

Complaint Investigation Report

Complaint # 22.023C
Complaint Investigator: Leigh Lardieri

Report Date: January 21, 2022

Date of Appointment: November 24, 2021

I. Identifying Information

Complainant:

Respondent:

Superintendent

School District

Student:

II. Summary of Complaint Investigation Activities

On November 23, 2021 the Maine Department of Education received this complaint. The complaint investigator was appointed on November 24, 2021. Therefore, the current investigation covers the period of November 23, 2020 to present. See MUSER XVI(4)(B)(3). The complaint investigator received 187 pages of documents from the

School District (the “District”). The investigator also received 19 pages of documents from the complainant. An interview was conducted with the Student’s parent (“Parent”) ¹ on December 15, 2021. On December 17, 2021 the following staff members from the District and from the School were interviewed: The Director of Special Services, the Student’s Special Education teacher, and the Board-Certified Behavioral Analyst (BCBA). On January 20, 2022, the Student’s psychiatrist provided information to the investigator.

The complaint investigator reviewed all documents, emails and information obtained through interviews, as well as the responses provided by the Parties to complete this complaint investigation.

III. Preliminary Statement

The Student is a _____ in _____ school receiving specially designed instruction and related services in a self-contained setting under the disability category of Autism. The

¹ Both parents were named on the Complaint Investigation request form. However, the father did not participate in any part of this investigation. Therefore, the “Parent” in this investigation and report refers to the Student’s mother.

student has been attending school in the District since . The family also has an outside case manager.² The Student and have been seen by a psychiatrist for over four years.³ The Student has a history of behavioral escalation, but not to the level of intensity and violence, currently witnessed by the parties.⁴ Until the events that led to the filing of this complaint, the Parent reported that she has had a good relationship with the District and school staff, and that the Student was doing fine in program.⁵ Likewise, the District reported that at the beginning of the year, the Student was doing well in school.⁶

During the summer preceding year, the Student experienced some medication changes.⁷ In early September it was reported that the student was having emotional and behavioral challenges at home, to the point where the police were involved, being called by the Parent on two occasions to intervene and assist with deescalating the student.⁸ During these incidents, significant property damage occurred in the home. Approximately two to three weeks after school started, the Parent met with the school staff to inform them that the Student continued to experience medication changes which coincided with escalated behaviors. The next day while the BCBA was meeting with the School Resource Officer (SRO) to familiarize him with the Student's emotional and behavioral profile, an incident occurred and intensified to the point where ultimately, a restraint performed by two SROs was necessary to maintain the safety of the Student, and others in the classroom. The Student was taken to the hospital and although went home that day, has not returned to in-person instruction at the school at this time.

The present complaint was filed by the Parent, alleging that the District has violated the Maine Unified Special Education Regulations ("MUSER"). After the receipt of the Parent's complaint, a Draft Allegations Letter was sent to the parties by the complaint investigator on November 30, 2021 alleging one violation of MUSER. A revised draft allegations memorandum alleging six violations of MUSER was sent to the parties on December 6, 2021. A telephonic Complaint Investigation meeting was held on December 6, 2021.

IV. Allegations

The following violations are alleged by the present complaint:

² See emails between parties from 9/22/2021; See prior written notice from 11/19/2021.

³ See communication with the psychiatrist from 1/20/2022.

⁴ See email from the Parent on 9/1/2021.

⁵ During the interview with the Parent, compared to grade, the Student transitioned well to grade and the staff were able to manage . She attributed this in part due to the restricted movement, predictability and limited transitions given COVID-19 protocols. The Student remained in self-contained classroom for most of the day, including lunch. She also indicated that the 1:1 staff working with the student last year did an excellent job and was even able to convince the student to take vaccine.

⁶ See email from the teacher on 9/15/2021.

⁷ As reported during interviews with the parties.

⁸ Ibid.

