-For example, how to "tell peers that your feelings are hurt without threatening to shoot them." She noted that while the District was dealing with the challenges of the COVID pandemic, it seemed that its answer was "to get the child out of school" when behaviors escalated.
- She believes that with the right supports and instruction, along with staff training, the Student can receive an appropriate education within the District. She does

have some concerns about the “ ” program. She noted that this program came together very quickly where the principal essentially had create and implement a program in March, 2021. She was concerned that Ms. did not have experience to put together such a program and that it did not have greater staff/professional input. She noted that building a program is hard, requiring a great deal of thought and consideration for individual student needs. She is concerned that other children in the program have similar “bad behaviors” and that some of those bad behaviors could rub off on

40. In an interview with the Complaint Investigator, stated as follows:

- She has four years of experience as a special education teacher and began working with the Student on March 29, 2021. She also serves as the Special Education Director and is developing the Program where the Student was placed beginning in March, 2021.
- At the beginning of the 2020-2021 school year there were not a lot of transition meetings due to the COVID pandemic, which may have created some additional challenges for this Student. In addition, she noted that to her knowledge, there was “no communication between and .” Finally, she noted concerns with regard to the school psychologist who was on medical leave and did not communicate well with staff or parents around absences.
- She believed that the Student should have received a Functional Behavior Assessment (FBA) earlier in the year, which would have provided greater support for staff working with the Student. She was also concerned that the behavior plan created by Ms. in January 2021 was inconsistent and didn’t contain goals
- She understood that the Student was receiving specifically designed instruction in the regular education room. She said that instruction was based on a modification of what was being taught in the general education curriculum. She said that the special education ‘pull out’ space was upstairs and wasn’t really appropriate for the Student insofar as older children (fourth and fifth graders) were in the room.
- She said that she started the program as a “pilot” program for children with behavior challenges in late March, 2021, and that she has four students in the program and two other adults (Ed Tech II and III). She said that she is able to provide the Student’s academic program within the program. She does not know if it is a good fit for the Student as is often more frustrated by the end of the day. She said that last week the Student hit a peer and threatened to “shoot” the principal.
- She has been working on a behavior intervention program she developed for the Student, which provides verbal prompting and redirection to the Student when is off task and also offers reinforcers.

41. In an interview with the Complaint Investigator, _____, Principal of _____, stated as follows:

- He is serving in _____ second year as the principal for the District. He previously served as the assistant principal in _____, where he also served as the school special education coordinator. He has been actively involved in this case and is “fairly well-versed in special education law” but is not a certified special education teacher nor does he have a degree in special education.
- He is aware that the Student was not allowed to return to _____ due to behavior concerns, and that the Parent tried to locate other placements for the Student in surrounding districts, all of which were refused due to concerns with the Student’s behaviors. After it was determined that the Student would return to the District, he had a conversation with the _____ special education director who told him that “they had significant concerns...that [the Student] had ‘lots of issues’, was aggressive and [an inappropriate] focus on another girl at the school...the same behaviors that we are seeing at _____”
- He was not sure when he received the IEP and other paperwork from _____ but said that he “made sure that [the Student] had in-class supports” when he started at the District in September, 2020. He noted that the District may have made some “procedural mistakes.” The District convened a transition meeting on September 30, 2020. He said that he understood that the District was “mirroring” the Student’s IEP from _____.
- He was not aware of the missing social work goal in the Student’s October 1, 2020 IEP. He noted that the school social worker (_____) at times was unavailable. He wasn’t sure if the District routinely let the Parents know when Ms. _____ was unavailable to provide services to the Student.
- He agreed that he “probably did” make a unilateral determination about the Student’s placement and programming as detailed in an email that he wrote on December 4, 2020 that he would find a separate place for the Student to work on academics in the afternoons, “beginning at 1:00 pm... today... [or that if _____ was] unsafe, we would need to send _____ home.”
- The “behavior plan” dated January 4, 2020-September 30, 2021 was created by the Student’s Case Manager _____ . (He believes that the January 4, 2020 date is a typo as the plan would have been created in December, 2020. He did not recall that _____ had created a separate behavior plan for the Student and that there has not been any behavior tracking for the Student prior to when Ms. _____ started working with _____.)
- He agrees that rewarding the Student with an opportunity to play laser tag was not the best approach for a child that exhibits threatening behavior, however at the time that he was given that reward, the District didn’t know about the extent of threatening behavior.

- He has tried to talk with the Student’s mother, but she has been very accusatory to District staff and is not taking any responsibility for the Student’s behavior. He said he has repeatedly asked the Student’s mother to send to school and to be ‘positive’ and that the Student’s family situation “is a disaster.” He said that the Parents are seeing the same behaviors at home with the Student. He said that the Student’s mother “wouldn’t work with the District...[and that they] didn’t want to hear about” a shortened school day. He noted several times that the Parents bore responsibility for not allowing the Student to be sent home when was exhibiting bad behaviors. He knows that the Student has talked about Parents having a lawyer and making statements that suggest that the Parents are sharing adult information about this case with the Student.
- He said that he came up with the idea for the program in February or March, 2020 and had , the Student’s incoming special education teacher, create the program for students like the Student. He said that the Student, like other children in the program, are together all day, including lunch and recess. He said that the Student does interact with typically developing peers during music and art class, although Ms. is “right beside ” for those classes.
- He noted that after the Student was suspended in April, 2021, the District was “a few days behind” in providing programming to IEP.
- He said that “there is no question” that the Student needs to be placed in an out of district placement like as he does not have the staff to do this for another year.

42. In an interview with the Complaint Investigator, , an ed tech III working with the Student, stated as follows:

- She started working with the Student in regular education classroom when school started in August, 2020. In addition to providing ed tech support for the Student, she also provided support to several other students in the classroom prior to the implementation of the Student’s October 1, 2020 IEP. She is also the Student’s regular education art teacher.
- She did not see a copy of the Student’s IEP from , but she did see a copy of the Student’s October 1, 2020 IEP.
- She primarily provided support for the Student during the morning in the regular education classroom. She said that , the Student’s regular education teacher, provided her with modifications to the Student’s academic program that she would help with.
- She said that she saw a copy of a behavior intervention plan right after the Student’s September 30, 2020 IEP team meeting.¹⁹ She said that the behavior plan

¹⁹ She said that she was not fully confident about the date that she saw the behavior plan. No behavior plan has been provided to the complaint investigator with a date prior to January, 2021.

that she saw included things that she was already doing with the Student, such as “taking more walks [and] coaching to be nice...” She did not have any interactions with _____, the Student’s social worker, but would get behavior tips from the school principal and veteran teachers within the District.

