

Complaint Investigation Report

Complaint # 22.032C

Report Date: March 7, 2022

Complaint Investigator: Leigh Lardieri

Date of Appointment: January 11, 2022

I. Identifying Information

Complainants: Parent

Respondent:

Student:

II. Summary of Complaint Investigation Activities

On January 7, 2022, the Maine Department of Education received this complaint. The complaint investigator was appointed on January 11, 2022. Therefore, the current investigation covers the period of January 7, 2021 to present. See MUSER XVI(4)(B)(3). The complaint investigator received 325 pages of documents from (“the District”). The investigator also received 8 pages of documents from the parent (“the Parent”)¹. On February 2, 2022 the Parent and a family member² were interviewed. The Pediatric Care Manager was interviewed on February 3, 2022. On February 7, 2022 the following staff were interviewed from the District: the Special Education Director, (“Special Ed Director”) the licensed clinical social worker (“Social Worker”), the Principal, and the Special Education Teacher (“Special Ed Teacher”).

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 -old receiving special education services under the disability category of Autism. In September 2021 the Student was suspended from school on two occasions for disruptive behavior and threatening staff. After the second suspension the Parent decided to keep the Student home until a meeting could be scheduled. An IEP meeting was held on October 6, 2021. It was determined that the Student would work remotely for approximately six weeks.³ The plan was to reconvene before Thanksgiving and review the Student’s progress.

¹ Although the stepfather was also named as a complainant in the request, the Parent in this case refers to the mother of the Student.

² The family member agreed to be interviewed in a supportive role for the Parent.

³ The option to work remotely was available to all school students under certain circumstances.

Although the Parent had strong concerns about the Student working remotely, she agreed to try this plan. On November 4, 2021 the Parent reached out to the District requesting an IEP meeting be held sooner than Thanksgiving.⁴ On November 15, 2021 it was determined that the Student would return to school for a partial day of instruction. The student worked with an Educational Technician (Ed Tech III)⁵ on core subjects for two hours per day. The Parent also requested that the District consider an out-of-unit placement⁶ for the Student. The team determined that placement in a more restrictive setting would be explored.

In December, two IEP meetings were held where members from the out-of-unit program were present and a change of placement was determined.⁷ The Student continued to attend school on a partial day schedule until January 18, 2022 when began attending a behavioral day treatment program in the out-of-unit placement.

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 Memorandum was sent to the parties by the complaint investigator on January 14, 2022 alleging four violations of MUSER. A revised draft allegations memorandum alleging five violations of MUSER was sent to the parties on January 21, 2022. A telephonic Complaint Investigation meeting was held on January 18, 2022.

IV. Allegations

The following MUSER violations are alleged by the present complaint:

1. The school staff and administration have denied the student a free and appropriate public education (FAPE) by not following the IEP. Specifically, the complainant alleges that the goals are not being addressed and accommodations are not being implemented as written in the IEP. **MUSER II (13); 34 CRF 300.101(a); MUSER IX (3)(B)(3).**
2. The student is being denied FAPE in the least restrictive environment (LRE). The school has made a change in placement by secluding the student and providing two hours of one-on-one tutorial instruction per day by an Educational Technician II on an abbreviated day schedule. **MUSER II (13); 34 CRF 300.101(a); MUSER II (1); MUSER VI (2)(I); MUSER X (2)(A)(4); MUSER VI (L)(1); MUSER X (2)(B).**
3. The school reduced the amount of the tutorial instruction time from three hours per day to two hours per day without input from the parent. **MUSER VI (2)(H)(I); 34 CFR**

⁴ Although the remote instruction was going well initially, by 11/4/2021, the Student was engaging in active refusal, aggression, and defiance when presented with remote assignments and tasks.

⁵ See the Ed Tech’s certification included in the documents provided by the District.

⁶ See email from the Parent dated 11/4/2021.

⁷ See prior written notices from 12/8/2021 and 12/16/2021. On 12/16/2021, the Student was also home due to another suspension.

