

Complaint Investigation Report

Complaint # 23.001C
Complaint Investigator: Leigh Lardieri

Report Date: September 2, 2022

Date of Appointment: July 13, 2022

I. Identifying Information

Complainant: _____, Parents

Respondent:

Case name: Parents v.

Student:

II. Summary of Complaint Investigation Activities

On July 6, 2022, the Maine Department of Education received this complaint. The complaint investigator was appointed on July 13, 2022. Therefore, the current investigation covers the period of July 6, 2021 to present. See MUSER XVI(4)(B)(3). The complaint investigator received 302 pages of documents from MSAD 33 (“the District”). The investigator also received 222 pages of documents from the parents (“the Parents”). On August 10, 2022 the Parent¹ was interviewed. On August 15, 2022 the following staff were interviewed from the District: the Special Education Director, (“Special Ed Director”) the Principal, and the licensed, certified Physical Therapist (“Physical Therapist”).² On August 16, 2022 the Student’s family practice Medical Doctor (“Doctor”) was interviewed. On August 23, 2022 the Outpatient Physical Therapist was interviewed.

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

III. Preliminary Statement

The Student is a _____-old,³ who will be entering _____ grade for the 2022-23 school year. _____ receives special education services under the disability categories of Other Health

¹ Although both parents are named as complainants, only the Student’s mother was interviewed.

² See copy of the active license to practice physical therapy, State of Maine (p.83 of the District exhibits); See also the Department of Education active CHRC endorsement (p.83 of the District exhibits).

³ The Student turns _____ in September.

Impairment⁴ and Specific Learning Disability⁵. The Student transitioned to _____ in September 2021, receiving occupational therapy (OT) and speech and language services under the disability category of Speech and Language Impairment.⁶ During the summer of 2021, The Student was due to receive compensatory services which carried over from _____ time spent receiving services associated with _____ Individual Education Program (IEP) from _____.

During the fall of 2021 the classroom teacher expressed concerns about the Student's academic progress, as well as noting some behavioral challenges the Student was exhibiting in the classroom. In January 2022, the teacher completed a referral for additional evaluations to understand if there were further issues that needed to be addressed in the child's IEP.⁸ In early March 2022, the IEP team held an annual review meeting, and determined that additional evaluations would be completed to assist the team in determining the Student's present levels of academic and functional performance.

On March 30, 2022 the Department of Education (DOE) received a request for a complaint investigation filed by the Parents against the District alleging violations of the Maine Unified Special Education Regulations (MUSER). On May 13, 2022, the parties engaged in mediation and reached an agreement.⁹ On May 16, 2022 the request to withdraw the complaint investigation was received by the DOE.¹⁰

The present complaint was filed by the Parents, alleging that the District has violated MUSER. After the receipt of the Parent's complaint, a Draft Allegations Memorandum was sent to the parties by the complaint investigator on July 20, 2022 alleging three violations of MUSER. A revised draft allegations memorandum was sent to the parties on July 21, 2022. A telephonic Complaint Investigation meeting was held on July 21, 2022.

IV. Allegations

The following violations are alleged by the present complaint:

1. The agreed upon mediation agreement from May 13, 2022 is not being followed by the District. **MUSER XVI 2 B; 34 CFR 300.506(b); MUSER XVI 4 (A)(1)(d).**

⁴ Primarily due to a medical diagnosis of _____.

⁵ See prior written notice dated 6/14/2022.

⁶ See IEP dated 6/14/22.

⁷ As reported during the interviews with the parties.

⁸ The documents used by the teacher were the initial referral forms provided by the District.

⁹ See signed agreement dated 5/13/22.

¹⁰ See signed withdrawal form dated 5/13/22.