- She said that her primary interaction was with the Student’s regular education teacher. She did not speak “very often at all” to the Student’s case manager, _____. She understood that _____ was doing work with the Student in the special education room in the afternoons, but was not sure about what the Student’s afternoon programming was.
- By December and January, the Student was exhibiting more frequent and more intense outbursts. She understood that the Student’s behavior changes may have been due to medication changes. She said that the Student’s mother did not typically let her or other District staff know about the Student’s medication changes unless she was directly asked. She spoke to the Student’s mother and told her it would be helpful to know in advance. She said that the Student “wasn’t progressing at all with _____ academics because of _____ distractions.”
- She felt that “_____ wanted to be in class with _____ peers” and became further frustrated when _____ was pulled out of class.
- During art class, _____ was able to work with _____ regular education peers where did not have to interact with others as much. She noted that _____ still struggled with working with _____ hands/writing/fine motor skills.

43. In an interview with the Complaint Investigator, _____, the Superintendent of the _____ School District, stated as follows:

- He has served as the superintendent for the District since it separated from _____ in July of 2019. He also serves as the District’s special education administrator.²⁰ Prior to working for the District, he was the superintendent and special education administrator for _____.
- The District did not receive documents from the Student’s previous placement at _____ until after school started and prior to the transition IEP team meeting on September 30, 2020.
- While the District did not provide special education instruction or supports to the Student required by _____ IEP from _____ prior to the September 30 meeting, the District provided the Student with ed tech support.²¹
- It was _____ understanding that with regard to the Student’s educational program and IEP that “everything would have moved over” from _____ . He

²⁰ He is not certified as a special education administrator or teacher, but he has participated in multiple workshops dealing with special education and reports that he is knowledgeable in special education law.

²¹ The initial ed tech assigned to the Student’s regular ed classroom worked with 3-4 other students in the room.

doesn't recall the goals regarding interaction with peers from the March, 2020 IEP or the executive functioning SDI being removed from the Student's October 1, 2020 IEP.

- He recalled that at the September 30 IEP team meeting the Student's social work services were intended to be "10 and 10" every day, meaning that the social worker would check in with the Student at the beginning and end of each day for 10 minutes.
- He was not aware of any behavior plan received from [redacted] and he recalls that he asked someone on [redacted] staff to prepare a behavior plan at the transition meeting on September 30, 2020.
- When the Student's negative behaviors increased during the fall, he asked [redacted] to prepare a behavior plan for the Student. He knew that [redacted] did not have specialized training or experience drafting behavior plans for behaviorally challenged students. He said that he would have "normally" asked the District's school psychologist, [redacted], to oversee and help with the creation of the Student's behavior plan. [redacted] was not available to assist with this due to his health issues in the fall of 2020.
- The District did not attempt to work with another psychologist or behavior specialist because there are not other qualified school psychologists available in the area. He did not consider the possibility of working remotely with another school psychologist or behavior professional in another part of the state.
- He is not sure why the January 4, 2021 behavior plan was not immediately implemented, saying that "it should have been implemented when written."
- With regard to the [redacted] program, he and his staff started working on this in early fall, 2020. He hired [redacted] to start setting it up for students with behavior problems. He tried to contact [redacted] to help with the program after the 2020 Christmas break, but he had a medical relapse and wasn't able to assist with the development of the program. He nonetheless felt confident that [redacted] had the necessary skills and experience to develop the program as she had worked on another program in a different school district. Although the Student's start and completion time in the [redacted] program was different than the regular education school schedule, the Student received the same amount of instruction time insofar as the [redacted] program integrates social and emotional learning into the school day including lunch breaks and specials.
- As the Student's behaviors escalated over the course of the spring, he asked [redacted], the school principal, to contact the Parents. Mr. [redacted] reported back to him that the Parents "seemed hostile."
- When the Student was suspended on April 26, 2021, it was initially intended that the suspension would last only until the completion of a risk assessment, which was scheduled for May 4, 2021. The family did not participate in the risk

assessment. May 10th was the 10th day of suspension. The District offered tutoring which the Student participated in for two of the five days offered. He acknowledges that the District did not fully implement the Student's IEP on May 11, 12 and 13, 2021.

44. In an interview with the Complaint Investigator, _____, the Student's social worker, stated as follows:

- She has been working as a social worker since December, 2019. She started working with the Student in October of 2020.
- She started her work with the Student at the request of the regular education teacher and the school principal. She has not seen any of the Student's IEPs or Written Notices. She said that the only documents she has received regarding the Student is the behavior plan that Ms. _____ prepared in March, 2021.
- Beginning in October, 2020, She met with the Student once per week for 20 minutes, according to _____ IEP, which was increased to 30 minutes per week later in the month. She noted an increase in the Student's challenging behaviors, including the Student's talking about gun violence and threats to other students and staff. She said that while she took notes, she did not track the Student's behavior in an organized way. She agrees that documentation regarding the Student could have been better.
- Beginning in March, 2021, she started working with the Student on peer relationship skills, which she has done "a few times" with the Student. She noted that the Student does struggle with peer relationships, but most of the work she has done with the Student has been on calming down and de-escalating skills. She typically worked with the Student alone in her office, unless _____ is exhibiting poor behaviors, in which case she would take _____ to the "sensory room."
- She said that the "_____ " class has five to six students and three to four staff in a room full of sensory items. In this placement, the Student only has access to non-disabled peers for lunch and recess, as well as during _____ art, gym and music classes. She noted that even in the _____ program, _____ has learned negative behaviors from other _____ students and that there is "never a second that you can turn your back and trust that _____ wouldn't hurt another student... now is emboldened."

45. A Functional Behavior Assessment (FBA) conducted by _____ on June 13, 2021 noted as follows:

- During the period of data collection²², the Student engaged in disruptive behavior, aggression, unwanted touching, and verbal threats. Anecdotal reports indicate that sometimes several adults (at one point 4-5 adults) will respond to an episode of maladaptive behavior by the Student. The frequency of maladaptive behaviors

²² Data for the FBA was collected for the period of 5/24/21 to 5/28/21 by the Student's teacher and ed techs working in the _____ classroom

observed during this period was once every 3 minutes on average. Many prompts were required to regain instructional control.

