

**Complaint Investigation Report
Parent v. Lewiston Public Schools
Complaint 19.114C
Complaint Investigator: David C. Webb
July 19, 2019**

DRAFT

I. Identifying Information

Complainant: [REDACTED], Parent

Respondent: Lewiston Public Schools
William Webster, Superintendent
Pam Emery, Special Education Director

Student: [REDACTED]
DOB [REDACTED]

II. Summary of Complaint Investigation Activities

On May 24, 2019, the Maine Department of Education received this complaint. The complaint investigator was appointed on May 30, 2019.

The complaint investigator received 106 pages of documents from the Parent and 389 pages of documents from the District. Interviews were conducted with the following people: [REDACTED], Parent; Jennifer L. Robert, Psychologist; Melanie Burgess, Special Ed Teacher and Case Manager; Matt McKenny, BCBA; Anna Mathieu, Assistant Special Education Director; Hilary Barber, ELL Director; Aden Hilowle, BHP, New Mainers Public Health Initiative; Kahali Ahmed, interpreter for the District.¹

III. Preliminary Statement

The 16-year old Student recently completed the tenth grade and resides in Lewiston with his family. He is the educational responsibility of the Lewiston Public Schools (“District”) where he qualifies for special education and related services as a student with multiple disabilities (Autism and intellectual disability).

This complaint was filed by the Student’s parent (“Parent”) alleging that the District violated the Maine Unified Special Education Regulations (“MUSER”). After the receipt of the parent’s complaint, a Draft Allegations Letter was sent to the parties by the complaint investigator on June 5, 2019 alleging 7 separate violations of the MUSER. A telephonic Complaint Investigation Meeting was held on June 7, 2019.

¹ As per the standards of practice for conducting complaint investigations, the Complaint Investigator used his discretion with regard to witness interviews, and therefore not all of the witnesses identified by the parties were interviewed as part of this investigation.

IV. Allegations

1. The Parent has not been able to participate meaningfully in the IEP process because of the following:
 - The District did not ensure the parent understood the results of the Student's evaluations in the fall of 2018. 34 CFR 300.322(e); MUSER VI(II)(H);
 - The District did not take steps to ensure the parent was afforded the opportunity to participate in the Student's tri-annual IEP Team meeting. MUSER VI(II)(H)(1); MUSER VI(2)(H)(5);
 - The District has not provided written notices of the IEP meetings in the native language of the parent. 34 CFR 300.503; MUSER App. at 219-220.
2. The District did not timely complete the Student's speech-language evaluation. MUSER V(1)(A).
3. The District did not timely complete the Student's annual review, which was ten months overdue. MUSER V(1)(B)(2)(a).
4. The Student's three-year evaluation was not thorough or comprehensive enough to gather relevant functional, developmental, and academic information about the Student. MUSER V(2)(B).
5. The IEP Team has not designed an IEP that allows the Student to make progress in his goals and the general education curriculum from the end of the 2017-2018 school year through the 2018-2019 school year, denying him a free appropriate public education (FAPE). MUSER IX(3)(A) and (C); MUSER §VI.2.J.(4); *Andrew F. v. Douglas County School District*, 137 S. Ct. 988; *RE-1*, 2017 WL 1066260 (Mar. 22, 2017).

The Complaint Investigator reviewed all documents, information, and responses from the parties.

V. FACTUAL FINDINGS

1. The 16-year old Student just completed the 10th grade and resides in Lewiston with his family. He is the educational responsibility of the Lewiston Public Schools ("District") and he qualifies for special education and related services as a student with multiple disabilities. He is diagnosed with autism spectrum disorder and an intellectual disability.
2. In an interview with the Complaint Investigator, the Parent stated that while she speaks Somali, she is unable to read or write in the Somali language.² The Parent stated that she speaks, reads and writes in French. She noted that the Student understands English and does not need translation or interpreter services.

² The Parent stated that Somali is also a written language.

