

**Complaint Investigation Report
Parents v. RSU 83/MSAD 13
Complaint 18.083C (student [REDACTED])
Complaint Investigator: Jeannette Sedgwick
May 30, 2018**

COMPLAINT INVESTIGATION REPORT

The Department of Education received this complaint on April 4, 2018. A complaint investigation meeting was held with both parties on April 24, 2018. The complaint investigator reviewed all documents, information, and responses from the parties. On May 4, 2018, the investigator conducted interviews with District staff (“District”). Those interviewed were the following: the Director of Special Education, the Student’s classroom teacher for the 2017-2018 school year, and the caseworker and consultant for the Student. Interviews were conducted with the complainants (“parents”) on May 10, 2018.

The complainants filed a hearing request on or about May 16, 2018, which caused the complaint to be set aside in accordance with MUSER VI(4)(A)(4)(a). The complainant withdrew the request for a hearing on May 23, 2018 and the complaint investigation was re-opened.

Because there has been noncompliance with special education laws and regulations, the District must complete a corrective action plan, components of which are due by **July 30, 2018**.

FACTUAL FINDINGS

1. The Student is 7 years old and attends second grade at the [REDACTED] Elementary School in [REDACTED], Maine.
2. The Student qualifies for special education based on the disability of ADHD.
3. Current evaluations of the Student include speech and language evaluation (dated 2017) and an occupational therapy evaluation (dated 2016). A developmental evaluation for the Student took place in July 2015, when the Student was five years old. During this evaluation, the Student was assessed in the areas of physical therapy, including the Peabody Developmental Motor Scales-2; speech and language, including the CELF-4 and GFTA-2; and psychological, including intellectual function based on the WPPSI-IV, and behavioral difficulties based on the CBCL and C-TRF. The Student’s IQ was in the 98th percentile and her processing speed in the 50th percentile. The 2015 evaluation stated that the Student, although she had a history of “emotionally reactive behaviors,” did not meet the criteria for Autism Spectrum Disorder (ASD).
4. The Student attended first grade at the Elementary School during the 2016-2017 school year. During this year, the Student’s IEP (dated 1/30/17) stated that the Student had

- functional needs, would receive occupational therapy 1x1 hour/week and consultation services by a special education teacher for emotional regulation for 1x30 minutes/month.
5. The summer after the Student's first grade year, the Student was parentally placed at a day treatment program at Acadia Hospital in Bangor because of concerns with behaviors at home. The Student spent a few weeks at Acadia Hospital and was released on or around October 10, 2017.
 6. The Student's IEP team met in September, October, December 2017 and January and March 2018. Parents communicated frequently with the District throughout the year.
 7. Parents provided a one-page letter dated September 18, 2017 from the Medical Director for Education at Acadia Hospital. This letter stated that the Student's "current diagnosis is Autism Spectrum Disorder."
 8. In September 2017, the IEP Team met to discuss the Student's transition into school from Acadia Hospital. The Team agreed to conduct an annual review in October and begin the re-evaluation process early, in the next month. Parent concerns at this meeting included the Student's anxiety. At this meeting, a representative from Acadia stated that the diagnosis of Autism by Acadia originated through observations, not testing. The Team agreed to conduct a full psychoeducational evaluation of the Student "after the parent returns the Student to her regular educational program." The Student returned to the District approximately a month after school started for the 2017-2018 school year. There is no documentation that a consent form was provided to the parent for a psychoeducational evaluation after she returned to school in October.
 9. The Team met on October 26, 2017. At this meeting, the IEP was amended by adding 30 minutes/week of counseling and added an emotional-based, self-evaluation chart to the Student's accommodations. The Team decided that the District would provide a speech and language evaluation and consent for that evaluation was signed by the parent on October 26, 2017. The Team discussed the Student's sporadic attendance and the Student's on-grade academic performance. The parents expressed their concern that the Student was suffering from an emotional disturbance and that the Student was "triggered" at school and would come home and "have meltdowns." Written notice states that the parents requested a social skills group and that the District responded with an additional service of counseling for 30 minutes/week.
 10. On December 8, 2017, the Student's Annual Review was held. The team reviewed the speech and language evaluation that had been completed on November 28, 2017. It was reported that the Student had made significant progress in the area of emotional regulation. The parents expressed concerns that the Student returned home from school each day upset. District staff agreed to look into the possibility of addressing some social skills needs through group interaction during OT services. Many accommodations were added to the IEP, such as preferential seating on the bus, an accommodation regarding