- Occupational Therapy session occurred in a quiet classroom with only the Student, OT, and the BCBA present. In this 1:1 situation, was better able to remain on task and comply with demands made. The Student appeared to respond to the structure and routine that were evident during the session.
- All adults interviewed appear to agree that the challenging behaviors are interfering with education and ability to build and maintain relationships.
- Based on the data submitted, behaviors seem to be reinforced and maintained by escape from non-preferred activities and attention. Data consistently indicated that the response to maladaptive behavior was to remove demands and increase attention.

46. In her June 13, 2021 FBA, recommended, in relevant part, as follows:

- Avoid telling /labeling what you want to stop doing. It is a more effective intervention to tell what you want to do;
- Collect data to help identify tasks that the Student is likely to attempt to avoid or escape. Prior to those activities identified, use a High-Probability Sequence (three things in a row that are easy or enjoyable for to do followed by the thing that would usually escape);
- Develop and teach replacement behaviors for undesirable behavior such as swearing; The BST (Behavior Skills Training) approach may be effective to teach these skills. Also use Differential Reinforcement of Alternative (DRA), to support the Student when is doing what is desired or expected of . "Catch being good."
- Increase time on task by setting a target for time to spend on a task to earn verbal praise, or attention from a preferred adult;
- Avoid using the word "no." When the Student makes a request that cannot be accommodated for any reason, Instead, tell what may have or what may do;
- Home/Community based therapy directed by a BCBA or BCBA-D to increase the rate of skill acquisition and address issues in the home environments;
- Neurological consultation may rule out or address physical causes that contribute to the Student's behavior;
- Speech Language Pathologist (SLP) evaluation and treatment (as determined by the SLP), focusing on social skills and functional communication;
- OT re-evaluation and continued OT is likely to provide continued supports to address OT issues;
- Communication book that can be carried between school or home or a secure spread sheet where information about the Student's day can be shared with

parents, and they can comment and reply to support direct lines of communication;

- Make expectations clear, short and to the point. Remind the Student about these expectations at the beginning of each class period or change in activity. Score sheets are attached that can be used to review each activity with the Student to provide feedback and prepare and remind of expectations through the day. Have the Student work with the 1:1 staff to fill these out after each class so can contribute to the scoring process. At the end of the day the information can be provided to parents on the daily report which is also attached. A modified version (if necessary) could replace the communication log.
- IEP implementation compliance checks: Many schools assign a neutral party to assure IEPs are being run as written across all students affected.
- Consider a whole school (Positive Behavior Interventions and Supports) PBIS model not only to support the Student, but to support students in general.
- Support the use of Safety Care antecedent interventions and de-escalation techniques;
- Dedicated 1:1. The Student would benefit from a dedicated 1:1 with an ed tech who has been trained in behavior support plan and gets regular feedback on implementation of the plan. 1:1 support staff should have no other responsibilities during the school day than to provide 1:1 service to the Student.
- The classroom appears to be an enriching educational setting appropriate to enhance the learning experience of neurotypical children. However, even with 1:1 support, the Student would still be likely to experience maladaptive behavior due to group skills and social skills deficits that would be disruptive to the class and embarrassing for the Student. should have supervised interactions with other students on the playground and in the lunchroom and perhaps during "specials" (ex: music, art, etc.) As develops group skills, could attempt trials in the classroom to see if is able to meet the demands placed on in that environment.

47. In a letter from the District's counsel dated June 16, 2021, the District acknowledged, during the course of the investigation, its failure to adequately implement the Student's IEP (as alleged in Allegation No. 1 of the Complaint). Specifically, the District stated in its letter:

...the SAU appears not to have had access to a complete copy of [the Student's] IEP from . The version of the Student's IEP, effective March 24, 2020, that was available to the SAU in the Adori database utilized by included only 20 minutes per week of social work services in the Section 7 service grid. Upon review, the version of the IEP that was available to conflicts with the Written Notice from that same meeting, which documented the IEP Team's determination of "Specially Designed

Instruction in Executive Functioning Skills (5 x 20 minutes per week).” During the transition IEP team meeting on September 30, 2020, _____, the Student’s outside case manager, provided a copy of the _____ IEP that reflected SDI of 5 times per week for 20 minutes...

Through interviews conducted in the course of this investigation, it has become apparent that _____ staff misunderstood the determinations of the September 30, 2020 meeting, as reflected on the IEP. Although the Student’s IEP called for SDI, provided by a special educator in a special education setting (_____), _____ was instead provided with support in the regular education classroom, under the supervision of a classroom teacher. While this may be consistent with the statement on the Written Notice, it is inconsistent with the IEP, and the IEP is the controlling document. _____ acknowledges that because of this misunderstanding, there was a failure to provide SDI called for on the Student’s IEP.

VI. DETERMINATIONS

Allegation # 1. Denying the Student of a FAPE by not ensuring that an IEP is in effect and fully and adequately implemented- including programs for transfer students- in violation of MUSER §IX.3.B(3);

Allegation #2. Not providing behavioral intervention services and modifications designed to address the Student's behavior in violation of MUSER §XVII.1.D(1) and MUSER §IX.3.C (2)(a);

Allegation #5. Not properly developing or revising an IEP thereby depriving Student of FAPE a in violation of MUSER §VI.2.J., MUSER §IX.3.C, MUSER §IX.3.D and 34 CFR 300.101(a);

Allegation #6. Not considering the existing evaluation data and the academic, developmental and functional needs of the Student in violation of MUSER §IX.3.C (1)(c);

Allegation #7. Not identifying within the IEP the specific special education services and supplementary aids and services to be provided to the Student in violation of MUSER §IX.3.A.(1)(d);

Allegation #10 Not preparing an IEP that is reasonably calculated to enable the Student to make progress in light of _____ circumstances in violation of MUSER IX(3)(A) and *Andrew F. v. Douglas County School District*, 137 S. Ct. 988; RE-1, 2017 WL 1066260 (Mar. 22, 2017);

NON-COMPLIANCE FOUND; DENIAL OF FAPE FOUND

Children with disabilities are afforded certain rights and protections under MUSER and the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 et seq. These rights include the development of an IEP and the delivery of special education services and

supplementary aids in the least restrictive environment. 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.