3. A “Lewiston Public Schools Home Language Survey” was signed by the Parent on June 8, 2015. On this form, the Parent indicated that the language that she most often used at home when speaking to the Student was Somali. The Parent circled “yes” on this form with regard to whether she wanted an interpreter for parent conferences, however the form does not ask if the Parent has a preferred language for interpreter services.
4. In response to written questions from the Complaint Investigator, the Parent stated that she disagrees that the Student has an intellectual disability, noting his ability to read, write and speak, his interest in learning and his ability to care for himself.
5. In response to written questions from the Complaint Investigator, the Parent stated she can read basic English for dates, times, and places for meetings. However, she cannot understand detailed notes, reports, or evaluations. With regard to her request for an interpreter, the Parent stated:

I told them at many meetings that I would prefer a French interpreter as I spoke and read French and did not understand the dialect of the Somali interpreter. The school did not provide a French interpreter at a meeting until June 2019. The school has never provided me any documents translated into French. [The District provided only a] Somali interpreter who spoke a dialect that I didn’t understand well.

6. In an interview with the Complaint Investigator, Kahali Ahmed said that he works at the District as an interpreter. He is certified by the American Council on the Teaching of Foreign Languages with an “Advanced High” designation.³ He said that he speaks Somali (regular dialect), Swahili and English. He does not speak French. He said that he provided interpreter services for the Parent on a number of different occasions and regularly interprets for parents of students at IEP team meetings. He said the Parent speaks “regular dialect” Somali, and that he is not able to interpret “Maay Maay” dialect and is not aware of any “Kenyan” or “Djibouti” Somali dialect. Mr. Ahmed noted that sometimes there are certain words that may be difficult to translate, that may be derivative of French or Arabic.
7. Mr. Ahmed said that he mostly does not provide written translation of documents and does not recall providing any written translation of documents for the Parent.
8. Mr. Ahmed said that he does not recall the Parent having significant difficulty understanding the content or discussions at any meetings where he provided interpreting

³ Advanced High designation is just below the highest designation of “Superior” and means, in relevant part: “able to consistently explain in detail and narrate fully and accurately in all time frames.”

services. He said that any time a parent told him that he or she didn't understand, he would let the IEP team know, and a new interpreter would be provided.⁴ Mr. Ahmed made clear that at no time did he tell the Parent to "just agree."

9. In an interview with the Complaint Investigator, Hillary Barber, the District's English Language Learners (ELL) Director said that when new families come into the District, a family interview is conducted to obtain the education and literacy levels of the entering student. She said that the family is able to tour the new school and meet school staff. Ms. Barber said that the District always provides interpreters for IEP team meetings, either through staff interpreters or the "Language Line" phone interpretation service. In the present case, Ms. Barber said that the Parent indicated her preferred language was Somali. She said that it is the practice of the special education secretary to send "interpretation" notices to parents for any document that a parent "needs to sign." Ms. Barber said that the District does not currently have the capability to use the "language line" to provide written translation services. Instead, the school secretary contacts the parent while the interpreter is on the line, then the interpreter reads through the requested document.
10. The IEP developed for the Student on September 12, 2017, provided the following classroom supports and services, supplemental aids, and modifications:

Services, supplemental aids, and modifications (provided in special and regular education classroom provided for the whole school day):

- Adult 1:1 BHP support in the regular education and special education setting;
- Frequent reminders to stay on task;
- Check for understanding of directions;
- Adult support when walking in the halls;
- Frequent motor breaks;
- Home-school communication to support the Student's mother with communication at home;
- Consult with ELL teachers for the Student's ELL needs;
- Time to process questions and answers before being asked to participate in class;
- Give multistep directions one at a time;
- Access to motor group
- ESY-3 hours per day for three days per week for eight weeks.

⁴ Anna Mathieu stated that there are at least three other Somali interpreters on staff, and that typically a new staff interpreter or a "Language Line" interpreter could be available to provide services within 15 minutes of any request.

Behaviors

- BCBA Consult as needed.

Assessments/Testing/Grading

- MEA alternate Math and ELA literacy (MSAA).

Specially Designed Instruction

- Specially Designed Instruction English 5 times per Week for 80 minutes
- Specially Designed Instruction Math 5 times per Week for 80 minutes
- Specially Designed Instruction Social Studies 5 times per Week for 80 minutes
- Specially Designed Instruction Science 5 times per Week for 80 minutes

Related services

- Physical therapy consultation once per month for 30 minutes
- Social work services-social group-six times per quarter for 60 minutes
- Special transportation to and from school daily

Least Restrictive Environment-Under this IEP, the Student spends 55.2% of his time with non-disabled children.

In the written notice prepared in connection with this meeting, it was noted that the Student was “moved from self-contained mathematics, English, science and social studies to basic level” classes in the same category because he was working “at a higher level than the self-contained class” was offering this summer.