1. The District violated MUSER when they did not immediately return the Student to the placement was removed from after the IEP team determined that the alleged conduct was a manifestation of disabilities. **MUSER XVII (F); 34 CFR 300.530**

2. The District violated MUSER by not providing the Student with a FAPE when they did not return the Student to the placement was removed from after the end of the interim plan period on November 19, 2021. **MUSER II (13); 34 CFR 300.101(a); 34 CFR 300.530**

3. The segregated program at home with 2 hours per day of education over video conference that the Student has been provided by the District this school year has not and does not provide the Student with a FAPE. **MUSER II (13); 34 CFR 300.101(a); MUSER XVII (D)(1)(a); 34 CFR 300.530**

4. The District's proposal on November 19, 2021 to provide the Student with a segregated program at home with 3-4 hours of support from a BHP does not provide the Student with a FAPE. **MUSER II (13); MUSER X (2)(A)(4); MUSER XVII (D)(1)(a); 34 CFR 300.101(a)**

5. The District's mention of an 'out of district placement' during the school year have not been real placement proposals since there is no actual program available (waitlists, denials, etc.) – these non-specific 'out of district placements' do not provide the Student a FAPE. **MUSER II (13); 34 CFR 300.101(a); MUSER IX (3)(H)**

6. The District's failure since the beginning of the school year to provide the Student with appropriate behavior supports and social skill-building has denied the Student a FAPE. **MUSER II (13); 34 CFR 300.101(a); MUSER IX(3)(C)(2)(a); 34 CFR 300.324.(2)(i)**

V. Factual Findings

1. In December 2020, evaluations were completed for the Student's triennial review. The following results were reported: ⁹ on the Vineland-3 across all domains (communication, daily living skills and socialization) the Student presented with adaptive behaviors in the low range as reported by the Parent and teacher. On the Maladaptive Behavior Domains, the Parent and teacher endorsed Internalizing and Externalizing behaviors in the Elevated range.

⁹ See evaluation report completed on 12/16/2020 by Specialist.

, M.S., NCSP, Certified School Psychologist

A summary of the Educational Review: 3-Year Evaluation yielded the following results: ¹⁰ the Student demonstrated mastery of most classroom mechanics, using a wide range of objects and materials that need to be organized, stored, and maintained. ¹¹ exhibited emerging skills in the Meals at School domain and required some coaching to perform these tasks.¹² Across the domain of Routines and Expectations, the Student displayed some skills that had shifted from Not Yet to Emerging and Mastered levels of skill.¹³

Classroom observations were completed on 12/4/2020, and 12/11/2020.¹⁴ The Student had 1:1 support from an educational technician (ed tech). was observed drafting and sending an email (with prompting) followed by earned reward time. Next, the Student and ed tech were observed in the library answering questions on a Google document. Finally, the Student was observed working through a practice Zoom math lesson. At the end of the observation was asked to rate the volume of voice. Overall, the following reflections were noted by the evaluator: the Student's academic skills were significantly below grade level; the Student required frequent prompting, and redirection to remain on task; the Student followed all required COVID-19 restrictions, including wearing a mask and maintaining distance; the Student responded to all prompts.¹⁵

2. On September 15, 2021, the Parent alerted the school that the police were called to the home to intervene because the Student's behavior had reached a level of intensity not seen before by the Parent. During the incident on 9/14/2021, she reported that there was significant property damage. ¹⁶
3. On September 21, 2021 the Parent met with school staff via Zoom to share information about medication changes, as well as details about the incidents that took place in the home. ¹⁷
4. On September 22, 2021, the following account summarizes an incident that took place at the school: ¹⁸ As biology class was being dismissed, the Student stood up and said "stop" to peers. The ed tech providing support was able to

¹⁰ See evaluation report completed on 11/24/2020 by _____, Special Educator.

¹¹ Skills were measured using the Assessment of Functional Living Skills (AFLS).

¹² Ibid.

¹³ Ibid.

¹⁴ See classroom observation report by _____, BCBA dated 12/18/2020.

¹⁵ Ibid.

¹⁶ See Parent interview notes from 12/15/2021; See notes from 9/21/2021 meeting with the Parent and school staff.

¹⁷ Ibid.

¹⁸ Chapter 33 incident report; Response from the District; Interviews with the parties.

escort the Student back to self-contained special education classroom.¹⁹ When the Student arrived in the classroom, behavior intensified. As the incident continued, the staff was able to evacuate all but one student from the classroom. This student along with a staff member went into the teacher's office to shelter in place.

The staff utilized deescalation strategies and attempted to offer the student support in an effort to help calm down.²⁰ The Student's behaviors continued to worsen as slammed computer down and threw body on the floor. School administration and the SRO were called to assist. The Superintendent also arrived. The Student began to throw various objects at staff in the classroom including a chair and vase. Staff removed additional objects out of the Student's reach. Staff continued to offer assistance using deescalation strategies.