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.

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 IX.3.B (3) addresses an SAU’s responsibility for Implementation of a student’s Individualized Education Program, and provides 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.²³ All identified children

²³ It is also clear that the District was aware that the Student needed special education and related services prior to the start of the 2020-2021 school year. The 2020-20201 school year commenced on August 26, 2020 and the 30 day deadline for a transfer IEP team meeting was September 25, 2020. The District was not in compliance with MUSER

with disabilities shall have a current Individualized Education Program in effect at the start of each school year.

Following the commencement of this Complaint Investigation process, the District acknowledged in a letter to the Complaint Investigator that “there was a failure to provide SDI to the Student” as called for in IEP. The District noted, as the record reveals, that although the Student’s IEP called for SDI provided by a special educator in a special education setting, was instead provided with support in the regular education classroom, under the supervision of the Student’s regular education classroom teacher. Ms. confirmed this in her interview, stating that she made modifications to her regular education program for (the Student’s ed tech III) and that Ms. would “oversee” the delivery of this instruction to the Student. Ms. also confirmed this information and added that she did not speak “very often at all” with , the Student’s case manager.²⁴

MUSER IX.3.B (5) addresses an SAU’s responsibility for IEPs for Children Who Transfer SAUs in the Same State and provides as follows:

IEPs for Children Who Transfer SAUs in the Same State.—If a child with a disability (who had an IEP that was in effect in a previous SAU in the same State) transfers to a new SAU in the same State, and enrolls in a new school within the same school year, the new SAU (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child’s IEP from the previous SAU), until the new SAU either adopts the child’s IEP from the previous SAU; or develops, adopts, and implements a new IEP that meets the applicable requirements in 300.320 through 300.324. [34 CFR 300.323(e)]²⁵

IX.3.B (3) when it did not hold its transfer IEP team meeting until September 30, 2020, five days after the time required.

²⁴ It is also clear from the record that Ms. and Ms. , two staff members working extensively with the Student during the fall, 2020 term, were not provided with up to date information on the Student’s programming or adequately informed of their responsibilities related to implementing the Student’s IEP. , the Student’s social worker, said that she has not seen any of the Student’s IEPs or Written Notices. She said that the only documents she has received regarding the Student is the behavior plan that Ms. prepared in March, 2021. MUSER IX.3.B (4) addresses an SAU’s responsibility for Accessibility of child’s IEP to teachers and others and provides in relevant part, that each SAU must ensure that:

- (a) The child’s IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
- (b) Each teacher and provider described in paragraph (3)(a) of this section is informed of
 - (i) His or her specific responsibilities related to implementing the child’s IEP; and
 - (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. [34 CFR 300.323(d)]

²⁵ School year means the total number of school days in a year as established by the school administrative unit or program year established by an IEU. MUSER II.34. In Maine, an SAU shall have at least 180 school days per year, 175 of which shall be used for instruction. 20-A M.R.S. §4801 (1)

District staff reported that that while they were aware of the Student’s challenging behaviors, virtually no special education services or supports were offered to the Student during the first month of enrollment.²⁶

For students transferring from another SAU in the same state, the *new SAU in which the child enrolls* must take reasonable steps to promptly obtain the child’s special education records from the previous SAU in which the child was enrolled. MUSER IX.3.B (5). (emphasis added). The District acknowledges that it did not have access to a complete copy of the Student’s IEP from . The missing portions of the Student’s file included the Written Notice and the service delivery page of March 2020 IEP from .²⁷ Under these circumstances, the District did not take reasonable steps to ensure that the Student’s special education records were complete.

Unfortunately, the lack of a complete academic record for the Student contributed to further disruptions to the Student’s special education services. Specifically, October 1, 2020 IEP did not include Specially Designed Instruction in Executive Functioning Skills and small group instruction. Furthermore, it did not include peer relationship goals that were in March, 2020 IEP. The absence of this documentation appears to directly correlate to a lack of services and IEP that was not reasonably calculated to enable the Student to make progress in light of circumstances by preventing needed training and supports-especially in the areas of developing peer relationships-which have been an ongoing concern during the course of the school year.²⁸

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. (emphasis added). In *School Union #51* 26 IDELR 1193, 26 LRP 4557, (Maine, 1997), the Hearing Officer

²⁶ , the school principal, was aware that the Student was not allowed to return to due to behavior concerns, and that the Parent tried to locate other placements for the Student in surrounding districts, all of which were refused due to concerns with the Student’s behaviors. said that the Student “probably did not” receive special education services in September when started at the District. said that the Student did not receive any SDI or special education services prior to the implementation of October 2020 IEP.

²⁷ In its June 16, 2021 letter, the District acknowledged that during the transition IEP team meeting on September 30, 2020, , the Student’s outside case manager, provided a copy of the IEP that reflected SDI of 5 times per week for 20 minutes. Apparently, there was no effort by the District at that time to inquire about this discrepancy in documentation, and these documents apparently remained missing from the District’s file when they were transferred to the Complaint Investigator on May 28, 2021.

²⁸ Several District witnesses referenced the difficulties faced to deliver a FAPE and provide procedural compliance in light of the pandemic. The Maine Department of Education adopted directives from the Office of Special Education Programs, U.S. Department of Education, noting that “while the Department understands that during this national emergency, schools may not be able to provide all services in the same manner they are typically provided...[however] the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP). (Office of Special Education Programs, U.S. Department of Education, referenced on the Maine Department of Education website: <https://www.maine.gov/doe/learning/specialed/covid19/Administrators>)

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. *School Union #51 Id.*

During the September, 30 IEP team meeting, there is no record that that the Student's team considered the recommendations from a psychoeducational evaluation conducted by School Psychologist _____ in July and September, 2020. In Ms. _____'s report, she specifically noted the importance of providing training "for all of those interacting with the Student" to better understand significant traumatic events. She cautioned that it was "essential" to seek professional treatment for the Student as soon as PTSD symptoms emerge" and noted that the disorder impacting the Student "responds very well to therapies...but if left untreated, can cause long standing emotional distress, relationship problems and academic failures for your child." Finally, she recommended a "functional approach to problem behavior. One wants to efficiently identify interventions with a higher likelihood of success. Determine the function of the problem behavior rather than the shape of the behavior."