300.322; 34 CFR 300.324 (a)(4).

4. The student was denied FAPE when _____ was suspended for behaviors directly related to disability. **MUSER II (13); 34 CRF 300.101(a); MUSER XII (A)(B)(C)(D); 34 CFR 300.530.**

5. The student is being denied FAPE. During the time _____ is attending school, the student is not receiving two full hours of instruction from _____ classroom teachers, special education teacher, or the ed tech II. **MUSER II (13); 34 CRF 300.101(a).**

V. Factual Findings

1. The Student had been attending school in the District since _____. _____ was receiving special education services as a student with Autism. _____ IEP included Consultation services for thirty minutes per month between the special education and general education teachers; Social Work Services for thirty minutes per week; and Behavior Consultation three hours per year.
2. In January 2020, evaluation results were presented as part of the Student's triennial review. The psychoeducational evaluation report yielded the following:⁸ The Student demonstrated average to extremely high average intellectual ability as measured by the Wechsler Intelligence Scale for Children, 5th edition (WISC-V). _____ academic achievement test scores, as measured by the Wechsler Individual Achievement Test, 3rd Edition (WIAT-III) were in the average to above average range in reading, math, and written expression. Behavior ratings demonstrated an Autism index standard score in the very likely range. In addition, the Parent endorsed social awareness scores in the severe range, whereas the teacher endorsed scores in the normal, mild and moderate ranges.
3. Multiple sources have reported that academically, the Student is extremely bright and capable. When the Student is in a "good space" emotionally and behaviorally, _____ can be likable, funny, and can carry on a conversation. When calm _____ identifies _____ triggers and coping strategies.⁹
4. Multiple sources have also reported that the Student has a history of difficult and challenging behaviors across settings (home and school). The Student has struggled with self-regulation when presented with non-preferred tasks (e.g., chores or classwork), or in situations where is not in control. When escalated, the Student displays irritability, posturing, makes verbal threats, and at times is physically aggressive. During these episodes, _____ is unable to use coping strategies.¹⁰ In the fall of 2020-21, the Student transitioned to the _____ school as a _____. The Parent reported it was a difficult transition, and that she had to pick up the Student a couple of times. By March 2021, out of concern for the safety of family members,

⁸ See psychological evaluation from January 2020 completed by _____
Examiner- Specialist

Certified Psychological

⁹ See interview notes with Parent, outside provider, and school staff.

¹⁰ Ibid.

the Parent sought residential placement for the Student as aggressive behavior, incidence of self-injury, and attempts to run away from home became more frequent and intense.¹¹

5. The Student was initially placed in a residential setting in Maine. By May 2021, the Parent was able to secure a placement closer to home, where she could visit a couple of times per week. While in this placement, the Student had access to a behavioral day treatment program where had specially designed instruction in reading, math, and writing along with support services.¹² In early June 2021, the IEP team convened to review the Student's program.¹³ It was determined that the Student would continue with day treatment level of programming, in addition to adding some accommodations.¹⁴ An Occupational Therapy (OT) evaluation was also reviewed. The team also discussed the transition that would occur when the Student was discharged back to home.
6. Although the Student had access to the summer day treatment programming,¹⁵ prior to scheduled release from the residential placement, the Parent discharged the Student and brought home for the summer. She reported that behavior was better, was using coping strategies, and was not aggressive towards family members.¹⁶ The Parent also reported that Section 28 services started.¹⁷
7. By the end of the summer, the Parent reached out to the District requesting an IEP meeting be held to prepare for the Student's transition back to the school.¹⁸ On August 19, 2021, a meeting was convened. It was determined that the Student would have the following services on the amended IEP:¹⁹ Consultation services for thirty minutes per month between the special education and general education teachers; Social Work Services for thirty minutes per week; and Behavior Consult three hours per year. Goals would focus upon use of coping strategies, work completion, and cooperative work with peers. Additional accommodations were also added to the amended IEP.²⁰
8. By mid-September, the Student's behavior intensified to the point that was not able to maintain or use appropriate coping strategies in class. behavior was

¹¹ See Parent interview notes.