The SRO from the school was called to assist. Prior to initiating the restraint, the officers engaged in a "wait strategy" while continuing to move items away from the Student. tipped over the clothes dryer, and kitchen cart, and threw a crock pot, ceramic bowl and microwave.²¹ After consulting with the BCBA, the Superintendent directed the officers to initiate a restraint.²² The Student was put into a prone position by the SROs and was handcuffed as continued to be aggressive with hands and arms. As the Student was engaging in self-injury by banging head against the floor, the Superintendent placed a yoga mat under head.²³

When the Parent arrived, the teacher stepped into the hallway to speak with her. Allegedly, the parent was heard saying, "I'm afraid [the Student] is going to kill someone."²⁴ When the Parent entered the classroom, she attempted to calm the student, but continued to escalate. The Student had cuts to arms and legs from the broken glass within the classroom.²⁵ An ambulance was called. The Parent gave permission for the Student to be sedated. received two injections and was taken to the hospital.²⁶ The Student has not returned to the school since the incident.

¹⁹ In this classroom known as the program, there are three other students, a special education teacher and four ed techs. In addition, the BCBA consults with the team and provides some training and professional development for the staff. Depending upon students' needs, the ed techs may go into less restrictive settings to support students in these classrooms.

²⁰ The teacher, ed techs, and support staff who work directly with the Student are certified in Safety Care training.

²¹ Chapter 33 incident report; Response from the District; Interviews with the parties.

²² The BCBA was present consulting with staff and school administration, including the Superintendent.

²³ Chapter 33 incident report; Response from the District; Interviews with the parties.

²⁴ See the District's response, and interview notes with school staff.

²⁵ See Physical Restraint and Seclusion Incident Report, 9/22/2021.

²⁶ As documented in the complaint request, received on 11/24/2021 the Student was seen by a crisis provider and put on a specialty unit wait list (2-3 weeks) for Hospital. was discharged the same day.

5. Following the incident, the BCBA reported that she spoke with the Student's psychiatrist. He shared that the behavioral incidents at home and school could be related to medication changes.²⁷ When the Student was in the emergency room, was placed on a new medication, but had a bad reaction.²⁸ Subsequently, was given another medication and reportedly responded well.²⁹ The BCBA expressed concern about keeping the Student and others safe if were return to school, given the intensity of behaviors during the incident. The psychiatrist stated he understood the school's concern about safety, but that it was up to the school to make that determination. Also, he told the BCBA that he advised the Parent that it would be in the Student's best interest to be hospitalized for evaluation and stabilization.³⁰

6. On October 4, 2021 a manifestation determination IEP meeting was held in response to the Student's ten-day removal from school. As documented in the prior written notice,³¹ the IEP team determined that the behavior for which the student was removed from school was a manifestation of disability, and that the Student's behavior was not a result of the failure of the school to implement the IEP. Out of concern for the safety of and others, the District proposed that the Student be placed in an interim alternative educational setting (IAES) in order to allow time for the behavior to stabilize and to address next steps with regard programming for the Student.³² The Parent rejected this proposal.³³

Although the Director of Special Services acknowledged that the student had the right to return to placement at the school, she also stated that the District would file an expedited due process hearing due to the high level of safety concern associated with the Student's behaviors.³⁴ The Parent conceded to the placement in an IAES. Beginning on October 19, 2021, the Student received specially designed remote instruction via Zoom, for two hours daily, along with thirty minutes per week of remote speech teletherapy. It was reported that participated in this instruction for eleven days.³⁵

²⁷ See notes from the phone conversation between the BCBA and psychiatrist on 9/30/2021.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ See prior written notice from 10/6/2021.

³² Ibid.

³³ Ibid.

³⁴ The expedited hearing request was filed on 10/4/2021.

³⁵ See prior written notices from 10/4/2021, and 11/19/2021.

