

**Parent v. MSAD #60**  
**Complaint 19.100C**  
**Complaint Investigator: Jeannette Sedgwick**  
**June 17, 2019**

## **COMPLAINT INVESTIGATION REPORT**

The Department of Education received this complaint on April 22, 2019. The complaint investigator reviewed all documents, information, and responses from the parties. On May 16, 2019, the investigator conducted interviews with the parent. On May 17, 2019, the investigator conducted interviews with the school's principal, assistant principal, the District's special education director, the school psychologist who had conducted evaluations of the Student, and the Student's special education teacher.

The investigation covers the time period from April 22, 2018 - the present.

### **FACTUAL FINDINGS**

1. During the 2018-2019 school year, the Student, who qualified for special education and related services based on an emotional disability, was in fifth grade in the District. She was found eligible for special education in the spring of 2019.
2. The Student had experienced trauma the years prior to the time of this complaint. In addition, prior to the time of this complaint, the Student had been bullied by a classmate ("peer") for reasons not having to do with a disability.<sup>1</sup> During the 2018-2019 school year, the Student was placed in the same classroom as the peer. During the first half of the year, she performed at grade level in her general education classes. During the first half of the year, she missed approximately 6 days of school for excused absences until December 2018.
3. In the early fall, the parent remained concerned about bullying of the Student by the same peer who had targeted the Student in the past. The District and parent met several times in the fall to discuss the issue of bullying and how to prevent the two students from interacting at school, including changing the Student to a new fifth grade classroom. During September through November 2018, school personnel described the Student has showing no outward manifestations of a disability other than appearing highly aware of the peer while in school. The parent stated that the Student experienced a high level of anxiety based on the previous bullying experiences.

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<sup>1</sup> The District fully investigated the bullying, which included cyberbullying, and found in November 2019 that the peer had bullied the Student. The school has a strong social/emotional curriculum that teaches students several mechanisms for all school students to engage in positive social interactions.

4. Communications and interactions between the parent and District administration during the fall were primarily about bullying and establishing systems for the Student, including protocols for bathroom breaks, so that the Student and the peer would not have the opportunity to interact. Because the Student became anxious when she saw the peer, she started to not go to recess or lunch in the late fall 2018.
5. During Thanksgiving break in November 2018, the Student received electronic communication from the peer that could be categorized as bullying. The parent informed the school about the incident. On November 26, 2018, the parent wrote an email to District staff stating that the Student was anxious and stressed when she had to be with the peer. The parent stated that she believes the District should have known at this point that the Student's emotional disability was impacting her ability to access school because the Student was exhibiting behaviors such as chewing her fingernails to the quick, was too fearful to go to recess and lunch, and was unable to focus in class on her academic work. Plans were made to move the Student to a new classroom beginning November 29, 2019.<sup>2</sup>
6. At home, the parent was noticing an increase in the Student's anxiety and depression. Citing privacy reasons, the parent did not share the Student's written diagnoses with the school, but alerted them that the Student had been diagnosed with depression and anxiety near the end of the second semester and in IEP meetings in January 2019.
7. Approximately the second week in December, the Student stopped attending school for the full day. The parent and district entered in to a dismissal agreement that showed the Student would attend school part-time. District staff stated that during this timeframe, the Student appeared overly worried about what was occurring in the classroom and was generally quiet. The Student did not verbalize the symptoms of her depression and anxiety to District staff and would tell her parent, who would then tell the school how the Student was feeling.
8. The parent requested a referral for special education in an email on December 12, 2018. The principal, director of special education, special education teacher and the parent met for a referral meeting on December 14, 2018. After this meeting, the special education teacher completed the special education referral form referring the Student, which was completed on December 20, 2018. On the referral form was the parent's report of the Student's diagnosis of major depressive disorder-adolescent and information about how

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<sup>2</sup> The Student did not move classrooms during the month of December 2018. The District did not want to transition the Student to a new classroom when there was a substitute teacher when the teacher was out for two days. Despite the teacher returning, arrangements to move the Student were not made until approximately two or more weeks later. The parent reported that the District knew the Student did not feel safe in the classroom while the peer was in that class; the District, still seeing little outward manifestation of concern by the Student, stated that a short delay in moving classrooms would ensure a successful transition.

previous trauma, bullying by a peer, and the depressive disorder affects her ability to access school.<sup>3</sup>