¹² See Parent interview notes.

¹³ See prior written notice from 6/7/2022.

¹⁴ Ibid. At the time, it was reported by staff that the day treatment setting was appropriate for the student.

¹⁵ See prior written notice from 6/7/2022.

¹⁶ See Parent interview notes.

¹⁷ These services include weekly counseling services, and BHP support in the home. The BHPs also go on outings in the community with the Student.

¹⁸ See prior written notice from 8/19/2021.

¹⁹ See prior written notice and amended IEP dated 8/19/2021.

²⁰ Ibid. These amendments included recommendations from the OT evaluation, including providing a space for the Student to work with an outside OT during the school day. Beyond this, there was no other inquiries made by the Parent regarding the OT evaluation at that time.

increasingly more disruptive.²¹ Eventually [redacted] was suspended on two occasions for threatening staff.²² After the suspension on September 27, 2021 the Parent decided to keep [redacted] home until another IEP team meeting could be held.²³

9. On October 6, 2021 the IEP team had an in-depth discussion about the Student's maladaptive behaviors. The Special Ed Director asked when the BCBA, who was not in attendance²⁴, would be observing the Student. The Parent stated she had an FBA from the Student's previous placement. The Special Ed Director requested a copy to be reviewed by the BCBA.²⁵ The team determined that the Student would work remotely for a few weeks, and that the team would reconvene before Thanksgiving to review [redacted] progress.²⁶ The District asserted that while working virtually in the past, the Student successfully accessed the curriculum.²⁷ Although the Parent was not in complete agreement, she was willing to try this plan for a short period of time.²⁸

The student used the Google classroom platform as [redacted] had before to access [redacted] classes and assignments.²⁹ The Parent gave the student support during this time, assisting with reading and scribing. She reported that the school staff were good about answering her questions returning her emails quickly if she had questions. It was determined that this plan would continue until Thanksgiving break and then the team would reconvene and review the Student's progress. During this time, the Social Worker met with the student virtually for thirty minutes per week.³⁰

10. It was reported that for the first couple of weeks the student was doing well with the remote learning. As the Student's behavior started to deteriorate, the Parent requested an IEP meeting sooner than had been originally anticipated.³¹ On November 15, 2021 the team met to review the Student's progress. The Parent stated that the Student's behavior was becoming more threatening and aggressive at home. The team had another robust discussion about the Student's behaviors in school and at home. At the IEP meeting it was determined that the placement requested by the parent would be sought.³² It was also

²¹ In the email dated 9/17/2021, it was noted that during math class the Student was so disruptive that it was upsetting for other students. In Science class, [redacted] was asked to leave and did so. As [redacted] was banging on the door to get back into the room, three students were crying.

²² According to the student incident reports, on 9/16/2021 the student was suspended for 1 day and again on 9/27/2021 for 2 days.

²³ As the parent was making a request for the IEP meeting, The District planned to set up a meeting as the Student was completing a 10-day trial in a small group setting outside of [redacted] classes.

²⁴ No evidence of an excusal for this IEP team member (area being discussed) was documented.

²⁵ See prior written notice from 10/6/2021.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ The student had access to recorded video lessons and assignments.

³⁰ See social work service documentation dated 2/18/2022.

³¹ In the email sent on 11/4/2021, the parent also asked that the team consider placement in a specific out-of-unit behavioral day treatment program for the Student.