2. The Behavioral Assessment Scale for Children (BASC) as administered did not accurately measure the Student’s true levels of functioning. **MUSER V(2)(C)(1)(b)(c)(d)(e); 34 CFR 300.304(c).**

3. The physical therapy evaluation as administered did not accurately measure the Student’s true level of functioning. **MUSER V(2)(C)(1)(b)(c)(d)(e); 34 CFR 300.304(c).**

V. Factual Findings

1. The Student lives with the Parents and two older siblings. The Parent shared the following:¹¹ the Student is very unique child. The Parent stated that the Student has issues with pain levels. is not very coordinated and is accident prone. The Parent also described the Student as being a “little ball of fun.” likes to play by . The family previously lived in state and before moving to Maine.
2. In September 2021, upon entering the student qualified for special education services under the disability category of Speech and Language Impairment.¹² received 2×30 minutes per week of direct speech and language therapy. was also receiving Occupational Therapy services one time a month for 1 hour.¹³
3. On September 14, 2021¹⁴, the District IEP team met with representatives and the Parents to discuss compensatory services as the Student did not receive the speech and language services was entitled to in the summer of 2021. The team determined that they would reconvene in the spring and make that determination based upon progress as reported by the Speech and Language Pathologist.¹⁵
4. Around the same time, the Student was just completing outpatient physical therapy services.¹⁶ was receiving rehabilitative services for a broken leg, and was discharged on September 16, 2021 as had met all of goals for Outpatient PT.¹⁷ was also

¹¹ As reported during the Parent interview on 8/10/22.

¹² See IEP dated 3/20/21.

¹³ Ibid.

¹⁴ See prior written notice dated 9/14/22.

¹⁵ Ibid.

¹⁶ As reported during the interview with the Outpatient Physical Therapist on 8/23/22: She explained that she has worked in the field for 24 years, but she is not a Pediatric Physical Therapist. She described the Student as being very active. She noted that during their therapy sessions, the Student did just fine. She also reported that the medical doctor had diagnosed the Student with uneven leg length. This therapist explained that although uneven leg length is not something that is curable in an individual, the effects can be mitigated by the use of orthotics, or “inserts” in the individual’s shoes. When asked if she had ever observed the Student in the school setting, she replied that it was not something that Outpatient Physical Therapists would do.

¹⁷ See PT Discharge Summary dated 9/16/21.

receiving medical care from a family practice medical doctor who diagnosed with

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5. Academically, the Student was demonstrating inconsistencies with reading writing, and math skills.¹⁹ It was also noted that the Student was growing increasingly frustrated by the academic tasks presented in the classroom. On October 27, 2021, the Parent gave signed consent for the Student to be able to participate in Title I interventions for English Language Arts (ELA) and math.²⁰ Of note is that the Student also received Title I services for reading and math during year.²¹
6. In November 2021, reports were issued for the Student's academic progress in general education class, as well as for progress on Speech and Language goals. Overall, the academic performance report indicated that the Student was on pace with all of semester one skills, (including partially met standards in some areas of ELA and math) with strengths in visual and performing arts and habits of work and weaknesses in reading comprehension and writing.²² On the IEP, it was reported that the Student made adequate progress on speech and language goals measuring grammar/syntax and intelligibility.²³
7. On January 18, 2022 the general education teacher made a special education referral.²⁴ In the referral, The teacher noted the following:²⁵

The Student was demonstrating overall inconsistent academic progress, making it difficult to determine what information was being retained. Although behavioral concerns were not as significant the Student was becoming easily frustrated and would at times refuse to work.
8. On January 28, 2022, the Student's progress on the speech and language goals were reported for a second time. Again it was noted that that the Student made adequate progress on the goals measuring grammar/syntax and intelligibility.²⁶

¹⁸ As reported during the interview with the medical doctor on 8/16/22: The doctor reported that she sees the Student for routine well-care. She noted that the Student was seeing other specialists for:

. The doctor noted that the Student appears to be pretty well, and seems well taken care of, but motor skills are "not that great." When asked if she had ever observed the Student in the school setting, she replied that it was not in the scope of practice, and also due to Covid, there were restrictions on who was able to enter the school.

¹⁹ As reported during interviews with the staff on 8/15/22.

²⁰ See District Title I letter dated 10/27/21. The Student received two hours per day of services as reported by the staff.