7. A mediation was held on October 13, 2021 where the parties reached an interim agreement.³⁶ The Student continued to receive remote instruction as the team continued to explore options for an out-of-unit placement.³⁷
8. On October 27, 2021 the Parent sent a letter to the Director of Special Services in which she expressed the following:³⁸ The Parent stated that she had sought advice from an attorney at Disability Rights Maine. She said that the Zoom sessions and virtual learning were not going well, and that she was not satisfied with the content of the material being presented. Also, the Parent was not pleased that the Student was being taught by an ed tech in place of the special education teacher. Although she agreed with the pursuit of referrals to out-of-unit placements, the Parent stood firm on the expectation that if a suitable placement wasn't found by November 22, 2021, the Student would return to the school full time.³⁹ She suggested it would be beneficial if the Student had a space could access when is feeling overwhelmed. The Parent also agreed to an increase in BCBA time, as well as any behavioral testing the District felt was necessary.⁴⁰
9. On November 19, 2021 a review of program IEP meeting was held. The District brought forth the following proposals:⁴¹ the Student would continue with remote learning in the IAES as there were ongoing concerns impacting a safe to return to school; the District would provide up to four hours per day of specially designed instruction in person at home to be delivered by an ed tech/ BHP. In addition, the district offered BCBA consult with the Parent and school staff to address in-home behavior. The District also proposed that a functional behavioral assessment (FBA) be conducted and that a review of the behavior intervention plan (BIP) be completed. The parent rejected all of these proposals.⁴² She stated that the Student was doing better with the medication changes. The Parent reported was less anxious, was sleeping better, and was doing much better behaviorally. She reiterated that he needed a space at school where could deescalate, without having access to objects and peers.⁴³

³⁶ On the same day, the District withdrew the expedited hearing request.

³⁷ An agreement was reached where the District would provide applications to the Parent to be completed and returned to the District.

³⁸ See letter dated 10/27/2021.

³⁹ Ibid.

⁴⁰ On 10/19/2021 a consent for evaluation was sent to the Parent. However, it was never returned.

⁴¹ See Prior Written Notice from 11/19/2021 IEP meeting.

⁴² Ibid.

⁴³ The discussion of a space for the student was mentioned multiple times in the prior written notices, as well as in the interview with the parent on 12/15/2021. During the interview with the District staff on 12/17/2021, it was reported that although there is a quiet room space in the self-contained classroom, they have tried to use it as a

10. In the weeks following the IEP meeting held on October 4, 2021 ongoing efforts were made to submit applications and secure a placement in a special purpose private program (SPPS).⁴⁴ Referrals were made to _____ in _____⁴⁵, the _____ in _____, the _____, and the _____ in _____.⁴⁶ In addition, the Parent had scheduled a visit to the _____ in _____.⁴⁷

11. On January 20, 2022, the Psychiatrist responded to this investigator. He shared that he has been working with the Student and the Parent for over four years. When asked about the phone call with the BCBA, he replied that he didn't document the September conversation. He stated that he fully supported the Parent's position that the current medication regimen has proven helpful, and [the Student] is much more stable and should return to school. He also added that the Parent wants to continue to hold open the option of _____ Hospital placement if things deteriorate.⁴⁸

VI. Determinations

The following violations are alleged by the present complaint:

1. The District violated MUSER when they did not immediately return the Student to the placement _____ was removed from after the IEP team determined that the alleged conduct was a manifestation of _____ disabilities. **MUSER XVII (F); 34 CFR 300.530. NO VIOLATION.**

Under State and Federal law Maine students with disabilities have a right to a free and appropriate public education.⁴⁹ If a student with disabilities is suspended or out of program for ten consecutive days, the team must convene a manifestation determination meeting.⁵⁰ In this case, the team agreed by consensus that the conduct in question on which led to the Student's removal was a manifestation of _____ disability, and that the Student's IEP was being implemented at the time of the incident.⁵¹ The District provided an offer of FAPE in an interim alternative

calming space which has led to further escalation. The District was also concerned that they could not safely escort the student to that space.

⁴⁴ See emails exchanged between the parties from 10/18/2021 through 11/10/2021.

⁴⁵ _____ stated they were unable to program for the Student.

⁴⁶ The Student was placed on a waiting list for _____; After a visit to the _____, the Parent was told the _____ location was not a good fit as it was more suitable for young children.

⁴⁷ On 12/22/2021, the Parent was due to visit this SPPS.

⁴⁸ See communication with the Psychiatrist from 1/20/2022.

⁴⁹ MUSER II (13)

⁵⁰ See Expedited Due Process Hearing request. Typically, school administrators suspend students for ten days. In this case, school administration and the Parent agreed not to suspend the Student. Instead, the Parent agreed to keep the Student home (out of program) until an IEP meeting could be held.