³² See prior written notice from 11/15/2021.

determined that the Student would attend school in-person for two hours per day where would receive Ed Tech support to work on class assignments.³³ Transportation was also arranged for this timeframe. The Social Worker continued to meet with the Student for thirty minutes per week and if needed, additionally when the student was escalated.³⁴ In addition, the team proposed a functional behavioral assessment (FBA) be completed by the BCBA who was not in attendance at the meeting.³⁵

11. Later that day, the Parent emailed the Special Ed Director stating that she was going to try to have the Student admitted to hospital where could attend their educational program until was ready to go to an out-of-unit placement. The Special Ed Director was amenable to this proposal, however she indicated that the determinations made at the IEP meeting would still stand, if needed. Two days later, the Parent reached out again to say the Student was not going to be able to attend the program at Hospital.³⁶ Instead the Student began in-person programming on a reduced schedule on November 22, 2021.
12. The week of November 22, 2021 the Student attended three days of in-person instruction for three hours per day. Almost immediately, the Special Ed Director reached out to the Parent to explain that after Thanksgiving the Student would attend for two hours per day, as agreed upon by the IEP team.³⁷
13. On Monday November 29, 2021 the student began attending school for two hours per day. This programming went on for several weeks. During this time the Ed Techs³⁸ working with the Student attempted to have attend as many of general education classes as could tolerate.³⁹
14. The Special Education Teacher and Ed Techs then tried an alternative workspace with the student on the same floor near the classrooms in the wing. This plan quickly needed to be adjusted. It was reported that the proximity to the busy classrooms became too overwhelming. Due to the behaviors that had already occurred, the Student's peers were not comfortable stepping out into the hallway, if the Student could be heard slamming objects, kicking lockers or being verbally aggressive.⁴⁰

³³ See amended IEP from 11/15/2021. This was listed in Section 6, Supplementary Aids and Services as “[Name of Student] will have an abbreviated day from 8:00-10:04 in the general education setting, daily.”

³⁴ See social work documentation dated 2/18/2022.

³⁵ No evidence of an excusal for this IEP team member (area being discussed) was documented.

³⁶ See email from the Parent dated 11/17/2021.

³⁷ See email from the Special Education Director to the Parent dated 11/23/2021. The time difference for the first three days was attributed to a miscommunication with the transportation department. The IEP team had determined that the Student would attend 2 hours per day of in-person instruction as documented in the prior written notice on 11/15/2021.

³⁸ At one point, two Ed Techs would switch off to work with the Student.

³⁹ The Parent and District agreed to have a rotating block schedule so the Student would be able to access all of classes at some point during the week.

⁴⁰ It was reported that some students were afraid to leave the classroom to go to the bathroom.

Eventually the Student moved downstairs with one-to-one support to work in a multipurpose conference room near the office. Each day would go to the cafeteria get breakfast and eat it in that space with the Ed Tech. She would go over daily schedule where was given choices of assignments, and in what order preferred to complete them. Over the next few weeks, the Student engaged in a combined pattern of escalation, active work refusal, throwing objects, and threatening behavior on 70% of the days attended.⁴¹ Observations from the FBA revealed similar results with respect to the overall frequency of the same behaviors.⁴²

15. On December 8, 2021 another IEP meeting was convened for the purpose of discussing a possible change in placement due to the Student's ongoing difficult and challenging behavior. The BCBA was not in attendance at this meeting.⁴³ Staff from the out-of-unit placement attended the meeting.⁴⁴ It was determined that the Student would attend the day treatment program, given a proposed start date of January 18, 2022.⁴⁵ It was also determined the Student would continue on two hour per day schedule.⁴⁶ The Parent and Student scheduled a visit to the out-of-unit placement for December 9, 2021.

16. On December 16, 2021 the IEP team convened another meeting at the Parent's request. She had several concerns she wanted the team to address.⁴⁷ The Parent also requested that the District consider increasing the Student's time to three hours per day, as there was still some time until start date at the out-of-unit placement. The District's response to this request was to continue with the two hours per day due to ongoing safety concerns, highlighted by another incident resulting in a three-day suspension for threatening and attempting to injure staff.⁴⁸

17. In January 2022, the Student continued to attend the school for two hours per day until transition to the out-of-unit placement on January 18, 2022.

VI. Determinations

The following MUSER violations are alleged by the present complaint:

1. The school staff and administration have denied the student a free and appropriate public education (FAPE) by not following the IEP. Specifically, the complainant alleges that

⁴¹ See daily notes from the ed tech dated 11/22/2021 to 1/12/2022. From 12/14/2021-12/16/2021 the Student was not in school due to a three-day suspension.