9. Immediately after arriving at school on January 4, 2019, as a part of a return-to-school plan, the Student was to do some classwork in a conference room instead of attending class. Student experienced a mental health crisis that day that resulted in a call to the crisis unit. The Student did not attend school after that date.
10. On January 17, 2019, the Student's IEP Team met for another referral meeting. At this meeting, the Student's IEP Team discussed the fact that the Student had not attended school based on reasons having to do with her mental health, for approximately three weeks before the meeting. Information was provided to the District that the Student has convergence insufficiency based on a recent evaluation by a non-District specialist. Consent to evaluate was signed at the meeting on January 17, 2019.
11. The Student was admitted to inpatient psychiatric care at the end of January 2019, where she stayed for approximately two weeks.
12. The District established educational services during the time of Student evaluations. These educational services were provided by one tutor until March 27, 2019 and a new tutor was hired a few days later when the first tutor became unavailable. Tutoring after March 27 was not provided consistently or as scheduled because of provider availability.
13. On February 14, 2019, the IEP Team met for an informal meeting while the student was in the eligibility process but not attending school for reasons having to do with her mental health. At this meeting, the parent expressed her concern about the Student being at home. A month later, on March 21, 2019, the IEP Team met to discuss the evaluations, and the IEP Team determined that the Student's disability was having an adverse effect on her ability to access the general education curriculum. The IEP Team developed an IEP with which was submitted to the parent on April 1, 2019.
14. The IEP Team met multiple times after the March IEP team meeting in the following months in accordance with regulation. The IEPs were modified several times to include very detailed and specific goals, services, and programming for the Student.
15. The parent informed the District she would be withdrawing the Student from school in the spring. The IEP Team met on April 26, 2019 and discussed the possibility of completing further evaluations of the Student. A new IEP that included social work services 17 hours/annually, ESY for 5 weeks, and consultation by a special educator in the general education setting for 20 hours/annually, as well as changes in goals and an

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<sup>3</sup> The District appears to have given the optional Departmental referral form to the parent in order to have her complete it on her own. When the parent could not complete this form, she requested help from the District a week later. The Department notes that the Department's referral form is meant to be an evaluative tool and is not a requirement to receive parental consent to evaluate. In this case, the consent to evaluate form should have been provided within 215 school days of December 12, 2018.

array of accommodations, was created.<sup>4</sup> Soon after that meeting, in the first week of May 2018, the parent withdrew the Student from school and the Student is currently enrolled in a different District.

Other relevant facts will be discussed in the determinations below.

## **DETERMINATIONS**

1. The District did not identify the Student as a student who may need special education and related services and refer her to an IEP Team to determine eligibility despite absences from school in the fall of 2018 and diagnoses that may affect her ability to attend school. MUSER IV(2)(A); MUSER IV(2)(D); MUSER VII(2)(E); MUSER VII(2)(J); MUSER VII(2)(L). **COMPLIANCE FOUND.**

Schools must identify students who in need of special education services through their child find obligations.<sup>5</sup> In the early fall of 2018, the District viewed the Student as a child who was affected by her peers' actions and provided the same services and supports through its ongoing work with the students in the fifth grade class. The parent reported to school that the Student was missing school for stomach aches or other illnesses and not for anxiety-based reasons. After the parent reported bullying after the Thanksgiving break, the District kept continued dialogue with parent, who was very concerned about ending possible interactions between the two students.

In early December 2018, the parent had requested a new classroom and reported some manifestations of the Student's anxiety, including school refusal.<sup>6</sup> The District staff stated that they did not see any signs that would alert them to the need for special education services, although the District did have some information about the Student's trouble getting to school in the mornings. A plan was put into place to assist the Student feel safe and attend school.

The parent's perspective is that the District should have known after the Thanksgiving vacation that the Student may have been eligible for special education and related services based on the Student's previous history of trauma and the additional trauma the Student experienced as a result of bullying. The parent stated that she believes that the District should have done more to safeguard the Student's mental health. The District, on the other hand, stated that the Student exhibited no overt signs of her disability until mid-December, that the school refusal in December was appropriately addressed, and that the District acted promptly to evaluate the Student when a referral for special education and related services was made.

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<sup>4</sup> Accommodations included access to the resource room, frequent check -ins for the day, using questions to help the Student advocate for her needs, a crisis plan, and advance notice of changes in scheduling.

<sup>5</sup> MUSER IV(2)(A).

<sup>6</sup> The parent emailed District personnel that the Student would not go to school on December 10, 2019.

