

**Complaint Investigation Report**  
**Parent v. Veazie Public Schools**  
**Complaint 19.028C**  
**Complaint Investigator: Jeannette Sedgwick**  
**November 20, 2018**

The Department of Education received this complaint on September 24, 2018.<sup>1</sup> The complaint investigator reviewed all documents, information, and responses from the parties. Interviews were conducted with the District's Principal/Superintendent<sup>2</sup> and the District's Special Education Administrator, as well as the Student's special education teacher, classroom teacher, and BCBA on October 25, 2018. An interview with the complainant was held on November 13, 2018.

**FACTUAL FINDINGS**

1. The ten-year old Student, who is described as very intelligent and a good friend in class, is in the fifth grade. She qualifies for special education and related services with the disability of emotional disturbance.
2. The Student has been enrolled in the District since February 27, 2018.
3. The most recent evaluation of the student is dated July 10, 2018. This evaluation states that the Student has been diagnosed with Disruptive Mood Dysregulation Disorder and Generalized Anxiety Disorder, as well as Unspecified Trauma and Stressor-Related Disorder. The evaluator wrote that the Student "presents with a complex social, emotional and behavioral profile" stemming from a history of developmental trauma that was experienced through witnessing violence, being physically abused, and separating from caregivers. The evaluation also states that the Student possesses "a number of protective and resiliency factors that help to offset the effects of trauma and additional stressors" and that the school and home should be working collaboratively to develop appropriate programming that allows her and others to be safe.
4. The Student's Team met in July 2018. The Team agreed that the Student was to be educated in the general education classroom and added behavior goals, SDI and related services. Some of the related services added were social skills training for 15 mins/day

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<sup>1</sup> The District filed a request for a due process hearing on September 25, 2018 and withdrew that request on September 27, 2018.

<sup>2</sup> For sake of clarity, the individual who holds the two positions of Principal and Superintendent is named the Superintendent in this Report.

and additional time as needed, 2 hours/week of consultation by a BCBA, several accommodations, and training District staff in trauma-informed practices.<sup>3</sup>

5. The Student has a detailed behavior plan (BIP) that was created by the District.
6. During the 2018-2019 school year, the Student attended the first five days of school, beginning on August 29, 2018.
7. On September 6, 2018 the Student attempted to leave school grounds at the end of recess. District staff blocked the Student and used a restraint when the Student began to push through the staff toward the road. The Student calmed after some time and returned to the building with the assistance of her parent and District staff.
8. The Student attended school on September 7, 10, and 11, 2018.
9. On September 11, 2018, after completing an assignment, the Student refused to do other work after multiple attempts at intervention by District staff. The Student disrupted others' learning through behavior of moving furniture and yelling. District staff used various help strategies in accordance with the Student's BIP. The Student continued to escalate. Staff restrained the Student when she overturned a desk and threw materials off shelves. The Student attempted to kick through a glass window of the classroom door. This restraint was released upon the parent's arrival at school a few minutes later.
10. That day, the Student was suspended for three school days (9/12, 9/13, and 9/14) for aggressive behavior that the District stated "present[ed] a substantial risk of the likelihood for harm to self and/or others." The suspension letter from the Superintendent dated September 11, 2018 ("first suspension letter") states that an IEP Team meeting would be held on September 14, 2018 and that "if an agreement cannot be reached at this meeting by the IEP team," the Superintendent reserved the right to extend the suspension for up to an additional 7 days.
11. The complainant was unable to attend the IEP Team meeting on September 14, 2018.
12. Written notice for this meeting states that the Student's IEP would be amended in the following ways:
  - Two hours of tutoring for academic subjects (reading, writing, and math) beginning on September 26, 2018 and continue until the IEP team reconvened and determined a FAPE;
  - Tutoring would be provided off-campus by two tutors trained in Safety-Care.

The Notice also states that the Student's "ongoing requirement for extensive staff intervention, redirection, and de-escalation has resulted in her lack of engagement in her academics, negative impact on her social relationships, and the disruption of the learning

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<sup>3</sup> District staff attended training for trauma-informed practices during the in-service days prior to the start of the 2018-2019 school year. In interviews, District staff who worked with the Student expressed that they worked assiduously to meet the Student's needs, including utilizing the information they learned in that workshop.

of others in her classroom.” In addition, the Notice states that “tutoring represents the Least Restrictive Environment for [the Student] because her behavior presents a substantial risk of the likelihood for harm to self/others and are a disruption to the entire school operations.”