²¹ See pages 181-183 of District Documents.

²² See the District Academic Performance Report for the 2021-22 school year.

²³ See progress notes from the Speech and Language Pathologist dated 11/10/21.

²⁴ See letter from the teacher dated 1/18/22.

²⁵ Ibid.

²⁶ See progress notes from the Speech and Language Pathologist dated 1/28/22.

9. On March 2, 2022, an annual IEP meeting was held. The following was reported:²⁷ the Student made adequate progress on speech and language goals. The Speech and Language Pathologist reported that the Student was making good gains but was still working on the skills related to articulation and grammar goals. The classroom teacher indicated that although she had seen progress in speech, the Student continued to demonstrate inconsistencies in academic skills. The team determined that the Student would continue to receive speech and language services 2 x 30 minutes per week in a small group.²⁸
10. On March 23, 2022 the District sent home a parental consent for evaluation form.²⁹ It was returned to the District signed by the parent on March 27, 2022.³⁰ The form listed the following for completion:³¹Academic/developmental testing; Psychological evaluation; Physical therapy evaluation; Other: Behavioral/ Social Emotional.
11. As already mentioned, on March 30, 2022 the DOE received a request for a complaint investigation filed by the Parents against the District alleging violations of MUSER. On May 13, 2022, the parties engaged in mediation and reached an agreement.³² On May 16, 2022 the request to withdraw the complaint investigation was received by the DOE.³³
12. On May 20, 2022, the District met with to discuss the compensatory services, if needed that would be provided to the Student. It was agreed upon that the Student would receive six hours of speech and language compensatory services.³⁴
13. By the end of May/early June 2022, the evaluations requested had been completed.³⁵ An IEP meeting was scheduled for early June. Prior to the IEP meeting, the District and Parent both discovered there was an error in the completion of the BASC as reported in the Psychoeducational evaluation report.³⁶ The District and Parents mutually agreed to move forward the with the IEP meeting without the corrected information from the BASC.³⁷

²⁷ See prior written notice dated 3/2/22.

²⁸ See prior written notice dated 3/2/22 and IEP dated 3/10/2022-3/9/2023.

²⁹ Although the form indicates that evaluations were discussed on 3/2/22, this is not indicated in the prior written notice from 3/2/22.

³⁰ See parental consent for evaluation dated 3/23/22.

³¹ Ibid.

³² See signed agreement dated 5/13/22.

³³ See signed withdrawal form dated 5/13/22.

³⁴ As reported during the staff interviews on 8/15/22. See also the prior written notice dated 5/20/22.

³⁵ See Psychoeducational evaluation report dated 5/25/2022; See OT evaluation report dated 5/12/2022; See the Speech and Language evaluation report dated 6/2/22; See the Physical Therapy evaluation report dated 5/20/22.

³⁶ As reported during the Parent and staff interviews on 8/10/22, and 8/15/22 respectively.

³⁷ Ibid.

14. On June 14, 2022, the team convened an annual review. The meeting was also held to review the evaluations.³⁸

The following information was shared from the Psychoeducational evaluation:³⁹
As measured by the Woodcock-Johnson Tests of Cognitive Abilities- Fourth Edition (WJIV-Cog)⁴⁰ the Student presented with average general intellectual ability, short-term memory and processing speed. verbal comprehension was in the high average range. demonstrated well below average long-term memory skills, and auditory processing and fluid-reasoning skills both in the below average range.

As measured by the Woodcock-Johnson Tests of Achievement-fourth Edition (WJIV-Ach)⁴¹ the Student demonstrated overall average reading and math skills. However, when looking at specific skill areas, presented with reading deficits in decoding, comprehension, and fluency. Written expression was also an area of weakness where the Student demonstrated below average spelling, writing samples, and writing fluency skills. Finally, below average skills were also found in the areas of math fluency, and calculation.

The following information was shared from the Speech and Language evaluation:⁴²

On the Clinical Evaluation of Language Fundamentals Fourth edition (CELF-4), the Student demonstrated average expressive, receptive, and core language skills. presented with a moderate delay in articulation/ phonological skills as measured by the Goldman-Fristoe Test of Articulation-3 (GFTA-3).