The District acted reasonably in addressing the Student's academic and behavioral needs. On December 20, 2018, District staff received information about the Student's diagnoses on the IEP referral form. When the Student experienced a mental health crisis at school on January 4, 2019, the District also had notice that this Student's education was being impacted by her disability.<sup>7</sup> The District responded by offering educational opportunities outside of school during the period of evaluations. By the time the Student started to be excessively absent based on reasons having to do with her disability, in late December 2018 and January 2019, the District had referred the Student and had started the evaluation process.<sup>8</sup> In this instance, once District had a reason to suspect that special education services may be needed to address the Student's access to the general education curriculum, it acted reasonably to address her academic and emotional needs.<sup>9</sup>

There has been no violation of law or regulation regarding this allegation.

2. The parent's request for a referral for special education and related services, which was received on December 21, 2019, was not acted upon within regulatory timeframe. MUSER V(1)(A)(3)(a)(1). **COMPLIANCE FOUND.**

Regulations state that the initial evaluation for special education must be conducted within 45 school days of receiving parental consent. The consent form was provided to the parent on January 17, 2019 and was signed that day. The meeting to discuss evaluations occurred on March 21, 2019. These dates indicate that fewer than 45 school days between consent being received and evaluations being conducted. There has been no violation of law or regulation regarding this allegation.

3. The District has not provided supplementary aids and services sufficient to enable the Student to participate in extracurricular and other non-academic activities. MUSER IX(3)(A)(1)(d). **COMPLIANCE FOUND.**

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<sup>7</sup> The time between the initial request for referral, December 12, 2018, was impacted by District practice of using the referral form and school vacations.

<sup>8</sup> *C.G. v. Five Town Cnty. Sch. Dist.*, 513 F. 3d 279, 288 (1<sup>st</sup> Cir. 2008). *Contra Z.J. v. Cty of Chicago, et. al.*, 73 IDELR 95 (2018) (violation of child find where District ignored clear signs of disability).

<sup>9</sup> While excessive absences are not the only indicator triggering a District's responsibility for child find, attending school is only one of many factors that could prompt a referral for special education and related services. 34 CFR 300.111; See *Doe v. Cape Elizabeth Sch. Dept.*, 74 IDELR 95 (2019).

After the Student was found eligible for special education and related services, in March 2019, the IEP Team created an IEP with measurable goals for the Student while she was at home. The IEP Team also discussed a plan for a re-entry into school that was consistent with the Student's current and emerging abilities and wrote the IEP to reflect the re-entry plan, of which abbreviated day was a part. The IEP was amended on April 10 and April 26, 2019, to reflect the Student's changing academic needs.

The March IEP contained a transition plan to receive academic services and the IEPs created in April contained a plan to move from tutoring services to full-time schooling in the regular education setting. These IEPs also contained the behavioral goal of using appropriate coping strategies when presented with anxiety-provoking situations as well as social work services.

At all times, the Team discussed the goal for the Student to return to school. ESY was added to the Student's IEP with the understanding that the amount of time the Student missed school for disability-related reasons, not her regression in skills, was the reason for participating in ESY. All of the proposed goals, services, and accommodations on the IEPs are appropriate to the child and allow her to participate in academic and non-academic parts of the school day. In fact, the Student participated in a school-sponsored musical concert while she was unable to attend school.

There has been no violation of law or regulation regarding this allegation.

4. The District did not provide FAPE for the Student during the 2018-2019 school year because of the following: **COMPLIANCE FOUND.**

A. The District did not provide special education, related services and supplementary aids and services sufficient to enable the Student to advance appropriately toward attaining her annual goals and progress in the general education curriculum. MUSER IX(3)(A)(1)(d).

The Student's present academic needs were discussed at each IEP Team meeting and the Student's IEP Team created IEPs that allowed the Student, who had been through mental health crisis, to address her emotional and academic needs as she became more able to function within a school setting. As discussed above, the Student's IEPs were reasonably calculated to provide educational instruction to the Student based on her individual needs.

The evaluations of the Student demonstrated a need for goals regarding self-advocacy and coping skills, and the IEPs created contained those goals. Academic goals in the IEPs reflected the specific ways the Student would access the curriculum. Additionally, the Student's academic needs were being met by the educational services being put into place from the time the Student was referred to special education, which was not a legal requirement, to the time the

Student became eligible. After being found eligible, the Student was offered tutoring.<sup>10</sup> There has been no violation of law or regulation regarding this allegation.