lunch menu sign ups, and giving work in smaller amounts. The parents requested an FBA at this meeting. The meeting lasted approximately two hours and then disbanded.¹

11. On January 3, 2018, the IEP Team met. The agenda included discussion of accommodations and modifications already in the Student's IEP, reviews of grades, classroom progress, attendance, and parent concerns. The agenda for this meeting also included the District's plans to file for mediation, to which the parents agreed.
12. In February, the District wrote to the parent expressing concerns about the Student's attendance and the District's intent to file for mediation. In this letter, the District stated that it wished to evaluate the Student and sent a consent form for the evaluation. In February, the District began the process of hiring an evaluator for a full educational evaluation of the Student.
13. In one of several email communications with the District, the parent wrote that they would only agree to meet with the IEP Team if there were no time limit to the meeting and if the Team considered all the recommendations for services and accommodations that were brought to the Team. In March, the District set up one point person who would communicate with the parents.²
14. In March 2018, the IEP Team met. At that meeting, Parents signed consent for the District to evaluate the Student in all areas of suspected disability, including the areas of ADHD, anxiety, autism, depression and OCD and to conduct an FBA. Also in March, the District entered into a contract with an independent evaluator who would conduct the evaluation of the Student. The evaluation was scheduled for April 13, 2018.
15. On April 11, 2018, parents revoked consent to evaluate and the evaluation was cancelled. Email communication from the Parent states that although the consent paperwork was signed, they did not consent because they had questions that remained unanswered.
16. The Student was absent eight times from April 2017 to the end of the 2016-2017 school year. The Student has not attended school since the last IEP meeting in March 2018 and in total, has been absent approximately 90 times this school year from mid-October until the date of this report.

Other relevant facts will be discussed in the determinations below.

¹ The parents believed that the IEP proposed by the district in December 2017 was incomplete because they disagreed with several aspects of the IEP and they wished to discuss more services and accommodations.

² In their documentation, the parents objected to the District's establishing one point person as the sole communicator with the family. This practice violates no law or regulation.

DETERMINATIONS

1. *The complainant alleged that during the December 2017 IEP team meeting,*
 - a. *An individual who could discuss the Student's speech evaluation results was not present. MUSER XI (2)(B)(6). COMPLIANCE FOUND.*

The parents' perspective is that because they had questions about the procedure of the evaluation which were not answered by the evaluator on the date of the meeting, there was a violation of law. However, the law states that an individual who can interpret the instructional implications of evaluation results should be present. The Student's evaluator, though not able to be present during the meeting, had shared information with the case manager. During the December meeting, the Student's special education case manager was present to discuss the results of the Student's speech evaluation. The case manager is also a teacher in the District, is certified to teach, and holds a degree in Special Education. No violation of law or regulation regarding this allegation has occurred.

- b. *The IEP Team did not consider the parent's requested accommodations, including group therapy, during the IEP team meeting MUSER VI(2)(I). COMPLIANCE FOUND.*

Written notice from the December 2017 Team meeting demonstrates that the IEP Team considered the parents' request for a social skills group. Written notice states that the parents stated their concerns that the Student could receive social skills instruction during an occupational therapy group, if possible. At the October 2017 IEP Team meeting, the Team had also addressed this concern by adding a counseling component to the Student's IEP.

When interviewed, members of the Student's IEP Team stated that the Student would benefit from social skills instruction because the Student has some lagging social skills. The Team believed that counseling addressed this concern adequately. The parents' requests were considered.