11. In the written notice prepared in connection with the September 12, 2017 IEP team meeting, it was determined that the Student would be given a speech/language evaluation as part of his triennial evaluations in the fall of 2018, due to concerns relating to the Student speaking in a “whisper” and in a robotic fashion. The written notice stated that the Parent requested a music course for the Student, as well as a request that the Student “come home with homework sometimes” so that she could support him around that. This written notice documented that Kahali Ahmed attended the meeting as an interpreter for the Parent.⁵ This written notice stated on the last page that “Parental rights should be sent home in the French language.”

12. In an interview with the Complaint Investigator, Matt McKenny stated that the Student was also involved with the RISE program during his tenth-grade year. The RISE

⁵ Hillary Barber, the District’s ELL Director stated that Mr. Ahmed is a school-year employee who works as a Somali interpreter. Ms. Barber said that Mr. Ahmed speaks “regular” Somali and does not speak with the Maymay dialect, which she understood to be the only other dialect that may be difficult for regular Somali speakers to understand.

program, (Reaching Independence through Systemic Education), is a program for students with autism and neuro-developmental challenges. Mr. McKenny stated that the RISE program offers classroom observations, a written behavior plan, social planning, staff training, monitoring, and data collection. He stated that an educational technician tracks the data and puts it into a spread sheet, e.g. tracking the Student's peer interactions and his ability to stay on task.

13. An IEP team meeting was held on June 6, 2018. In a written notice prepared in connection with this meeting, it was noted that while this meeting was scheduled as "an annual", it was determined that the Student's annual meeting would be postponed to the fall of 2018 since the team "could not come to agreement." The written notice from this meeting also stated, in relevant part:

- "As some of the other teachers have noted, it has become clear over the course of this school year that he is not showing the ability to reach beyond rote memory learning by using higher level critical thinking skills. Most of the standards in Basic expect the student go beyond just memorization; this causes significant difficulty for the staff to support him in trying to meet a goal he is unable to meet at this time. [The Student] relies 100% on staff support to output work and even with their assistance and attempts to help him formulate answers/responses that meet criteria for the standards..."
- [The Student] has improved his speaking skills and no longer speaks in a whisper.
- "The team made the request that [the Student] move to FLS (Functional Life Skills) classroom", however "mom did not agree at this time" so it was determined that the Student would remain in the "basic" level classes pending his annual review in the fall.⁶
- The Parent asked to "make sure the teachers are writing in the home/school log every day."
- This written notice stated that "Parental rights should be sent home in the French language."

14. The Parent stated that she did not receive notices from the District with regard to translation services for interpreting the content of documents. The Parent said that when interpreter services were provided in Somali at meetings, she was unable to understand much of the language due to the interpreter having a different dialect.

⁶ Psychologist Jennifer Robert explained that the FLS classroom provides more support and individualized instruction for students in academics-reading, writing, math, which would be provided in separate room, with opportunities for students to be with typically developing peers for lunch, music, art and phys ed. FLS also offers repeated practice of skills and additional applied behavior analysis for the Student.

15. On October 15, 2018, Dr. Robert completed a psychological evaluation for the Student as part of his triennial review.⁷ In this evaluation, she stated:
Results from this testing indicate cognitive functioning in the intellectually deficient range. He continues to demonstrate a strength in his ability to look at patterns and choose the correct response, however he is unable to generalize these skills to academic tasks. His vocabulary development and communication skills are significantly delayed. He is able to copy information, but he works extremely slowly. His higher level reasoning skills, such as inductive and deductive reasoning, and analysis and synthesis skills are very poor. This impacts his ability to problem solve. His adaptive functioning skills are in the very low range, including his communication skills, socialization skills, and his daily living skills. These results suggest that [the Student] is functioning in the intellectually deficient range.
16. Dr. Robert conducted the following evaluations on the Student: Kaufman Brief Intelligence Test: Second Edition (KBIT:2); Wechsler Nonverbal Test (WNV); Gilliam Autism Rating Scale: Third Edition (GARS:3); Social Responsiveness Scale: Second Edition (SRS:2) and the Vineland Adaptive Behavior Scale: Third Edition. In an interview with the Complaint Investigator, Dr. Robert said that she added the Vineland as it addresses an adaptive functioning component; namely, how the Student is able to apply skills in areas of communication, activities of daily life and socialization.
17. Dr. Robert stated that overall the Student scored very low in his evaluation, which supported her decision to diagnose him with an intellectual disability. She noted that the Student's intellectual functioning is very limited and has plateaued. She stated that she believes that the Student's special education programming has been addressing his weaknesses; however, she noted that some of his scores had dropped from his previous evaluation in 2015.⁸ Dr. Robert pointed out that not all students who are diagnosed with autism have an intellectual disability.
18. Dr. Robert said that at the October 2018 IEP team meeting she observed the Parent to be engaged and aware of her report and the discussion topics. Dr. Robert said that the District had arranged for the Somali interpreter to be present for the meeting. Dr. Robert stated that she read through her report section by section at the IEP team meeting, which was in turn translated by the interpreter. Dr. Robert believed that the Parent understood the report, diagnoses and recommendations, but noted that it was very clear that she