- B. The District did not include goals related to and addressing the Student's specific emotional needs. MUSER IX(3)(A)(1)(d). **COMPLIANCE FOUND.**

The goals on the Student's several IEPs from March 2018- April 2018 were specific to the Student's academic and emotional needs. For instance, The IEP created on March 10, 2019 included a crisis plan, which is not regularly part of an IEP due to the need for it to be malleable based on Student need, and the April 26, 2019 IEP added direct social work services, as well as multiple accommodations, to the IEP. The April 26, 2019 IEP also contained the provision of social work services to provide the Student with coping strategies.

Additionally, the IEP Team discussed conducting new evaluations to further assess the Student's needs. Ultimately, at each of the multiple IEP Team meetings in March and April 2019, new goals and accommodations based on the child's individual needs were discussed and included. These were sufficient to address the Student's needs based on the evaluations and documentation provided to the District. There has been no violation of law or regulation regarding this allegation.

- C. The District did not provide academic instruction from the end of March through the beginning of April. MUSER IX(3)(B)(3). **COMPLIANCE FOUND.**

The Student was found eligible for special education services in March 2019. Prior to this date, the Student had been receiving educational services at home. The tutor with whom the Student was working was no longer able to provide services after March 27, 2019, and the District found a new tutor within approximately a week after the eligibility determination.

The Student was still not attending school in March and April 2019. There was no lack of educational services after eligibility because the parent denied those educational services when they were offered, and, even if the tutorial services specified on the Student's IEP had not been offered, the District had already provided instruction for several weeks to ensure the Student was able to continue her academic classwork and remain comfortable receiving instruction. There has been no violation of law or regulation regarding this allegation.

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<sup>10</sup> The parent at first refused the new tutor's services because the hours differed from those of the previous tutor, and then suggested times of availability that ultimately did not match the tutor's availability. In an email dated April 2, 2019, the District told the parent that posting for a new tutor would occur for the times the parent requested.

- D. The Student's IEP Team members are not consistent and have not attended meetings although they have not been excused in advance. MUSER VI(2)(b).  
**COMPLIANCE FOUND.**

The composition of the Student's IEP Team did not change after March 2019, when the Student was found eligible for special education and related services. At a meeting on April 30, 2019, one general education teacher, who was not the general education teacher on the initial IEP Team, attended the meeting as a substitute for the general education teacher who had previously attended.<sup>11</sup> There has been no violation of law or regulation regarding this allegation.

- E. The Student is not being educated in the least restrictive environment.  
MUSER X(2). **COMPLIANCE FOUND.**

Federal and state law and regulation require that students are taught in the least restrictive environment "to the maximum extent appropriate."<sup>12</sup> Maine regulations state that when a Student is receiving tutorial instruction based on an abbreviated day schedule that has been determined by the IEP Team, that service must appear on the IEP.<sup>13</sup>

The District has ensured that the Student was receiving education in the least restrictive environment. The circumstances of the Student's disability were such that attending school was very difficult, if not impossible, for her after January 2019. Once the Student was found eligible for special education in March 2019, the Student's IEPs showed the least restrictive environment for the Student given her individual needs. At the meeting on April 26, 2019, the IEP Team discussed and proposed an IEP incorporating a 1:1 ed. tech for a full day of school based on the Student's needs. The goals in the IEPs aimed toward re-entry into full participation in the school day. There has been no violation of law or regulation regarding this allegation.

- F. Tutoring has been put into place without the requisite IEP Team discussions and decisions. MUSER II(1); MUSER VI(2)(L). **COMPLIANCE FOUND.**

Information gathered during the investigation shows that the IEP Team discussed and determined that based on the individual needs of the Student, tutoring was put into place in accordance with regulations that state that tutoring may be provided in conjunction with an abbreviated school day. The determinations and decisions of the IEP Team during all four of

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<sup>11</sup> The Department notes that when creating an amendment to an IEP, the parent and District may decide to amend without convening the full team. 34 CFR 300.324(a)(4).

<sup>12</sup> 34 CFR 300.114(a); *C.D. v. Natick Pub. Sch. Dist. And Bureau of Special Ed. Appeals*, 70 IDELR 120 (2017).

<sup>13</sup> MUSER VI(2)(L).



April's meetings were made based on all the information from the parent, from the school, and in accordance with the evaluation results. The Team's decision to provide short-term tutoring was reasonable based on the Student's emotional needs involving school attendance. There has been no violation of law or regulation regarding this allegation.

Because the District has complied with law and regulation, no corrective action is ordered and the complaint is closed.