Unfortunately, other than ordering additional evaluations for the Student in OT, the recommendations for staff training, professional interventions and functional behavior support and tracking were not addressed within the Written Notice or the Student's IEP, and staff interviews revealed that they were unaware of any of these recommendations being put into place. Neither _____, the Student's regular education teacher, Ms. _____, the Student's ed tech or Ms. _____ the Student's case manager received any specialized training in behavior management or understanding students who have experienced trauma. The Student's behavior plans were not prepared by behavior professionals or even supported or reviewed by the school psychologist. Instead, the District offered a hodge-podge of ineffective responses to the Students behaviors which resulted in escalating behaviors and _____ removal into more restrictive settings. As noted by _____, BCBA, "a lot of reactions by District staff to the Student's behavior actually increased the likelihood that the Student's challenging behavior would continue, making things worse."²⁹

With regard to the Student's behavior programming, MUSER §IX.3.C (2)(a); provides that the IEP Team shall, in the case of a child whose behavior impedes the child's learning or that

²⁹ The record does not support a finding, as the Parents argue, that the District's failure to order speech and language services following the Student's speech and language evaluation by _____ denied the Student a FAPE. In her February, 2021 evaluation, Ms. _____ did not recommend speech and language services based on the Student's scores. Instead, she recommended a series of accommodations which were ultimately added to _____ IEP in March, 2021.

of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. MUSER §II.21 defines “positive reinforcement interventions and supports” as “the use of positive techniques designed to assist a child to acquire educationally and socially appropriate behaviors and to reduce patterns of dangerous, destructive, disruptive or defiant behaviors.” In *County of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1467 68 (9th Cir. 1996), the Ninth Circuit Court held:

The placement must also include "educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction." *Rowley*, 458 U.S. at 189...[G]oals are not limited to academic benefits, but also include behavioral and emotional growth...Educational benefit is not limited to academic needs, but includes the social and emotional needs that affect academic progress, school behavior, and socialization.

The Second Circuit Court of Appeals held that a New York school district’s failure to implement a behavior intervention plan denied the student of a free appropriate public education and violated his rights under the Individuals with Disabilities Education Act. *C.F. v. New York City Dep't of Educ.*, 62 IDELR 281 (2d Cir. 2014). The failure to properly or consistently implement the behavioral interventions identified in a student's BIP can also amount to a denial of FAPE. *Guntersville City Board of Education* 47 IDELR 84 (SEA AL 2006). In *Paris Sch. Dist. v. A.H* the U.S. District Court affirmed a hearing officer’s ruling that a school district’s misclassification of the student's behavioral issues, coupled with the district's failure to identify the reasons for her "noncompliant" behaviors and the failure to quickly develop a behavior management plan made the student’s BIP deficient. 69 IDELR 243 (W.D. Ark. 2017).

As noted above, the District was aware of the Student’s challenging behaviors at the outset of the school year based on the Student’s history while attending school in . The District failed to diligently determine the full scope of IEP from , which would have brought the Student’s executive functioning and peer behavior goals to the IEP team during the September 30, 2020 meeting. ’s recommendations from her September, 2020 psychological evaluation further highlighted the Student’s challenges, and added recommendations that the District neglected to adequately consider. Although social work services were provided within the Student’s October, 2020 IEP, there was a disconnect with what was apparently determined by the Student’s IEP team and what was within the written IEP, resulting in only 20 minutes per week of social work services.³⁰

The record shows that this lack of a behavior plan and programming designed to meet the unique needs of the Student directly impacted in the weeks and months following the

³⁰ Superintendent recalled that at the September 30 IEP team meeting the Student’s social work services were intended to be “10 and 10” every day, meaning that the social worker would check in with the Student at the beginning and end of each day for 10 minutes.

October 1, 2020 IEP. _____, the Student’s social worker, said that she didn’t start working with the Student on peer relationship skills until March, 2021, and that most of the work with the Student has been on calming down and de-escalating skills. Ms. _____ reported that she did not track the Student’s behavior in an organized way that could have helped the Student’s IEP team better understand and respond to _____ behaviors. While the District finally made an attempt to develop a behavior plan in early January, 2021, it was not developed with the guidance of experienced behavior professionals³¹, nor was it distributed to all staff until late in the school year, after the Student’s negative behaviors had become more frequent and difficult to prevent and manage. As a result, the Student was subjected to frequent removals from educational programming.³²

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). The record supports a finding that on at least two occasions, the District was not compliant with this section: In early December, 2020, Mr. _____ acknowledged to the Complaint Investigator that he unilaterally determined that due to _____ behaviors, the Student’s placement should be changed; on June 4, 2021, a “School Incident Worksheet” appears to unilaterally modify the Student’s IEP as a result of a behavior incident by noting that the “Student will be in the second _____ classroom with an ed tech or teacher for the rest of the year (6.5 days). _____ will do _____ lunch, specials and recesses individually.”

MUSER IX(3)(A) defines an IEP, in relevant part, as a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum and a statement of measurable annual goals. MUSER IX(3)(A)(c) states that the IEP must also show how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals. In the present case, the District was not in compliance with this provision of MUSER as none of the Student’s IEPs included any IEP progress goals.³³

³¹ Mr. _____ reported that when the school psychologist was unavailable due to illness, the District did not attempt to work with another psychologist or behavior specialist “because there are no other qualified school psychologists available in the area.” He did not consider the possibility of working remotely with another school psychologist or behavior professional in another part of the state. MUSER IX.3.B (3) provides that 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... and shall determine any amendments to the IEP necessary to reflect the inability to commence services as originally anticipated by the IEP Team. Unfortunately, no such efforts were made in the present case.

³² The student was removed from _____ classroom or sent home early on seven different occasions during the 2020-2021 school year before _____ was suspended for 10 days on April 26, 2021. (see fact 28)

³³ On June 15, 2021, after the document production deadline, a four-page IEP progress sheet was submitted to the Complaint investigator.

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). Following the increase in the Student's negative behaviors in the fall of the 2020-2021 school year, the District missed a critical period of time to revise the Student's IEP to address particular behavior needs. Instead, it chose to simply place in a more restrictive setting without clear support from case manager or a behavioral professional.