⁷ Dr. Robert said that she is not certain whether her report was sent by mail or whether it was sent home with the student in a sealed envelope. She did not send an interpretation notice with her report.

⁸ Dr. Robert noted that the drop in the Student's scores is also a reflection of the comparison of his scores to similar age peers, i.e. the Student's scores were now being compared to other 15 year old students, instead of 12 year old students.

disagreed with the conclusion that the Student had an intellectual disability. She also said that the Student's sister has an intellectual disability and attends the FLS program.

19. Dr. Robert stated that children with autism require consistency and structure, and that the Student's absence for an extended period during the 2018-2019 school year contributed to his academic challenges.

20. The Student's IEP team met on October 18, 2018. The Written Notice prepared in connection with this meeting noted that Anna Mathieu, Special Education Supervisor, provided the Parent with procedural safeguards in French, "as this is the language she can best read". Khalif Ahmed served as the interpreter for this meeting. The written notice also states in relevant part:

- It was determined that the Student will continue with his current services within the RISE Program and more academic support will be provided for reading and math;
- The team will reconvene in order to process through Dr. Robert's evaluation;
- The team considered having the Student participate in the Functional Life Skills Program but rejected this option because the RISE Program accommodates his functional and academic needs;
- The team considered not holding another meeting but rejected this option as the team feels it is vital that the Parent is able to understand the evaluations and how they relate to the Student;
- The notice reported that the Parent:

...was overwhelmed by the information from [the Student's] testing. She did not feel like the Student presents the same way at home as he is presenting at school. Mom says that he is doing well in math and in English and that she is able to help at home. Mom is wondering if he can stay in the classes that he is currently in, but also [to receive] better support [for] him in the classroom. Mom does not support any 1:1 direct instruction. Mom did not understand how he could still be at a pre-k or second grade level after being at school for 6 years. She was concerned that he did not understand anything he has been learning for the past 6 years.

21. In an interview with the Complaint Investigator, Anna Mathieu, Assistant Special Education Director and Special Education Supervisor for the High School, said that after the October 18, 2018 IEP team meeting, the team planned to reconvene on October 31, 2018 in a more informal meeting where Dr. Robert's report and the team's recommendations could be discussed in a more detailed manner so that the Parent could better understand what was being recommended. Ms. Mathieu said that she planned to have more female staff members at this follow up meeting as she feels that the Parent

does better with women than men. She reported that the Parent cancelled the meeting just before the scheduled time with no reason given.

22. In an interview with the Parent, she said that after the October 2018 IEP team meeting, she informed District staff that her mother in Africa was very sick and that she needed to be with her. She then departed for Africa with the Student, whose first absence was reported on November 5, 2018.⁹
23. The Parent said that during the time that she was in Africa (approximately three months), he received tutoring with two different teachers at home 3 hours per day, 1:1. (1.5 hours of math assistance and 1.5 hours of English.) In addition, the Parent reported that the Student did some work online with reading, writing and math with the IXL program. The Parent did not communicate or coordinate with the District with regard to the Student's tutoring or on-line work while the family was in Africa.
24. The Parent stated that she first received a copy of Dr. Robert's psychological evaluation in the mail after she returned from Africa in February, 2019. Although she was present for the meeting in October when the report was presented, she said that she informed the entire team that she was having difficulty with the interpreter. She said that the District's response was for Dr. Robert to continue anyway, and that neither the interpreter or evaluator explained specifically what the numeric scores represented in the cognitive testing section. The Parent said that she did not ask for help with interpreting the report because she was not aware that she could do so, and there was no form attached offering this service.
25. In an interview with the Complaint Investigator, Melissa Burgess, the Student's special education teacher and case manager during the 2018-2019 school year said that the Student missed a significant amount of time this year and that when he returned, she noticed a regression in his skills, including his interpersonal skills which she characterized as "drastically different." She said that the Student was more skittish, did not like to be touched and was more likely to be distracted. Ms. Burgess said that she received no communication from the Parent regarding support or coordination with the District prior to the family leaving for Africa, nor did she receive any communication from the Parent while the Student was in Africa. Ms. Burgess reported that the Student "missed a lot of classes" during the 2017-2018 school year.
26. Ms. Burgess said that the Student hasn't met his goals under his IEP. She feels that the Student would be best served by participation in the FLS program as it would be at his