⁴² See observations conducted on 12/9/2021, 12/10/2021, 12/13/2021, and 12/17/2021 for 7.75 hours in the small group conference room and on transportation. The Student had a total of 125 negative behaviors during this time, as documented in the FBA report dated 1/12/2022.

⁴³ No evidence of an excusal for this IEP team member (area being discussed) was documented.

⁴⁴ See prior written notice from 12/8/2021.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ See prior written notice from 12/16/2021 where concerns about accommodations, and services were discussed.

⁴⁸ See prior written notice from 12/16/2021, and suspension letter from the principal dated 12/17/2021.

the goals are not being addressed and accommodations are not being implemented as written in the IEP. **MUSER II (13); 34 CRF 300.101(a); MUSER IX (3)(B)(3). NO VIOLATION FOUND.**

Under State and Federal law Maine students with disabilities have a right to a free and appropriate public education.⁴⁹ In addition, in 2017, the Supreme Court ruled that “a child’s program must be appropriately ambitious in light of a student’s unique circumstances.”⁵⁰ Historically, this Student’s academic progress has been a strength. Corroborating evidence suggests that the student’s academic achievement on individual standardized assessments, group achievement testing, and curriculum-based assessments showed average to above average performance compared to typically developing peers.⁵¹ Thus, this Student’s IEP did not require the provision of services for any academic needs. Instead, the IEP included consultation, and social work services, with goals and accommodations appropriately focused upon functional needs and deficits. When the Parent brought forth a list of concerns about the implementation of the IEP, the Special Ed Director addressed them at an IEP meeting.⁵²

Through the provision of consultation, the special education teacher collaborated with the general education teachers, and ed techs working with the Student. had opportunities to participate in classes with support when was able to tolerate the large group general education setting. work completion goal was being addressed. In addition, given weekly social work services the Student’s goals which focused upon practicing and using coping strategies, and cooperation with peers were being addressed by a provider who has worked with the student since . Evidence presented throughout this case suggests that the staff were flexible and supportive in working with the Student’s challenging behaviors.⁵³ They allowed the student choices and invited participation and ownership into making changes to behavior plan, and reward system. In response, it is well documented that the Student would routinely decline to avail of accommodations (e.g., taking breaks).⁵⁴ The staff maintained open communication with the Parent.⁵⁵ They utilized their combined skills and expertise,⁵⁶ made shifts in their practices, and yet the Student’s capacity to self-regulate and maintain behavior continued to deteriorate.

The District was compliant. However, it should be noted that although not substantive enough to violate FAPE, procedural errors associated with the implementation of the BCBA consultation occurred. First, there was neither evidence of the attendance of the BCBA at the IEP meetings

⁴⁹ MUSER II (13)

⁵⁰ *Endrew F. v. Douglas County School District* (March 22, 2017).

⁵¹ See results on the WIAT-III, NWEA, and standards-based grades in English Language Arts, and Math.

⁵² See prior written notice from 12/16/2021.

⁵³ See documentation provided by the District.

⁵⁴ *Ibid.*

⁵⁵ See email exchanges between the staff and Parent.

⁵⁶ All staff working directly with the student were trained in de-escalation strategies.

starting from October 6, 2021 through December 8, 2021, nor indications of excusals of the BCBA for non-attendance (area being discussed) at these meetings.⁵⁷ In addition, although there are social work and consultation goals in the IEP, it is not clear if there is a goal⁵⁸ specifically connected to the BCBA related service to address more explicitly the behaviors that negatively impacted the Student's ability to successfully access education in the least restrictive setting.