Allegation #9. Not ensuring that a continuum of alternative placements is available to meet the Student's educational needs in violation of MUSER §X.2.B;

Allegation #11 Not ensuring that the Student's educational placement is in the least restrictive environment in violation of MUSER §X.2.B and MUSER §VI.2.I.

NON-COMPLIANCE FOUND; DENIAL OF FAPE FOUND

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] Comparable facilities – facilities in which special education services are provided to children with disabilities shall be comparable to those in which regular education is provided to children and located in chronologically age appropriate settings.

The Least Restrictive Environment (LRE) requirement reflects the IDEA's preference that "[t]o the maximum extent appropriate, children with disabilities, including children in public or

private institutions or other care facilities, are educated with children who are not disabled." See 20 U.S.C. §1412(a)(5); *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).

The Student was first placed in a regular education classroom, and has been moved to progressively more restrictive placements over the course of the year. On December 3, 2020, IEP team determined that [redacted] would "work upstairs in the spare special education room to help with focus on material."³⁴ It is unclear, however, whether this change provided a "meaningful benefit" for the Student. There is no indication that the Student received any additional behavior programming or supports. [redacted], the Student's special education teacher/case manager, didn't review the Student's work and didn't know specifically what the ed tech was doing with [redacted]. [redacted], the Student's social worker, worked with the Student alone in her office, primarily on de-escalating skills and not on building peer relationship skills.

The Student's programming became more restrictive again following the March 11, 2021 IEP team meeting. The amended IEP from this meeting provided that the Student would be placed in the [redacted] program and spend 8% of [redacted] time with non-disabled children. Ultimately, the Student was suspended for 10 days, and then subject to tutoring, and finally on June 4, 2021 "removal" to the "second [redacted] classroom" with an ed tech or teacher for the

³⁴ As an amended IEP was not provided from this meeting, it is unclear the amount of time the Student spent with non-disabled peers after this placement change.

rest of the year, where [redacted] would also have [redacted] lunch, specials and recesses individually with no interaction with [redacted] non-disabled peers.³⁵

Without question, the Student demonstrated very concerning behaviors, threatening the safety and wellbeing of other Students and staff. However, the District's failure to implement recommended behavior instruction and support resulted in the Student being placed in a series of overly restrictive settings.³⁶

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). The evidence in this case supports the conclusion that while the District made some effort to provide a behavior plan and the [redacted] placement and supports for the Student, it failed to develop a programming alternative, *on a timely basis*, once it became clear the Student's IEP and behavior plan were not working.

Allegation #3 not conducting a manifestation determination in violation of MUSER § XVII.1.E³⁷

NON-COMPLIANCE FOUND; DENIAL OF FAPE FOUND.

MUSER § XVII.1.D.1 provides, in relevant part, that a child with a disability who is removed from the child's current placement pursuant to paragraphs (C), or (G) of this section must—

- (a) Continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

³⁵ The Parents argue that because the [redacted] program is on a "shortened school day" the Student was also not receiving the same amount of instruction time as [redacted] non-disabled peers. The evidence supports a finding, as confirmed by Superintendent [redacted] that the Student was able to receive a full day of instruction because the [redacted] program integrates social and emotional learning into the school day including lunch breaks and specials.

³⁶ Evidence of the Student's ability to receive [redacted] educational programming in less restrictive settings is demonstrated from [redacted] attendance in [redacted] during the 2019-2020 school year where [redacted] was able to spend 94% of his time with non-disabled children. In [redacted] March, 2020 IEP, the Student's regular education teacher noted that [redacted] has "good skills" and the Student's special education teacher noted that "there were no behavioral concerns during [redacted] time working in the resource room."

³⁷ Although non-compliance was found with regard to Allegations #2 and #3 concerning the District's failure to timely conduct a manifestation determination and an FBA, the record does not support a finding of a separate violation of MUSER §V with respect to evaluation procedures as alleged in Allegation #8.

(b) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.³⁸

The District acknowledges in its response to this complaint that for several days it failed to ensure that the Student continued to receive educational services in alternate setting to enable to participate in the general education curriculum and to progress toward meeting IEP goals, in violation of MUSER § XVII.1.D.1(a).³⁹

With regard to discipline issues and the relationship of these issues to a Student's disability, MUSER § XVII.1.E requires districts to "conduct a manifestation determination within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct." In such an event, the regulations then set forth a series of specific steps the IEP Team must take to ascertain the relationship between the student's conduct and the disability, as well as whether the conduct is related to a district's failure to implement an IEP.⁴⁰

³⁸ MUSER § XVII.1.C provides as follows: For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (E) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (D) of this section. MUSER § XVII.1.G provides in relevant part that School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child possesses a weapon at school, knowingly possesses or uses illegal drugs or inflicts serious bodily injury upon another person while at school.

³⁹ In its response, the District wrote: Regrettably, staff in the program, from which [the Student] had been removed on April 26, 2021, was not available to implement [] IEP for an additional three days beyond the 10th day of suspension, meaning that for those three days [the Student] was not suspended, as a disciplinary matter, but was also not able to access full IEP. made tutoring available to [the Student] on May 11, 12 and 13 and returned to school full time on Friday May 14. was first observed as part of the FBA on Tuesday May 18, 2021. regrets that it was not possible to fully implement [the Student's] IEP on May 11, 12 and 13. It is noteworthy that while tutoring and an abbreviated day are among the types of services that constitute special education, MUSER X.2.A(4) requires that the IEP "must be revised" to add tutorial instruction. No such revision was made to the Student's IEP.

⁴⁰ **Manifestation Determination.**

(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the SAU, the parent, and relevant members of the child's IEP Team (as determined by the parent and the SAU) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(b) If the conduct in question was the direct result of the SAU's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the SAU, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (E)(1)(a) or (1)(b) of this section was met.

Although the Student’s “formal 10 day suspension” in the instant case extended from April 26 to May 10, 2021, the evidence in this case supports a conclusion that the Student’s behaviors constituted a “pattern”, as defined by MUSER § XVII.1.E. and 34 CFR §300.536, both with respect to the frequency and types of infractions that led to the disciplinary actions.

The Student’s removals, as documented, reveal that the Student was removed from educational placement at least seven times prior to the formal “10 day” suspension starting on April 26, 2021. Although it is not clear from the record how much time the Student was removed from educational placement for each of these seven earlier “removals”, the U.S. Education Department has stated that “portions of a school day that a child has been suspended may be considered a removal in determining whether there is a pattern of removals.” 71 Fed. Reg. 46,715 (2006). see also, *School Dist. of the City of Flint*, 66 IDELR 197 (SEA MI 2015).