- c. *The IEP Team did not complete the annual review of the Student during the December 2017 meeting. MUSER IX (3)(D)(1)(a). COMPLIANCE FOUND.*

At the end of the December IEP meeting, the parents had numerous issues to discuss, including accommodations they would have liked to see included in the Student's IEP. The parents had presented a list of these accommodations to school staff in November. The parents stated that they did not believe the IEP meeting was finished and therefore, the annual IEP had not been developed.

Written notice demonstrates that the IEP team had agreed that this meeting was an annual review. The Team discussed the speech and language evaluation, progress in occupational

therapy and counseling, and the Student's current needs. The District proposed the IEP in a timely fashion after completing regulatory requirements.

- d. *The complainant alleged that the IEP Team did not review evaluation data with the parents, although that evaluation data appeared on the written notice.*

MUSER VI (2)(J)(1). **COMPLIANCE FOUND.**

Evaluation data from the speech and language evaluation was discussed at the December 2017 IEP Team meeting. See discussion of allegation 1(a) above.

2. *The complainant alleged that the parents requested an FBA during the December IEP meeting and requested an FBA during the December 8, 2017 IEP team meeting, but that those evaluations did not occur within the regulatory timeframe. MUSER V(4)(B). NONCOMPLIANCE FOUND*

The Student's parents stated that although the team had agreed upon conducting an FBA, they did not receive a consent to evaluate form for a functional behavioral assessment. The Parents also stated that their address had changed during this time period, but that they were in frequent communication with the school and that the consent form was never provided. District staff stated that directly after the December meeting ended, staff requested that the parents sign the consent form, which was in another room, but that the consent form was not presented to them then or through the mail. Subsequent to that meeting, both special education staff members became unavailable for some time because of emergency situations. The District provided a consent form for an FBA in March 2018.

The Department requests corrective action for this noncompliance.

3. *The complainant alleged that the Written Notice for the December 2017 IEP meeting and subsequent meetings did not contain reasons for not changing the Student's identification, evaluation, or educational placement that the Parent had recommended. MUSER IX(3)(C)(4); 34 CFR 300.503. COMPLIANCE FOUND.*

The Student became eligible for special education for the diagnosis of ADHD and remained so throughout the 2017-2018 school year. Based on the documentation and interviews, the parents believe that the letter from the Medical Director for Education at Acadia should have been enough to change the identification of the Student to qualify for special education with a diagnosis of autism spectrum disorder. The parents believe that the Student has symptoms of other disabilities, such as autism, anxiety, and emotional disturbance.

Having seen the Student's functional needs such as social skills and occupational therapy needs based on an occupational therapy evaluation dated September 2016, the District maintained that the Student's eligibility for special education should remain other health impairment (OHI) for the Student's ADHD until the District could fully evaluate the Student. The District has not witnessed the behavioral issues the parents call "meltdowns" or "dysregulation," (described as bouts of crying and yelling for several minutes), or humming or singing songs to herself.

Further evaluations of the Student by the District would clarify the issue of eligibility. As of the date of this report, however, the parents have revoked their consent for the District to evaluate, stating that they do not trust any District-hired staff to conduct a fair evaluation. The Team met regularly and provided detailed written notice after each meeting about what the Team discussed regarding the Student's identification, evaluation, and educational placement. No violation of law or regulation regarding this allegation has occurred.

4. *The complainant alleged that not all staff are familiar with the Student's IEP and accommodations involving behavior interventions, particularly the bus driver and the Student's classroom teacher.* MUSER IX(3)(B)(4)(b). **NONCOMPLIANCE FOUND**

The parents stated that they do not believe that the Student's classroom teacher for the 2017-2018 school year implements the accommodations in the Student's IEP.³ Specifically, the parents state that the Student does not have the opportunity for regular movement breaks (October IEP), does not use a fidget in class (October IEP), does not use a daily emotion-based self-evaluation chart (October IEP), does not use visual checklists/schedules (December IEP), headphones to block out noise (December IEP), and giving only few worksheets at a time (January amendment). The parents were also concerned about issues of Student lunch, which on certain days had to be ordered in advance, and for which they requested teacher assistance (January amendment).