2. The student is being denied FAPE in the least restrictive environment (LRE). The school has made a change in placement by secluding the student and providing two hours of one-on-one tutorial instruction per day by an Educational Technician II on an abbreviated day schedule. **MUSER II (13); 34 CRF 300.101(a); MUSER II (1); MUSER VI (2)(I); MUSER X (2)(A)(4); MUSER VI (L)(1); MUSER X (2)(B). NO VIOLATION FOUND.**

On November 15, 2021 when the IEP team determined that the Student would return to a reduced schedule for two hours per day with Ed Tech support in a small group setting, it was implemented as an accommodation on the IEP.⁵⁹ This allowed flexibility for the Student to attend general education classes with support for as much time could tolerate, while having the alternative of a quieter workspace in which to work should the larger classroom environment become too overwhelming.⁶⁰ Indeed, the evidence in this case suggested that the Student required more and more time in the alternate workspace to self-regulate, deescalate, and maintain safety.⁶¹ continued to receive social work and consultation services, as well as accommodations whether was in the large or small group setting.⁶² In the delivery of instruction to students in small group settings, Ed Tech IIs and Ed Tech IIIs are authorized to conduct one-on-one or small group instruction with indirect supervision.⁶³ In this case, one of the staff working with the Student had Ed Tech III certification, while the other had Special Ed Teacher certification.⁶⁴ The District was compliant.

Procedurally, as it relates to this allegation, it would have been sensible to provide a detailed explanation of the implementation of an abbreviated school day in November when it was first initiated.⁶⁵ However, this oversight did not substantively change what the Student was receiving for in-person support during time in school.

⁵⁷ MUSER VI (2) (F); See also prior written notices from 10/6/2021; 11/15/2021; 12/8/2021; The BCBA did attend the meeting on December 16, 2021 indicating that she had started observations for the completion of the FBA.

⁵⁸ MUSER X (2)(A)(1).

⁵⁹ See prior written notice and amended IEP from 11/15/2021.

⁶⁰ When initially returned to in-person learning, the Student was able to eat breakfast in homeroom. The Student was encouraged to join peers for a field trip to the school, but declined.

⁶¹ See documentation from the District. As the Student's behaviors became more disruptive, the general education teachers had to evacuate the classrooms out of a concern for safety because the Student would refuse to leave the room.

⁶² See District documentation, and staff interviews.

⁶³ MUSER X (2)(A)(6) and p. 119

⁶⁴ See certification documents provided by the District.

⁶⁵ See email prior written notice from 11/15/2021; 12/8/2021; 12/16/2021.

3. The school reduced the amount of the tutorial instruction time from three hours per day to two hours per day without input from the parent. **MUSER VI (2)(H)(I); 34 CFR 300.322; 34 CFR 300.324 (a)(4). NO VIOLATION FOUND.**

As indicated in the previous allegation, the Student was receiving Ed Tech support in a small group setting as an accommodation for two hours per day as determined at the IEP team meeting attended by the Parent. This was documented in the prior written notice on November 15, 2021.⁶⁶ When the Student started new schedule, for the first three days (November 22-24) was picked up to go home by transportation an hour later, at 11:00 am instead of the agreed upon pick up time of 10:00 am. This was due to a miscommunication with the transportation department, rather than a unilateral reduction in time initiated by the District outside of the IEP team process without Parent input.⁶⁷ The Special Ed Director notified the Parent six days in advance of the Student's scheduled return to school on November 29, 2021 after the Thanksgiving break.⁶⁸ The District was compliant.

4. The student was denied FAPE when was suspended for behaviors directly related to disability. **MUSER II (13); 34 CFR 300.101(a); MUSER XII (A)(B)(C)(D); 34 CFR 300.530. NO VIOLATION FOUND.**

There is no dispute that the behaviors for which the Student was suspended were directly related to disability.⁶⁹ Significant evidence from multiple sources documented the frequency and intensity of the Student's challenging behaviors across settings (home and school).⁷⁰ In Maine, students with disabilities can be suspended for up to ten days for violations of the code of student conduct.⁷¹ In this case, the number of suspensions for this Student did not exceed ten days.⁷² Upon return from suspensions, the District responded by continuing to provide services for the Student while also considering the safety and well-being of the other students, and staff in the school. The District was compliant.