In light of the prior removals, the District was obligated to conduct a manifestation determination prior to the “10 day” period required in MUSER § XVII.1.E.⁴¹ It is noteworthy that the failure to conduct a timely manifestation determination is more than just a “procedural” violation of IDEA and MUSER. In *R.E. v. N.Y.C. Dep’t of Educ.*, 694 F.3d 167, 190 (2d Cir. 2012), the Second Circuit Court of Appeals addressed the two-part “procedural” and “substantive” inquiry and held:

Substantive inadequacy automatically entitles the parents to reimbursement. Procedural violations, however, only do so if they “impeded the child's right to a [FAPE], ...significantly impeded the parents' opportunity to participate in the decision-making process..., or caused a deprivation of educational benefits.” 20 U.S.C. § 1415(f)(3)(E)(ii); *A.C.*, 553 F.3d at 172. *T.M. v. Cornwall Cent. Sch. Dist.*, 752 F.3d 145, 160 (2d Cir. 2014). Multiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not. See *Werner v.*

(3) If the SAU, the parent, and relevant members of the child’s IEP Team determine the condition described in paragraph (E)(1)(b) of this section was met, the SAU must take immediate steps to remedy those deficiencies.

F. Determination that Behavior Was a Manifestation.

If the SAU, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child’s disability, the IEP Team must—

(1) Either—

(a) Conduct a functional behavioral assessment, unless the SAU had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(b) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (G) of this section, return the child to the placement from which the child was removed, unless the parent and the SAU agree to a change of placement as part of the modification of the behavioral intervention plan.

⁴¹ when a manifestation determination is triggered, the regulations set forth a series of specific steps to address the root causes and treatments for the underlying behaviors. If the manifestation team determines that the behavior is related to the disability, the IEP Team must conduct a functional behavioral assessment. In this case, it appears that a formal manifestation meeting was not held as the parties reached agreement that a functional behavior assessment would be conducted by _____, BCBA.

Clarkstown Cent. Sch. Dist., 363 F.Supp.2d 656, 659 (S.D.N.Y.2005). *R.E. v. N.Y.C. Dep't of Educ.*, *Id.* at 190.

In *R.E.* the court concluded that the failure of an IEP team to conduct an adequate FBA, without otherwise adequately identifying the problem behavior and prescribing ways to manage it, was a “serious procedural violation” because it prevented the [IEP team] from obtaining necessary information about the student's behaviors. In *R.E.*, the court held that such a failure “seriously impairs substantive review of the IEP because courts cannot determine exactly what information an FBA would have yielded and whether that information would be consistent with the student's IEP.” *Id.* at 190.

Regrettably, it was just this type of focused approach on the Student’s behavior that might have made a critical difference to special education programming or supportive services during the Student’s year. The manifestation determination would have caused the IEP team to more carefully consider other relevant information, such as teacher observations, discipline reports or recommendations. It could have provided a more targeted functional behavior assessment and would have given attention to updating the Classroom Plan to address some of the behaviors in addition to those negative and hostile behaviors. A more timely manifestation and FBA process would have provided a greater likelihood that alternative services would have been offered more rapidly. In short, the lack of adequate or effective behavior interventions created a school environment ripe with repeated seclusions further resulting in the denial of a FAPE for this Student.

Allegation #4: Failure to provide the parents with proper prior written notice of the District's proposals regarding the student's educational program in violation of MUSER §VI.2.I; VI.2(H) and MUSER App. I (34 CFR §300.503) and MUSER App. 1 (34 CFR 300.501 (b) and (c)).

NON-COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND.

MUSER §VI.2.H states in relevant part that each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:

- (a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- (b) Scheduling the meeting at a mutually agreed on time and place.

The notice must indicate the purpose, time, and location of the meeting and who will be in attendance, as well as the participation of other individuals on the IEP Team who have knowledge or special expertise about the child. MUSER §VI.2.H (2).

MUSER §VI.2.H (6) provides that a public agency must give the parent a copy of the child’s IEP at no cost to the parent within 21 school days of the IEP Team Meeting. [20 U.S.C. 1414(d)(1)(B)(i) and 34 CFR 300.322 (a-f)]

MUSER §VI.2.I states that if the team cannot reach consensus, a district must provide the parents 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. The written notice provisions of 34 CFR §300.503 require districts to give parents notice, according to specifically defined terms, at least 7 days prior to the date the district proposes to *change* or initiate programs for students.⁴² (emphasis added)

The parental participation provisions of 34 CFR 300.501 (b) and (c) provides in relevant part:

- (b) (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—
- (i) The identification, evaluation, and educational placement of the child; and
 - (ii) The provision of FAPE to the child.

In *R.E. v. N.Y.C. Dep’t of Educ.*, 694 F.3d 167, 190 (2d Cir. 2012), the Second Circuit Court of Appeals addressed the two-part “procedural” and “substantive” inquiry and held:

Substantive inadequacy automatically entitles the parents to reimbursement. Procedural violations, however, only do so if they “impeded the child’s right to a [FAPE], ...significantly impeded the parents’ opportunity to participate in the decision-making process..., or caused a deprivation of educational benefits.” 20 U.S.C. § 1415(f)(3)(E)(ii); *A.C.*, 553 F.3d at 172. *T.M. v. Cornwall Cent. Sch. Dist.*, 752 F.3d 145, 160 (2d Cir. 2014). Multiple procedural violations may cumulatively result in the denial of a FAPE even if the violations considered individually do not. *See Werner v. Clarkstown Cent. Sch. Dist.*, 363 F.Supp.2d 656, 659 (S.D.N.Y.2005). *R.E. v. N.Y.C. Dep’t of Educ.*, *Id.* at 190.