The parents also are concerned that they are not being contacted when the "teacher perceives an event during school that seems to cause the Student dysregulation," as stated on the IEP. The teacher and parent have different views about what kind of behavior constitutes dysregulation. The classroom teacher has not perceived any events during school; the parents have cited times when the Student's interactions with peers have caused them concern.

The Student's classroom teacher stated that the Student, along with the rest of the class, takes frequent movement breaks and sits in many areas throughout the classroom as the Student moves from one activity to another. The classroom teacher, who has been an educator for 28 years and who holds an advanced degree in educational leadership, stated that she has

³ The parents' criticisms of the teacher and other District staff include type of instruction, tone of voice, and amount and type of assistance with academic work, all of which are not allegations relevant to a special education complaint investigation.

implemented the Student's accommodations, that she does not like to single students out, and that she pairs the Student with other children in workgroups to facilitate the Student's acquisition of social skills. She also described her classroom and teaching practices as using verbal prompting for all students.

Regarding the October IEP accommodations, the emotional behavioral chart was not used. District staff communicated with the parents that the chart was creating much stress for the Student and the use of the chart was discontinued. No IEP change was made. The classroom teacher indicated that reminders of classroom schedules were verbal, not visual checklists as stated in the IEP. The District stated that all accommodations were implemented but may have been implemented on an "as needed" basis. The IEPs state that the Student "will receive these accommodations." The District has not complied with the accommodations on the Student's IEP.

The parents also state that the bus driver was not familiar with the Student's IEP, specifically in the area of seating on the bus. The Student was given preferential seating and later in the year, the District implemented a seating plan for each student riding the bus. There is no violation regarding the bus driver's knowledge of the Student's IEP.⁴

5. *The complainant alleged that the District has not provided periodic reports from occupational therapy services.* MUSER IX(3)(A)(1)(c). **COMPLIANCE FOUND.**

The District reported that there are two types of progress reports for the Student's OT. Regular progress reports come from the District and a second set of reports originate with the Student's provider and not an employee of the District.⁵ District progress reports are provided to parents in November, March and June, as frequently as reports for non-disabled students. The parents maintain that occupational therapy notes were not provided to them. Written Notice indicates that an OT evaluation (not progress report) was sent to parents on October 27, 2017.⁶ It is unclear whether these notes were provided to the parents prior to their request, but in any case,

⁴ During the complaint investigation, the parents also raised the issue of an aide in the classroom who they believed to be unfamiliar with the Student's need for movement, an accommodation listed on the Student's IEPs. The District responded that at all times, all District staff have followed the IEP. There is no finding regarding aides in the Student's classroom.

⁵ Detailed progress notes for OT were provided in December 2017 and March 2018.

⁶ In interviews, District staff stated that the District understood its responsibility to provide special education progress reports of its own, rather than wait for reports by an outside agency. Documentation shows that the District fulfilled its obligation for its own reporting and also gave the parents service provider updates.

the progress reports were delivered with the same frequency as other reports in the school as required. The District has complied with law and regulation regarding this allegation.

6. The complainant alleged that the Student's IEP(s) are not being implemented, particularly with regard to (a) behavioral accommodations and (b) measuring progress toward goals. MUSER IX(3)(B). **NON-COMPLIANCE FOUND.**

Regarding the implementation of behavioral accommodations, see findings in determination 7(a). Regarding counseling services as part of the Student's behavioral accommodations, the counselor in the District became unavailable to provide counseling to the Student in late March 2018. The parents stopped sending the Student to school approximately that same time, such that the unavailability of the counselor did not affect provision of services or FAPE to the Student.

With respect to measuring progress towards the Student's goals, progress reports from the time of this complaint demonstrate that the Student's progress is measured and reported to the parents.