⁹ The Student's attendance records for the 2018-2019 school year reveal that with regard to the Africa trip, he was absent from November 5, 2018 to February 7, 2019. Over the entire year, the Student missed 54 days of school.

instructional level, where academic skills are integrated in the community. For example, she said that the FLS program could involve a lesson and socialization plan where the Student would learn the bus system, work on budgeting his money, and how to find and keep a job. While the Student now receives 1:1 services in the “Basic” program, the primary change with regard to the FLS program would be a modification of the instructional level and the location of his specifically designed instruction.

27. Ms. Burgess attended the October 18, 2018 IEP team meeting. She said that the Somali interpreter at the meeting was the same one used at previous IEP team meetings, and there was no indication at this meeting that the Parent couldn’t understand what was being said, nor did she express any concerns about interpreting documents she had received. Ms. Burgess reported that following the discussion of the FLS program, the Parent abruptly left the meeting.
28. Ms. Burgess stated that when the Student was in school, the Student’s teachers and the Parent would communicate regularly through a “communication log” which traveled to and from home with the Student in his school backpack. She said that this form was not translated by the School and that the Parent would relay information to school in this log, writing in English and responding to comments made by staff in English. Ms. Burgess said that she never heard any concerns from the Parent regarding translation issues.
29. In response to the Complaint Investigator’s written questions, the Parent stated that at no point in the past year was she aware of this interpreter phone service and did not know the school was required to be sending this form along with mailings to her. She further did not ask for interpreting of the October 2018 psychological evaluation report as she was “not aware” she was able to make this request.
30. In an interview with the Complaint Investigator, Matt McKinny, the Student’s Behavioral Analyst, said that he has been working with the Student and the family for approximately one- and one-half years. He said that he provides staff training and mentoring with regard to implementing the Student’s behavioral and social programming. He said that he writes and revises the Student’s behavior plan, regularly observes the Student and oversees the data collection as part of the RISE program with regard to the Student’s behaviors in school. Mr. McKinny said that he regularly attends the Student’s IEP team meetings, and that the Parent seemed to fully understand the conversation and content of the meetings with the interpreter present.
31. Mr. McKinny said that the behavior data tracking within the RISE program monitors the Student’s behaviors and triggers, peer interactions, and areas where he goes off task. He said that the RISE behavior data tracking is similar to a Functional Behavior Assessment

(FBA). Mr. McKinny said that an FBA, which addresses more serious behavior concerns and more intensive teaching strategies of reinforcement or punishment, was not necessary as the Student's behaviors did not rise to this level of severity.

32. Mr. McKinny said that he feels that the FLS program is more appropriate for the Student. He said that there is not much more "revision or modification" he can do with the Student's current Basic and RISE programs, even with the 1:1 educational technician working with him.
33. Mr. McKinny said that he did not feel that a speech language assessment was necessary as part of his triennial evaluation in October 2018, as the Student was able to control and discontinue whispering and his robotic speech with prompts from staff.
34. In an interview with the Complaint Investigator, Aden Hilowle, the Student's BHP through New Mainers Public Health Initiative, said that he regularly attends the Student's IEP team meetings. Mr. Hilowle said that the District has provided a Somali interpreter at each of the meetings he has attended with the Parent. Mr. Hilowle noted, however, that when he recently attended a meeting with a French interpreter, the Parent seemed more engaged. With the Somali interpreter, he recalled that the Parent was frustrated with regard to some interpretations due to the Parent having a "different dialect."
35. Mr. Hilowle said that the Parent is having a hard time accepting that the Student has an intellectual disability, noting that it is "culturally" more difficult for male children to be labelled with a disability. He said that he was aware that when the Parent traveled to Africa, she had the Student take part in some educational programming, including "IXL" on-line programming.
36. Anna Mathieu said that the Student participated in the FLS program during his summer ESY programming between his eighth and ninth grade years, and did "very well" in this program. She said that the Student has struggled in the Basic program, which often involves a structured 80 minute class where it is more difficult to hold the Student's attention. She said that the FLS program is more specifically designed for the Student's needs and life skills. She said that the District was ready to make this determination at the June, 2018 IEP team meeting, but wanted to wait until they had more evaluation data from Dr. Robert. She said that Dr. Robert's October 2018 evaluation confirmed that the FLS program was best for the Student.
37. Ms. Mathieu stated that she understood that the Parent agreed that a speech language evaluation was not necessary for the Student, as the Parent stated that she had taken the Student to his doctor and that his whispering was not an articulation or pragmatic issue-