The following information was shared from the Occupational Therapy evaluation:⁴³

As measured by the Bruninks-Osteretsky Test of Motor Proficiency, second edition (BOT-2), the Student presented with average scores in fine motor precision, fine motor integration, and manual dexterity. In combination with the BOT-2, it was reported that through informal clinical observation, the Student demonstrated age-appropriate skills on all areas assessed.⁴⁴

The following information was shared from the Physical Therapy evaluation:

The Peabody Developmental Motor Scales second edition (PDMS-2) is a standardized assessment composed of six subtests that measure interrelated motor abilities that

³⁸ An IEP Facilitator was appointed by the DOE to attend the meeting which was rescheduled to 6/14/22 per the parent's request, due to illness. See also documents provided by the Parent and District.

³⁹ See Psychoeducational evaluation report dated 5/25/22 submitted by _____ Ed.S. School Psychologist.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² See Speech and Language evaluation report dated 6/2/22 submitted by _____, M.A. CCC-SLP.

⁴³ See Occupational Therapy evaluation report dated 5/12/22 submitted by _____ MOT, OTR/L.

⁴⁴ Ibid.

develop in early childhood.⁴⁵ Published by Pearson Assessments this evaluative tool produces standard scores, percentile rankings, age equivalent scores and a Gross Motor Quotient.⁴⁶

On the PDMS-2, the Student presented with average ability in gross motor skills. also demonstrated strengths in body awareness, good strength and balance.⁴⁷ During the interview with the Physical Therapist, she noted that at the conclusion of the 45-minute evaluation, as they were walking out of the room, she observed the Student walking up and down stairs appropriately, without the use of the handrails.⁴⁸

15. The team determined that the Student's eligibility would change from Speech and Language Impairment to Other Health Impairment and Specific Learning Disability⁴⁹. They also determined that the Student would receive specially designed instruction in ELA and math for 30 minutes per day in each subject area. The Student would also receive Speech and Language therapy, twice a week for 30 minutes.⁵⁰ The team also determined that the review of the Psychoeducational Evaluation would proceed without the review of the BASC. Instead, the team agreed to disregard the obtained rating scale, and redo the rating scale.⁵¹
16. On June 16, 2022 the teacher completed the BASC teacher rating scale. Compared to the previous teacher ratings completed on 5/16/22, the data illustrates that the updated teacher ratings produced two distinctly different sets of scores.⁵² Likewise, the graphs produced also illustrate two distinct clinical and adaptive T-Score profiles for the teacher ratings.⁵³ Subsequently, the evaluator also revised the narrative portion of the report pertaining to the results of the BASC. Most notably, the updated copy of the report reflects that in the areas of Hyperactivity, Somatization, Withdrawal, Attention Problems, and Functional Communication the teacher ratings were different in comparison to the original report.⁵⁴
17. On July 27, 2022 the Special Education Director sent an email to the Parents, forwarding them a copy of the updated Psychoeducational Assessment Report. She indicated to the Parents that she would like to set up an IEP meeting in September 2022 at a mutually agreeable date and time to review the report with the Parents and educational team present.⁵⁵

⁴⁵ See Physical Therapy evaluation report completed by _____, PT.

⁴⁶ See pearsonassessments.com

⁴⁷ See Physical Therapy evaluation report completed by _____, PT.

⁴⁸ This observation was made in the presence of the Student's father, who was in attendance during the evaluation. During this evaluation, he disagreed with the PT's assessment of the Student's skill level with completing sit-ups.

⁴⁹ See prior written notice dated 6/14/22.

⁵⁰ See IEP dated 6/14/22.

⁵¹ See prior written notice from 6/14/22, Section 1.

⁵² See District exhibits, pages 38 and 57.

⁵³ See District exhibits, pages 39 and 58.

⁵⁴ See pages 28-30 and 47-49 of the District exhibits.

⁵⁵ See District exhibits, p. 80.