13. The second suspension letter from the Principal/Superintendent, dated September 14, 2018, stated that at the IEP Team meeting “a change in programming was ordered and [the Student] is to receive tutoring outside of school beginning on 9/26.” Citing safety concerns, the District stated that “tutoring will be in place until we can convene the IEP Team to discuss programming and an appropriate placement.” The District suspended the Student for an additional 7 days (9/17, 9/18, 9/19, 9/20, 9/21/ 9/24, and 9/25).
14. The Student’s attendance record states that the Student was out of school because of out-of-school suspension for more than the days specified on the suspension notices. The Student was also marked suspended for an additional three days, September 26, 27, and 29, 2018. Including these additional days, the Student was suspended for a total of 13 consecutive school days during the 2018-2019 school year.
15. After the District filed an expedited hearing request, the complainant and District made an agreement to have “stay-put” be tutoring, not in her general education classroom at the school. The complainant did not wish to agree to tutoring but felt that she was threatened with a due process hearing unless she agreed to tutoring as “stay-put.” This agreement was made on or about September 25, 2018, approximately three days after the request for complaint investigation was filed.
16. The Student has remained in crisis since mid-September, has been in and out of hospitalization settings, and is currently in a residential treatment facility.

## **DETERMINATIONS**

1. The Student experienced a change of placement during the 2018-2019 school year because of disciplinary removals and the District did not conduct a manifestation determination meeting within 10 school days of the decision to change the Student’s placement. MUSER XVII(1)(B)(1); 34 CFR 300. 536.

### **NON-COMPLIANCE FOUND.**

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the SAU, the parent, and the relevant members of the child’s IEP Team must review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine (a) if the conduct in question was caused by, or had a direct and substantial relationship to the child’s disability; or (b) if the conduct in question was the direct result of the SAU’s failure to implement the IEP. There are two separate paths for students depending upon if

the IEP Team decides the violation of the school's code of conduct was or was not a manifestation of the child's disability.<sup>4</sup>

The Superintendent's first suspension letter states that the District "was reserving the right to impose an extension to the [3-day] suspension for up to an additional 7 days if the IEP Team could not reach an agreement" [about educational services and placement]. After that letter and the IEP Team meeting, the District imposed another suspension of 7 days. However, the attendance record shows that the Student was suspended for longer than the dates in the suspension notice. The Superintendent's letter of September 14 states that at the Student's IEP Team meeting, "a change in programming was ordered" and that tutoring would begin on September 26, 2018. The Department notes that IEP Teams do not order educational placements.<sup>5</sup> A change in placement occurred based on the Student's 13 days of suspension.

The District did not hold a manifestation determination meeting when it decided to change the Student's placement based on discipline. Although there were several meetings scheduled during September and October 2018, no meeting was classified as a manifestation determination Team meeting to determine whether the Student's behavior was caused by or had a direct and substantial relationship to her disability.<sup>6</sup> If the Student's IEP Team determined that the Student's behavior had been a manifestation of her disability, the District should have reviewed the Student's BIP and taken immediate steps to remedy the deficiencies if the Team determined that the District's failure to implement the IEP was a direct cause of the Student's behavior.<sup>7</sup>

2. The District has not provided FAPE during the 2018-2019 school year because the IEP Team decided on September 14, 2018 that the Student was not allowed to return to school. MUSER XVII(1)(E).

**NON-COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND.**

A change of placement occurred on September 14, 2018 at an IEP Team meeting that changed educational programming to an abbreviated school day without the participation of the

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<sup>4</sup> 34 CFR 300.530; MUSER XVII(1).

<sup>5</sup> The IDEA requires that parents be part of the team that creates the IEP and determines the educational placement of the child and the location where services will be provided. "The core of the statute... is the cooperative process that it establishes between parents and schools." *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 205-206. Although the Superintendent may not have intended this result, his letters can be interpreted as a threat of further disciplinary action to be held against the Student in order to induce the parent to comply with the District's desire for a new educational placement. This contravenes the purpose of the IDEA's mandates regarding IEP Teams' responsibilities.

<sup>6</sup> The District indicated in an email that it would in the future hold a manifestation determination meeting.