⁵¹ See prior written notice from 10/4/2021.

educational setting.⁵² The District also proposed that a review of the function of the behavior be completed, as well as a review of the behavior intervention plan (BIP) be conducted during this time.⁵³ The parent rejected these proposals and requested that the Student be able to return to school.

Although the special education director acknowledged that the Student had a right to return to school, she added that the District was prepared to file an expedited due process hearing as they believed that there was a substantial likelihood of injury to the Student or others if were to return to school.⁵⁴ Indeed that day, the district filed a request for an expedited due process hearing.⁵⁵ Taken together, in putting forth these proposals, and in filing the hearing request, the District was compliant.⁵⁶

2. The District violated MUSER by not providing the Student with a FAPE when they did not return the Student to the placement was removed from after the end of the interim plan period on November 19, 2021. **MUSER II (13); 34 CRF 300.101(a); 34 CFR 300.530. NO VIOLATION FOUND.**

On November 19, 2021 the team reconvened to review the Student's program. It was determined that would continue in the IAES as it was reported had not been admitted to the hospital for an evaluation as remained on the waiting list for admission.⁵⁷ This, along with the rejection of the completion of an FBA, and revision of the behavioral intervention plan, did not allow the District to make an informed decision that with reasonable assurance, the Student would be able to return to school safely.⁵⁸ In essence, the District did not have the data to refute the concern that there was a substantial likelihood of injury to the Student or others if were to return to school.⁵⁹ The District was compliant.

3. The segregated program at home with 2 hours per day of education over video conference that the Student has been provided by the District this school year has not and does not provide the Student with a FAPE. **MUSER II (13); 34 CRF 300.101(a); MUSER XVII (D)(1)(a); 34 CFR 300.530. VIOLATION FOUND.**

⁵² Ibid.

⁵³ See Expedited Due Process Hearing Request.

⁵⁴ Ibid.

⁵⁵ On 10/13/2021, the parties reached an interim agreement in mediation. The District then withdrew their request for an Expedited Hearing.

⁵⁶ MUSER XVII (1-4); 34 CFR §300.530; 34 CFR §300.531; 34 CFR §300.533

⁵⁷ See notes from the interview with the parties; See BCBA conversation notes with the psychiatrist.

⁵⁸ See prior written notices from 10/4/2021 and 11/19/2021. In the 11/19/2021 prior written notice, it was reported that the Student had another incident in the home a month prior (October 2021).

⁵⁹ Ibid.

On October 4, 2021 when the manifestation determination IEP meeting was held, the Student had been out-of-program for nine days. On October 6, the Parent picked up materials. The Student was also expected to access Google classroom at that time.⁶⁰ The direct remote instruction that the Student received did not begin until October 19, 2021.⁶¹ By November 3, 2021 the Student stopped attending the Zoom sessions.⁶² By the time the IEP team met again on November 19, 2021, the student had been out-of-program for twenty-one days.⁶³ Since November 19, 2021, no evidence has been brought forth to suggest that the Student resumed participation in any program. Knowing the Student required frequent redirection and prompting during instruction, when the Student stopped participating remotely, the District should have taken further steps to remedy the situation in an effort to reengage the Student in this instruction. Evidence suggesting the instruction was not appropriate for the Student was brought forth by the Parent on October 27, 2021.⁶⁴

4. The District's proposal on November 19, 2021 to provide the Student with a segregated program at home with 3-4 hours of support from a BHP does not provide the Student with a FAPE. **MUSER II (13); MUSER X (2)(A)(4); MUSER XVII (D)(1)(a); 34 CRF 300.101(a) NO VIOLATION FOUND.**

As previously stated, on November 19, 2021 the team reconvened to review the Student's program. At this point, the District maintained the legitimate concern that there was a substantial likelihood of injury to the Student or others if the Student were to return to school.⁶⁵ The District also reiterated that the Student needed a more intensive level of programming. Thus, the District stood ready to send a certified ed tech III with Safety Care training to the home to work with the Student. It is within the scope of the certification of an ed tech III to provide special instruction for a short-time with indirect supervision by the certified special education teacher responsible for the program.⁶⁶ Ultimately, there was no way to measure the sufficiency of up to four hours per day of in-person instruction in the home as the District did not have an opportunity to implement this interim plan given the parent was unwilling to access the services offered.⁶⁷ The District was compliant.