⁴² Pursuant to 34 CFR §300.503, the written notice must:

1. Describe the action *regarding the referral, evaluation, identification, programming or placement* that your SAU proposes or refuses to take;
2. Explain why your SAU is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your SAU used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of the IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that your SAU is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding *your rights under Part B of the IDEA, such as and the Due Process Office of the Maine Department of Education (207-624-6644), the Maine Parent Federation (1-800-870-7746), and Southern Maine Parent Awareness (1-800-564-9696)*
7. Describe any other choices that your child’s individualized education program (IEP) Team, *which includes the parent, considered and the reasons why those choices were rejected;*
8. Provide a description of other reasons why your SAU proposed or refused the action.
9. *Include a summary of comments made by the parents, including the parents’ description of their child’s progress; and*
10. *Names and titles of each member.*

In *Spring Branch Independent School District v. O.W. by Hannah W.*, 961 F.3d 781, 796 (5th Cir. 2020), the Fifth Circuit Court of Appeals found a “substantial and significant deviation from the IEP...[resulting in] a loss of academic benefits” from an IEP amendment outside of meeting when the content of the modification and written document detailing the IEP modification were not properly prepared. *Id.* at 799. See also, *Georgetown Indep. Sch. Dist.*, 121 LRP 3995 (SEA TX 11/18/20).

In the present case, although Superintendent clearly recalled that at the September 30, 2020 IEP team meeting that the Student’s social work services were intended to be “10 and 10” every day, there was no mention in the Written Notice that this option was considered and the reasons why it was rejected. The December 3, 2020 Written Notice did not identify members attending this IEP team meeting nor does it identify the date that the notice was sent to the Parents. The December 16, 2020 Written Notice does not identify members attending this IEP team meeting nor does it identify the date that the notice was sent to the Parents. The January 27, 2021 Written Notice did not identify when it was sent to the parents.⁴³ The March 11, 2021 Written Notice was not sent to the parents until April 21, 2021.

While the Parents were able to attend the Student’s IEP team meetings and remained involved in the Student’s educational programming, it is apparent that the frequency of these procedural violations significantly impeded the parents' opportunity to fully participate in the decision-making process. Key records regarding the Student’s programming were missing or not provided to the Parents. Notification about who was to attend meetings was not provided. As a result, these multiple procedural violations contributed to the deprivation of the Student’s receipt of a FAPE during the 2020-2021 school year.

Allegation #8. Failure to adequately consider the concerns of the parents in the IEP decision making process in violation of MUSER §IX.3.C(1)(b) and MUSER §VI.2(I).

NO VIOLATION FOUND

MUSER §IX.3.C provides that an IEP Team must consider both the concerns of the parents when developing each child’s IEP. MUSER §§VI (2)(B) and (H) provide, in relevant part, that the IEP team must include the child’s parents who must be afforded the opportunity to participate in all IEP team meetings.

When making a change in educational placement, a school must consider a parents' concerns must not predetermine the educational program for a disabled student prior to meeting with the parents, because the core of the IDEA is "the cooperative process that it establishes between parents and schools." *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 53 (2005).

In the present case, there is no evidence that the District failed to adequately consider the concerns of the parents in the IEP decision making process. Despite the numerous procedural

⁴³ As noted above, no amended IEPs reflecting changes made at these meetings were produced to the Complaint Investigator.

and substantive violations identified in this report, the District responded to the Parents' request to convene IEP team meetings and the Student's mother appears to have attended each of the IEP Team meetings from September 30, 2020 to the present, and Parent concerns and points were routinely noted in each of the Written Notices corresponding to the IEP team meetings.

VII. CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

1. The Student's IEP team shall convene within 30 days of this report to:
 - Review the findings of the FBA conducted by _____ on June 13, 2021 to determine all necessary educational supportive services and specialized instruction that the Student requires in light of the findings and recommendations from this FBA, including ESY, emotional/social/behavioral support and additional academic supports;
 - Determine the appropriate and least restrictive educational placement for the Student with necessary BCBA support/consultation as well as ed techs and staff trained and experienced in behavior/socialization and safety issues;
 - Determine a supplemental service/accommodation plan to ensure coordination of treatment for the Student that includes effective communication and collaboration with the parent;
2. Determine a schedule to review the Student's progress along with appropriate opportunities for the Student to interact with typically developing peers and to return to _____ placement within the District with appropriate instruction and supports;
3. Determine what compensatory education and services must be provided to the Student for equity in light of the District's failure to provide meaningful social/behavioral educational programming to the Student for _____ year, taking into consideration the need for extended school year programming.
4. The IEP shall be amended to reflect all modifications of programming or services.
5. The District shall schedule training, by an attorney or member of the Department, for all appropriate staff members in order to review state and federal regulations with respect to IEP Team responsibilities including documentation of behavior and supportive services offered to the identified Student. This includes training that reviews the following regulatory provisions:
 - MUSER IX.3.B(3) IEP Program Be in Effect, Full Implementation of IEP
 - MUSER XVII.1.D(1)(b) Receive as appropriate an FBA and behavior intervention services and modifications to address the behavior violation
 - MUSER IX.3.C (2)(a) Consideration of Special Factors – if behavior impedes, consider use of PBIS and other strategies to address the behavior
 - MUSER VI.2.J. Major IEP Team responsibilities
 - MUSER IX.3.C Development of IEP
 - MUSER IX.3.D Review and Revision of IEP
 - 34CFR300.101(a) FAPE available to all children, inclusive, including children with disabilities who have been suspended or expelled
 - MUSER IX.3.A.(1)(d) Special Education and Related Services

- Endrew F v Douglas County School District “preparing IEP that is reasonably calculated to enable the child to make progress in light of the child’s circumstances”
 - MUSER X.2.B Least Restrictive Environment
 - MUSER VI.2.I IEP Decision Making Process
 - MUSER XVII.1.E Manifestation Determination
 - MUSER VI.2(H) Parent Participation
 - MUSER App. I (34 CFR §300.503) Written Notice
 - MUSER App. 1 (34 CFR 300.501 (b) and (c)) Parent Participation in Meetings and Parent Involvement in Placement Decisions
6. The District shall schedule de-escalation and physical restraint training, by a recognized state approved behavior management organization, for all appropriate staff members.
 7. Within a year from the date of this report, the District shall either hire a certified Special Education Director or show that they have contracted with another School Administrative Unit (SAU) for one.
 8. The following compliance documentation shall be sent to the Due Process Office and the Parents:
 - a copy of the IEP;
 - copies of all evaluation reports; and
 - a copy of the Written Notice (WN)
 - Copy of the staff training curriculum, trainers and staff members attending the training.
 - Monthly updates, to the Due Process Office only, indicating progress on hiring a certified special education director.