<sup>7</sup> 34 CFR 300.530; MUSER XVII.

parent. An abbreviated school day is any day that a child with disabilities attends school or receives educational services for less time than the Student's peers without disabilities within the same school or school program. An abbreviated day can only be initiated based on the child's individual educational needs or based on the child's medical needs.<sup>8</sup>

The Team's decision on September 14, 2018 was that the Student would, in effect, attend school on an abbreviated day basis because she would receive two hours of 1:1 academic tutoring. The decision to impose an abbreviated day schedule for the Student violated procedural requirements set forth in MUSER.<sup>9</sup> To underscore this change of placement, the District wrote to the complainant that "a new placement was ordered."<sup>10</sup> Even if the District had followed the procedures for determining that an abbreviated school day was necessary for the Student's academic needs, tutoring cannot be used as a form of specialized instruction.<sup>11</sup>

Additionally, parents must have the opportunity to participate meaningfully in decisions about educational services for their children.<sup>12</sup> When a District conducts an IEP meeting without parents in attendance, the District must keep a record of its attempts to arrange a mutually agreed-upon time and place.<sup>13</sup> Here, after a three-day suspension of the Student, the District held an IEP Team meeting with little notice to the parent and no opportunity for meaningful parental participation in the IEP process.<sup>14</sup> The complainant was given only a few days' notice of the meeting and the IEP Team did not attempt to reschedule.<sup>15</sup> In this particular instance, where

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<sup>8</sup> MUSER II; MUSER VI(2)(L).

<sup>9</sup> If the IEP Team considers that an abbreviated school day is appropriate and necessary, the IEP Team must address how the child will meet the system of learning results; how the child will participate in local and statewide assessments; develop a revised IEP with a re-entry plan for the child to return to a full-time school day within a reasonable period of time; delineate the actions the District will take to assist the child to participate in a full day of school; and document in the Written Notice the basis for the determination of an abbreviated school day and how the determination is based on the individual needs of the child. MUSER VI(2)(L).

<sup>10</sup> "When students are out of school because of discipline, an abbreviated school day, or medical reasons, tutoring may be provided as a short-term measure to ensure that students receive instruction." Tutoring is not specially designed instruction. Schools should make every effort, including re-entry plans and proposals for definitive placements, to ensure that students with disabilities are enrolled and attending school. "Tutoring for students who receive special education."  
<https://mainedoenews.net/2017/11/15/tutoring-for-students-who-receive-special-education/>.

<sup>11</sup> *Id.*

<sup>12</sup> 34 CFR 300.322; MUSER VI(2)(H).

<sup>13</sup> *Id.*

<sup>14</sup> 34 CFR 300.322; MUSER VI(2)(H); *Honig v. Doe*, 484 U.S. 305, 311 (1988).

<sup>15</sup> According to the written notice, the complainant requested to reschedule the meeting and the "IEP Team rejected the cancellation of today's IEP meeting due to the need for a programming decision as [the

notice was so short and the purpose of the Team meeting was to change the Student's educational program as evidenced by the Superintendent's first suspension letter, the Team's decision to remove the Student from her current educational placement to an abbreviated day of tutoring without considering the parent's input violated federal and state regulations.

A change in placement also occurred after the Student was removed from school for discipline for over 10 days, as discussed above. Districts must provide educational services to a child whose placement has been changed through discipline so that the child is able to continue to participate in the general education curriculum and progress toward meeting his or her goals.<sup>16</sup> The second suspension of over 10 days, which had nothing to do with any further conduct by the Student, constituted a change of placement. Tutoring was to begin earlier, but was not offered until October 1, 2018.

In all, the Student was not allowed to return to school after September 14, 2018, her first suspension, when her IEP was improperly modified to include tutoring until the Team could discuss educational placement. Whether the lack of educational services constituted a denial of FAPE, however, is difficult to ascertain. The complainant requested status of tutoring on September 24, and the District informed her that tutoring would begin on Monday, October 1. By that time, however, the Student was in crisis and became unavailable for education services offered by the District.<sup>17</sup>

3. The Student has not received special education or related services as specified on her IEP since September 14, 2018. MUSER XVII(1)(D). **NON-COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND.**

Federal and State law provide that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.<sup>18</sup> A failure to implement an IEP can result in a denial of FAPE.<sup>19</sup> However, not every deviation from an IEP results in a denial of FAPE.<sup>20</sup>

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Student's] behaviors present a substantial risk of the likelihood for harm to herself and/or others and are a disruption to entire school operations.”