VI. Determinations

1. The agreed upon mediation agreement from May 13, 2022 is not being followed by the District. **MUSER XVI 2 B; 34 CFR 300.506(b); MUSER XVI 4 (A)(1)(d). NO VIOLATION FOUND.**

For this allegation, each part of the mediation agreement⁵⁶ will be addressed separately:

1. *The District is in the process of re-evaluating _____ in all areas of suspected disability and behavioral/social emotional concerns, including but not limited to speech, occupational therapy, and physical therapy special education services. These evaluations must be completed and reports issued on or before June 7, 2022. Once these evaluations and reports are completed, the District will convene a facilitated IEP on or before June 8, 2022, to review _____'s progress to date and potential need for additional services.*

The IEP team convened on June 14, 2022 at the request of the parent.⁵⁷ The determinations indicated that there was consensus among the team members. As supported by the evidence presented in the factual findings of this case, the above requirement has been met by the District.⁵⁸

2. *Based on the results of the re-evaluation and IEP team determination under paragraph one, the District will develop a new IEP through a facilitated process to provide FAPE.*

On June 14, 2022 the IEP team met with a facilitator present (appointed by the DOE) to review the evaluations.⁵⁹ The team made determinations based upon the results and developed a new IEP.⁶⁰ The above requirement has been met by the District.⁶¹

3. *The parties agree that _____ was responsible for providing _____ with special education services from February 2021 through the end of the 2020-2021 school year (including the Extended School Year), and that the District was responsible for providing such services from the start of the 2021-2022 school year and going forward.*

On May 20, 2022 the District met with _____ and the Parents to establish how much compensatory service was still owed to the Student. This was mutually agreed upon in September of 2021 involving the District and _____ working together with the parent. They settled upon the following: The Student will receive six hours of compensatory speech and language services.⁶² It was reported that _____ reached out to the Parents, and scheduled the

⁵⁶ See mediation agreement dated 5/13/22.

⁵⁷ As reported by the Parent and staff.

⁵⁸ See factual findings #13, 14, and 15 of this report.

⁵⁹ See prior written notice from the meeting held on 6/14/22.

⁶⁰ See IEP dated 6/14/22.

⁶¹ See factual finding #15 of this report.

⁶² As reported during the interviews with the staff on 8/15/22. See also the prior written notice from 5/20/22.

compensatory services to begin July 22, 2022, at the office.⁶³ The above requirement has been met by the District.

- 4. There is a meeting scheduled on May 20, 2022, between and the District to determine how many hours of speech therapy services owes to and how and when those services will be provided. Without agreeing that it is responsible for providing with services prior to September 1, 2021, once it is determined whether services are owed by , the District will coordinate with to provide with speech therapy compensatory education services beyond the aforementioned provision of services through the IEP process. The parents agree that these services may be provided by or another qualified speech and language pathologist and will be delivered in the most therapeutically beneficial manner in order to catch up with any speech deficits experienced as a result of not having received speech therapy services pursuant to previous IEP. These services will be provided in-person; however, if that is not possible due to the lack of providers, the services may be provided virtually with a parent or an aid present. If the provider referenced above determines that virtual speech therapy services are not effective for , such services will be provided only in-person going forward.*

As mentioned above, on May 20, 2022 the District met with and the Parents to establish how much compensatory service was still owed to the Student. This was mutually agreed upon in September of 2021 involving the District and working together with the parent. They settled upon the following:

The Student will receive six hours of compensatory speech and language services.⁶⁴ It was reported that reached out to the Parents, and scheduled the compensatory services to begin July 22, 2022, at the office.⁶⁵ The above requirement has been met by the District.

- 5. The District will provide with 12 hours of occupational therapy compensatory education services outside the provision of services through the IEP process. These services will commence after the aforementioned evaluation and reports are completed (no later than June 7, 2022), continue during the extended school year, and be completed no later than December 31, 2022. These services may be provided by or another qualified occupational therapist and will be delivered in the most therapeutically beneficial manner in order to catch up with any deficits experienced as a result of not having received occupational therapy services.*

⁶³ See District's response dated July 29, 2022.