5. The District's mention of an 'out of district placement' during the school year have

⁶⁰ During the interview with the staff, it was reported that during _____ year, the Student was really trained to use the digital platform and was familiar with it.

⁶¹ See prior written notice from 11/19/2021.

⁶² Ibid.

⁶³ From 10/5/2021 to 10/18/2021 and from 11/3/2021 to 11/19/2021, excluding holidays.

⁶⁴ See Parent letter from 10/27/2021, stating that the remote instruction via Zoom was not going well.

⁶⁵ In the prior written notice from 11/19/2021, the Parent reported that the Student's behavior in the home and community was much better with the changes in _____ medication dosage. However, she also reported that a month prior, _____ escalated again. She added that the Student is inconsistent with problem solving when there is a trigger.

⁶⁶ MUSER X (2)(A)(5); See also MUSER, p. 110, Educational Technician III, required supervision.

⁶⁷ See District's Response.

not been real placement proposals since there is no actual program available (waitlists, denials, etc.) – these non-specific ‘out of district placements’ do not provide the Student a FAPE. **MUSER II (13); 34 CRF 300.101(a); MUSER IX (3)(H). NO VIOLATION FOUND.**

In Maine, Public agencies including schools must provide FAPE in the least restrictive environment. This means that to the maximum extent appropriate children with disabilities are educated with children who are not disabled and special classes separate schooling or other removal of children with disabilities from regular education environment occurs only when the nature or severity of the disabilities such that education of regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.⁶⁸ When a school considers an out-of-unit placement, it must convene an IEP team meeting to discuss the child’s progress and goals. If a placement is not known, another IEP team meeting shall be held to discuss the child’s new placement, with a representative from the new program or facility in attendance.⁶⁹ In this case, when it became evident that there was a substantial likelihood of injury to the Student or others if were to return to school, the District filed an expedited due process hearing.⁷⁰ Beginning at the October 4, 2021 IEP team meeting, the District proposed that an out-of-unit placement be sought, and the parent agreed to the pursuit of referrals for such a placement.⁷¹ In the weeks that followed, the District continued to reach out to various programs, as the Parent completed applications.⁷² The District maintained ongoing communication with the parent about the status of the applications.⁷³ The District stands ready to convene another IEP team meeting when a placement is found. Concurrently, by taking steps to provide services temporarily in an IAES, the District was compliant.

6. The District’s failure since the beginning of the school year to provide the Student with appropriate behavior supports and social skill-building has denied the Student a FAPE. **MUSER II (13); 34 CRF 300.101(a); MUSER IX(3)(C)(2)(a); 34 CRF 300.324.(2)(i). NO VIOLATION FOUND.**

Since May 2021, the team has been implementing the Student’s current IEP. Special education services focus upon specially designed instruction in English Language Arts, math, vocational and life skills, community-based instruction, and Extended School Year Services (ESY). The IEP also includes the related services of: Speech and Language therapy, Occupational Therapy Consultation, Special Transportation, and Consultation with the BCBA. In addition, the Student

⁶⁸ 34 CRF 300.114 (a)(2)(ii) cited in 76 IDELR 21, 126 LRP 40 Quincy Public Schools, Massachusetts State Educational Agency (January 31, 2020).

⁶⁹ MUSER IX (3)(H)

⁷⁰ See the District’s response.

⁷¹ See interim mediation agreement from 10/13/2021; See parent letter from 10/27/2021.

⁷² By, 10/15/2021 the District had to provide applications and the Parent needed to return them by 10/22/2021.

⁷³ See emails between parties.

has supplementary aids including a positive behavior support plan, and adult support as needed.

⁷⁴ The IEP also contains a post-secondary transition plan for the Student. At the IEP meeting, when the parent raised the concern regarding the Student's interactions with girls, the team developed a social story to address this behavior. ⁷⁵ The team agreed by consensus that the determinations made for services and supports were appropriate to meet the needs of the Student.

⁷⁶

At the beginning of the 2021-2022 school year, a student profile summary was presented which mapped out behaviors, triggers, and interventions for the staff to implement in order to support the Student. In addition, the District provided evidence of tools and supplementary aids that are utilized daily in conjunction with the Student's program to support his behavior across settings.