7. *The complainant alleged that the IEP developed at the December IEP Team meeting ("December IEP") and IEPs/amendments created during the following months were not developed to provide the Student with FAPE, particularly in the following areas: MUSER VI(2)(J)(4).*

There is no bright-line rule about what constitutes FAPE for every child who receives special education services. Rather, schools must provide educational benefit through an IEP that aims to enable a child to make progress. The IEP must be reasonably calculated and be appropriate in light of the child's circumstances.⁷ Based on evaluations of the Student, the IEPs and IEP amendments created during the 2017-2018 school year have been designed to provide FAPE to the Student.

- a. *Emotional, behavioral, communication, AT, and academic needs;*
COMPLIANCE FOUND.

The documentation shows that the District has addressed many of the parent concerns about behavior by putting in place counseling services on the IEP and a special education consultation. The members of the IEP Team agree that the Student's academic ability is above average and that she is able to achieve in her classroom. Progress reports from November, when the Student's attendance was sporadic but more regular than it was later in the school year, showed limited progress in OT and made progress in the area of self-regulation.

⁷ *Endrew F. v. Douglas Cty. Sch. Dist.* 137 S. Ct. 1001 (2017).

The parents maintain that behaviors at home, following the school day, are the direct result of District staff not meeting the Student's needs. The District states that the Student may occasionally cry for less than a minute, but that she is easily redirected to use her skills to move past the moment. She is performing at the top of her class and has made significant progress in the area of social skills. District staff have known her for over two years, since she entered the District, and have seen much growth in the Student's positive interactions with peers. District staff does not witness what the parents describe as meltdowns or dysregulation.

The Student's current classroom teacher stated that the Student is able to clarify needs, such as when requesting information from the teacher about how and when to transition from one task to the next. Regarding assistive technology, the documentation does not show that the Student needs AT services, since there has been no assessment in this area. As discussed above, further evaluation of the Student will better clarify the Student's areas of strength and weakness. Based on the current evaluations and reported progress in school, the District has provided the Student with FAPE in these areas.

- b. *The goals are the same goals with the same date as those on the Student's previous IEP;* **COMPLIANCE FOUND.**

The District stated that it made the clerical error of not changing the dates on the Student's current IEP and has subsequently corrected this action by sending a new IEP to the parent with changed dates. If this had been non-compliance, it has now been corrected.

The fact that the proposed IEP from December 2017 contains the same goals as last year's IEP, however, signals a more serious issue of the Student potentially not making progress.⁸ The District's response to having the exact same behavioral goals on the annual IEP are that the functional goals, the only goals on the IEP, are written in such a way that the Student will progress from year to year as the Student progresses in her social skills.

Student has made gains in the areas of self-regulation. Both the parents and District staff believe the Student's disability affects her ability to relate appropriately with her peers and that the Student would gain from social skills instruction. The counseling goals on the annual IEP are properly individualized in this specific instance, where the kinds of interactions for behavioral instruction are articulated for this specific Student.

- c. *Lack of measurable goals.* **COMPLIANCE FOUND**

The District has provided IEPs for the Student with measurable goals. For example, that the Student, through occupational therapy services, will improve sensory processing and reflex integration to impact positively on functional daily life performance, general regulation,

⁸ *Endrew F.*, 137 S. Ct. 988 (2017).

emotional regulation, behavior... as measured by therapist observations and records.” The Student’s goals also include goals for counseling “as measured by [the Student’s] ability to correctly assess her problem/emotional reaction in 2 of 3 trials presented in the therapy setting.” These goals are measurable and no violation of law or regulation has occurred.

The Student has not regularly attended school during the 2017-2018 school year and the District has deemed her truant. She is not being homeschooled and currently is receiving no formal education. When the Student attended school, the District provided FAPE. Now, after missing over 90 days of school, this second grader is not accessing education in the District.

CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

The District must complete the following corrective action by **July 30, 2018**.

1. Provide the Department with a written, internal, school-wide plan for the assumption of special education procedural responsibilities, such as providing consent forms, (a) after IEP Team meetings and (b) at times when all District special education staff become unavailable.
2. Provide the Department with a written, internal, school-wide plan describing the internal processes for special education administrators to communicate with District staff about IEP accommodations.