⁶⁴ As reported during the interviews with the staff on 8/15/22. See also the prior written notice from 5/20/22.

⁶⁵ See District's response dated July 29, 2022.

Since the provision of these compensatory education services is pending, and the end date for completion is approximately four months from the date of this report, the District has met this requirement at this time.⁶⁶

6. *The District will provide _____ with 12 hours of physical therapy compensatory education services outside the provision of services through the IEP process. These services will commence after the aforementioned evaluation and reports are completed (no later than June 7, 2022), continue during the extended school year, and be completed no later than December 31, 2022. These services may be provided by _____ or another qualified physical therapist and will be delivered in the most therapeutically beneficial manner in order to catch _____ up with any deficits _____ experienced as a result of _____ not having received physical therapy services.*

Since the provision of these compensatory education services is pending, and the end date for completion is approximately four months from the date of this report, the District has met this requirement at this time.⁶⁷

7. *The District will provide professional development and training to its special education and administrative staff regarding procedures for enrolling new and transferred students who may have special needs. Such training will include but not be limited to ensuring that test and IEP results be conveyed directly to parents and not through students.*

During the interview with the Special Education Director, she indicated that she is developing a plan to provide professional development and training with the special education and administrative staff this fall to address the issue mentioned above.⁶⁸ The District stands ready to fulfill this requirement once the staff returns to work for the 22-23 school year.⁶⁹ The District has met this requirement at this time.

8. *The parents will withdraw their pending request for a complaint investigation as a result of this Agreement.*

This requirement was fulfilled by the Parents on May 13, 2022.⁷⁰

2. The Behavioral Assessment Scale for Children (BASC) as administered did not accurately measure the Student's true levels of functioning. **MUSER V(2)(C)(1)(b)(c)(d)(e); 34 CFR 300.304(c). NO VIOLATION FOUND.**

As determined by the IEP team on June 14, 2022, an error was discovered in the administration of the BASC teacher rating scale. As the District and Parents both discovered this error, it was

⁶⁶ As reported during the interviews with staff on 8/15/22, the District now has a signed release of information from the Parents to be able to seek out an occupational therapist.

⁶⁷ As reported during the interviews with staff on 8/15/22, the District now has a signed release of information from the Parents to be able to seek out a physical therapist.

⁶⁸ As reported during the staff interviews on 8/15/22.

⁶⁹ Ibid.

⁷⁰ See factual finding #11.

determined that the remedy would be to have the rating scale redone by the _____ teacher who had taught the Student for the entire 2021-22 school year.⁷¹ By 6/16/22, indeed the rating scale was completed by this teacher, returned to the evaluator, and scored.⁷² The evaluator made revisions to the Psychoeducational report, provided a revised copy to the District, who in turn sent a copy to the Parents.⁷³ Although this may be considered a procedural error, individually it does not meet the threshold of a substantive error impacting FAPE.⁷⁴ Since the District swiftly followed through, and with due diligence to correct the error, the District was compliant.

3. The physical therapy evaluation as administered did not accurately measure the Student's true level of functioning. **MUSER V(2)(C)(1)(b)(c)(d)(e); 34 CFR 300.304(c). NO VIOLATION FOUND.**

As referenced above⁷⁵ on May 20, 2022, the Student completed a Physical Therapy evaluation with _____ father in attendance. As the evaluation began, the father shared with the therapist that the student had surgery three weeks prior, but that _____ was cleared by the doctor with no limitations.⁷⁶ During the course of the evaluation, the Physical Therapist asked the Student to complete tasks in compliance with the standardized protocols of the PDMS-2. Likewise, the scoring and interpretation of the results of the Physical Therapy evaluation were all documented in the evaluation report.⁷⁷

Sharing her conclusions with the IEP team, and based upon the evidence collected through the standardized assessment and clinical observations within the scope of her license, the Physical Therapist opined that the Student did not require physical therapy services to successfully navigate _____ educational environment.⁷⁸

Taking this along with other information about this Student's academic and functional abilities, the IEP team determined that the Student did not require Occupational Therapy or Physical Therapy services to successfully access _____ education in the least restrictive setting.⁷⁹ When the Parents expressed concern⁸⁰ over what they believed to be inconsistencies in the school-based evaluations (OT and PT) compared to the concerns expressed by the pediatrician, the Director of Special Services explained the difference between what is required for eligibility in the educational model of service, verses what is required for treatment in the medical model of

⁷¹ See prior written notice from 6/14/22, section 1.