⁷⁷ It was reported that the staff meet weekly to discuss the needs of the Student and others in the classroom. The staff also participate in ongoing professional development, including offerings by the BCBA as a part of the consultation on the IEP. ⁷⁸

Up until the incident at the center of this case, substantial documentation has been furnished suggesting that the behavioral supports and social skill-building provided to the Student have been appropriate. Staff have used modeling, verbal and visual prompts, and social stories to specifically address the Student's behaviors and social skills in the moment, and across school settings. ⁷⁹ The speech and language pathologist has also worked with the Student on functional communication and pragmatic language skills, in individual therapy and in consultation with the teacher for these skills to be applied in the learning environment. ⁸⁰

The District was compliant.

VIII. Conclusion

In this case, no one disputes that the Student's behavior during the incident on September 22, 2021 was more intense and violent compared to past emotional and behavioral presentation. Corroborating evidence across settings (school and home) of significant property damage, as well as the involvement of law enforcement is indicative that the Student presented much greater challenges for the Parent, and the District staff than in the past. The Student's increase in strength and physical size also factor into in the District's inability to support the Student and safely maintain without substantial risk of injury to the Student or others at the school.

⁷⁴ See IEP dated 5/27/2021.

⁷⁵ See exhibit S-6.

⁷⁶ See prior written notice from 5/13/2021.

⁷⁷ See exhibits including behavior intervention plan, behavioral data, classroom and computer use protocols, headphones, the student profile summary.

⁷⁸ See interview notes with District staff.

⁷⁹ See District exhibits.

⁸⁰ See IEP goals and notes from the Speech and Language Pathologist which address the follow skills steps: a. knowing your feelings; b. asking for help; c. asking questions to gather information; d. listening/waiting for appropriate time to talk.

From the time the manifestation determination IEP meeting was held in October 2021, the District was transparent in its assertion that they could not safely manage the student’s behavior in the public school setting any longer, and therefore would move forward with an expedited due process hearing. Although the Parent had the right to reject the proposals brought forth by the District, this left them with limited options in trying to produce an appropriate plan so that the Student’s educational needs could be met satisfactorily. In considering the provision of FAPE, each School Administrative Unit (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] ⁸¹ In order to ensure the appropriate level of programming and support for the Student, the District made a reasonable proposal in the pursuit of an out-of-unit placement.

The District made palpable efforts to try to come to a resolution with the Parent in this matter. As such, with the exception of the violation in allegation # 3 and the need for corrective action as described below, in light of the evidence the District was found to be compliant on all other issues brought forth in this complaint.

VIII. Corrective Action Plan

Children in Maine, ages birth to twenty who have disabilities, may not be excluded from the benefits of services to which they are entitled under the IDEA. 34 CFR 300.34. ⁸² The Department of Education shall ensure the provision of appropriate services regardless of the nature and severity of the child’s disability or developmental delay. ⁸³ Federal and State law provide that all children with disabilities have available to them a free appropriate public education (“FAPE”) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. See 34 CFR 300.101; 34 CFR 300.531; ⁸⁴ A district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. ⁸⁵

⁸¹ MUSER X (2)(B)

⁸² MUSER XI.

⁸³ MUSER I (2).

⁸⁴ MUSER I.

⁸⁵ *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988 (2017).

A failure to implement a student's individualized education plan can result in a denial of FAPE.
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With regard to allegation #3, a gap in the Student's educational services occurred between October 5, and November 19, 2021. On November 19, 2021, an offer of temporary in-person services in an IAES (the home environment) was made. This offer was rejected by the parent. Regardless of the Parent's unwillingness to accept this proposal, the offer of an interim solution by the District was still not the same as the provision of FAPE. As a result of the combined impact of both of these lapses in services, the District must convene an IEP meeting and work towards consensus with the Parent to establish the Student's academic and functional needs. Then, the IEP team members need to work towards consensus regarding the provision of compensatory educational services. The Parent must be given an opportunity to provide input about the amount and scheduling of the compensatory services. The IEP team shall plan to provide these services during the school year and/or during the summer. This IEP team meeting, and the provision of compensatory educational services as determined by the IEP team need to occur by December 1, 2022. Should the student begin attending a program in an out-of-unit placement, the District will work with that program to choose the providers and send documentation of the provision of these services to the Department by December 1, 2022.

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Leigh Lardieri, Ph. D.
Complaint Investigator

⁸⁶ Ibid.