<sup>16</sup> CFR 300.530; 34 CFR 300.531; MUSER XVII(1).

<sup>17</sup> In mid-October, the parent informed the District that the Student was hospitalized but not in residential placement and a meeting was scheduled for October 24, 2018.

<sup>18</sup> 34 CFR 300.101; 34 CFR 300.102; MUSER I.

<sup>19</sup> *Andrew F. v. Douglas County Sch. Dist.*, 137 S. Ct. 988, 1000 (2017).

<sup>20</sup> *L.C. and K.C. v. Utah State Bd. of Ed. et al.*, 43 IDELR 29 (10<sup>th</sup> Cir. 2005).

Based on the facts above, the Student was available for tutoring after September 14, 2018 until approximately October 1, 2018. Because this was time period when the Student should have received tutoring, the District did not comply with MUSER XVII(1)(D). In this particular instance, the lack of special education and related services does not amount to a lack of FAPE that would result in the need for compensatory services because of the short duration of time and the Student's individual strengths and weaknesses as documented on her IEP.

4. During the 2018-2019 school year, the Student has not been educated in the least restrictive environment. MUSER X(2)(B). **NO DETERMINATION; NO DENIAL OF FAPE FOUND.**

The complainant stated that she believes the District did not intend to provide the Student with the kinds of accommodations and services that would assist the Student to participate in the general education classroom. She stated that the District had not wanted the Student, who "has been through a tough time," to be enrolled in the District. She believes the Student, who had made significant gains in the months leading up to the beginning of the 2018-2019 school year, deserved to be in public school with her peers. The complainant believes that the lack of provision of appropriate services, coupled with the long suspension, was egregious.

Children with disabilities must be educated in the least restrictive environment with children who are not disabled in a regular educational environment to the maximum extent appropriate.<sup>21</sup> In determining educational placement for a child with a disability, a District must ensure that a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.<sup>22</sup> Tutoring is not the least restrictive environment and procedural violations concerning the Student's placement render the Student's last IEP specifying tutoring as SDI invalid, as discussed above.

However, on Oct. 16, 2018, the complainant informed the District that another entity would be taking over the Student's IEP. The Student's availability for education in between the time of filing the request for a State complaint investigation and October 16, 2018, is not entirely clear.<sup>23</sup> There is no determination regarding this allegation.

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<sup>21</sup> 34 CFR 300.120; MUSER X(2)(B). See *L.B. v. Nebo School Dist.*, 379 F.3d 966, 976 (10<sup>th</sup> Cir, 2004) (internal citations omitted).

<sup>22</sup> 34 CFR 300.116; MUSER X(2)(B).

<sup>23</sup> Tutorial services may be appropriate when students are in the hospital. MUSER X(2)(A)(4). Here, the complainant told the District that the Student was hospitalized and then a few days later, informed the District that another entity would take over the Student's IEP. The District has received a records request from that other entity and believes there is a possibility that the complainant and Student may have moved out of the District.

5. The District has not allowed the Student to remain in her educational placement (“stay-put”) during the pendency of this State complaint investigation.  
**MUSER XVI(20). NON-COMPLIANCE FOUND**

A student must remain in his or her educational setting during the pendency of a State complaint investigation. The request for a State complaint investigation was filed on September 24, 2018. The Student’s stay-put should have been the last-agreed upon IEP. After the Student’s suspension, she should have returned to her educational setting at the District elementary school.<sup>24</sup>

### **CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT**

1. The District’s administration must review the following regulations with an attorney who practices special education law or with the Department and submit a statement of assurance that it will follow these regulations:
  - MUSER XVII(1)(B)(1)
  - MUSER II; MUSER VI(2)(L)
  - MUSER VI(2)(H)
  - MUSER XVII(1)(D)
  - MUSER XVI(20).
2. The statement of assurance should be submitted to the Department by December 15, 2018.

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<sup>24</sup> Although the District states that the last IEP specifying tutoring was agreed-upon, information and documentation garnered in this investigation demonstrate that the last agreed-upon IEP was not the IEP that improperly listed tutoring as SDI while the Student awaited placement.