⁷² See updated Psychoeducational evaluation dated 7/15/22.

⁷³ Ibid.; see also the email from the Special Education Director to the Parents dated 7/27/22.

⁷⁴ See *Watson v. Kingston City Sch. Dist.*, 43 IDLER 244, (2005); See also *Student with a Disability v Maine SAU*. 72 IDELR 169 Maine SEA (January 2018).

⁷⁵ See factual findings #13 and 14.

⁷⁶ See Physical Therapy evaluation report completed by Tiffany Beaulieu, PT.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ See prior written notice and IEP from 6/14/22.

⁸⁰ During the interview with the Parent, it was reported that they (the Parents) did not understand why there were differences between the school evaluations and information from the outside providers.

service.⁸¹ Subsequently, an IEP was developed which was reasonably calculated for the Student to make progress in light of circumstances.⁸² The District was compliant.

VII. Conclusion

In the present complaint, part of what has been disputed is whether the District had upheld a mediation agreement that was settled in May 2022. Based upon the evidence presented in the case, the District has been compliant in each portion of the agreement.

The remaining two allegations involved the appropriate administration of evaluations. Again, the evidence presented in this case shows that the District met their obligations. When a problem was discovered within the psychoeducational evaluation, the District responded immediately to correct the error. The resolution of this issue was agreed upon by the parties at the June 2022 IEP meeting. No one disputes that a procedural error occurred regarding the handling of the BASC assessment. However, the error was not sufficient to amount to a denial of FAPE.⁸³

At the same IEP meeting, the school-based Physical Therapist, with 25 years of experience assessing and working with children in this elementary school, reviewed the evaluation she had completed. Judging from the evidence presented in this case, this trained, and qualified professional appropriately administered the evaluation, and shared the results with the IEP team. By all accounts, based upon the results, and her clinical judgement, the PT provided an accurate depiction of the Student's motor functioning, as well as ability to navigate the school environment in accessing education. This was all accomplished within the scope of her license and practice as a PT. By enlisting the services of this PT, the District complied with the law regarding the requirements for completing evaluations.⁸⁴

By all accounts, the District has worked diligently to ensure the Student's educational needs are being met so may access education in the least restrictive environment. Likewise, the evidence shows that the Parents are understandably very concerned about the Student and will continue in their efforts to make certain that the District is aware of what they believe their child needs to be successful.⁸⁵ The Parents also expressed that they would like their concerns to be

⁸¹ See prior written notice from 6/14/2022, Section 6, parent concerns.

⁸² See *Andrew F. v Douglas Co. Sch. Dist.*, 19 IDELR 174, 137 S. Ct. 998 (2017).

⁸³ See *Watson v. Kingston City Sch. Dist.*, 43 IDELR 244, (2005); See also *Student with a Disability v Maine SAU*. 72 IDELR 169 Maine SEA (January 2018).

⁸⁴ See MUSER IV 2 G; MUSER V(2)(C)(1).

⁸⁵ As reported by the Parent during the interview held on 8/10/22.

heard, and their input respected by the District.⁸⁶ The remedy sought by the Parents in this case was that the District be held accountable to what they agreed to in the mediation agreement.⁸⁷ The District has abided by that agreement, as well as maintained compliance with respect to the additional allegations.

VIII. Corrective Action Plan

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

Leigh Lardieri, Ph. D.

Complaint Investigator

⁸⁶ Ibid.

⁸⁷ See Complaint Investigation Request filed by the Parents.