5. The student is being denied FAPE. During the time is attending school, the student is not receiving two full hours of instruction from classroom teachers, special education teacher, or the ed tech II. **MUSER II (13); 34 CFR 300.101(a). NO VIOLATION FOUND.**

When the Student was attending school, the staff with whom worked made ongoing efforts to support behavior and social-emotional well-being, assisting the Student to persevere for as

⁶⁶ This prior written notice was mailed home on 11/15/2021.

⁶⁷ See email from the Special Ed Director dated 11/23/2021.

⁶⁸ Ibid.

⁶⁹ See evidence from documents and interviews with the parties.

⁷⁰ Ibid.

⁷¹ MUSER XVII (A)(B)(1); Had the Student been suspended for 10 days a manifestation determination IEP meeting would have been required. MUSER XVII (1)(E).

⁷² See attendance records provided by the District.

long as possible within the two-hour timeframe. These efforts have been well-documented in this case.⁷³ In addition to the work completion time, other tasks and activities were built into the two hour block. The Student was given time to eat breakfast and snacks. was also given drawing time to start day. Each day, staff would review the assignments from general education classes with the Student, offering the option of completing tasks in the order chose. When presented with the non-preferred tasks of reading and writing, the staff read with and scribed for As the Student completed assignments, received positive reinforcement per behavior plan. Whether was in a calm state or in a state of agitation, the Student was given opportunities to take breaks throughout day, which frequently declined.⁷⁴ When the Student was engaged in active refusal, or verbal aggression, the staff avoided power struggles and waited out. Sometimes would come around and get back to work, and other times would continue the verbal negotiation to avoid work. In the end, the Student earned grades demonstrating met or exceeded the standards in academic classes (including gifted and talented class) for the first trimester, and partially met the standards for physical education class.⁷⁵ The District was compliant.

VII. Conclusion

This case involves a with a history of high academic achievement coupled with behavioral struggles in both the home and school settings. Substantial evidence suggests that to mitigate her child's increasingly difficult and challenging behaviors, the Parent took steps to secure in-home services and ultimately residential placements in order to provide the Student with direct behavioral support to keep her child, and her family safe.

As the Student transitioned back to the school at the start of the 2021-22 school year, by all accounts, the District and Parent worked collaboratively to put in place programming for the student that would support academic progress in the general education curriculum and meet functional needs in light of circumstances. From August 2021 through December 2021, five IEP meetings were held to review the Student's programming, with a particular focus upon amending practices to respond to ever-changing and unpredictable social, emotional, and behavioral presentation. At every turn, the District maintained ongoing communication with the Parent. Staff were responsive and shifted their practices by implementing the Parent's suggestions, responding to questions about the Student's programming and implementation of the IEP accommodations. Staff also pivoted in their implementation of the behavior plan multiple times, in response to the Student's requests and suggestions. Ultimately the Student's behavior deteriorated to such a point that programming for in the school setting was unsustainable. Subsequently, the IEP team agreed that the remedy of an out-of-unit placement at

⁷³ During the interviews with the staff, there were multiple occasions when the Student was violating the code of conduct where suspension was not issued.

⁷⁴ See staff interview notes, and daily behavior logs.

⁷⁵ See report card for trimester 1, 2021-22 school year.

the Parent's request was the appropriate setting for the Student, which is where has been since January 18, 2022.

As mentioned previously, the procedural errors surrounding the implementation of the behavioral consultation as a related service did not meet the threshold of a substantive violation of FAPE. However, it should not be overlooked that the errors had the potential to cause an impediment to FAPE. The presence of the BCBA at the IEP meetings might have allowed for possible guidance of a critical nature to be shared with the team.

All things considered, in light of the evidence as stated above, the District was found to be compliant. No violations were found with the allegations brought forth in this complaint.

VIII. Corrective Action Plan

As this complaint investigation has found no violations of MUSER, no corrective action is required.

Dated: March 7, 2022

Leigh Lardieri, Ph. D.
Complaint Investigator