rather that he was “afraid” of his new voice. Ms. Mathieu stated that if the Student was asked to speak in regular tone, he could do so.

38. Ms. Mathieu stated that the District has a number of Somali students who receive special education services and that District always uses interpreters for meetings involving parents who are not English speaking. She said that the “cultural broker” referenced in the Parent’s complaint also speaks Somali and has familiarity with special education matters. She said that this interpreter, Khalif Ahmed, has been used as an interpreter for a number of other IEP meetings involving the Parent. She said that at the October 2018 meeting, Dr. Robert’s report was not read word for word, but she offered a detailed summary which was interpreted by Mr. Ahmed. She said that the interpreter would ask the Parent clarifying questions during the meeting and it appeared that the Parent understood the report.
39. On March 12, 2019, the IEP team reconvened. The interpreter was out sick, and the team unsuccessfully attempted to obtain interpretation services via Language Line. In addition, Dr. Robert was unable to attend this meeting. Pursuant to the written notice, the Parent stated that the meeting could be continued, and that if she needed anything translated, she could ask Mr. Abdi, the Student’s case manager, who was also in attendance. Mr. Myers, the administrator for the meeting, observed that the mother still had questions about the results of Dr. Robert’s evaluation. The team determined that it would reconvene at a future date at which time Dr. Robert and an interpreter could be present.
40. On April 8, 2019, the IEP team reconvened and an interpreter and Dr. Robert were present. The mother was called and stated that she did not feel well and declined to participate in the meeting by phone. The team decided to continue in her absence. The team determined to move the Student to the FLS classroom, while he continued to receive services through the RISE program, after the upcoming spring vacation.

VI. DETERMINATIONS

1. **The District did not ensure the parent understood the results of the Student’s evaluations in the fall of 2018. 34 CFR 300.322(e); MUSER VI(II)(H);**
 - **The District did not take steps to ensure the parent was afforded the opportunity to participate in the Student’s tri-annual IEP Team meeting. MUSER VI(II)(H)(1); MUSER VI(2)(H)(5);**
 - **The District has not provided written notices of the IEP meetings in the native language of the parent. 34 CFR 300.503; MUSER App. at 219-220.**

3. Failure to timely complete the Student's annual review, which was ten months overdue. MUSER V(1)(B)(2)(a).

PROCEDURAL VIOLATIONS FOUND; NO DENIAL OF FAPE FOUND

MUSER §§V1.2(H) (1) provides, in relevant part, that each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—

(a) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(b) Scheduling the meeting at a mutually agreed on time and place.

MUSER §§V1.2(H) (5) provides, in relevant part, that the public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

Pursuant to MUSER Appendix 1 and 34 CFR §300.322 (e), a school administrative unit must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

MUSER §§V1.2(H) (6) provides that a public agency must give the parent a copy of the child's IEP at no cost to the parent within 21 school days of the IEP Team Meeting. [20 U.S.C. 1414(d)(1)(B)(i) and 34 CFR 300.322 (a-f)].

34 C.F.R § 300.503 also addresses notice issues and provides:

(c) *Notice in understandable language.*

(1) The notice required under paragraph (a) of this section must be -

(i) Written in language understandable to the general public; and

(ii) *Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.* (emphasis added)

(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure -

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

Maine Department of Education (Department) Administrative Letter #23, dated March 12, 2019, clarifies the requirement to ensure Parents' meaningful access to IEP information. In this letter, the Department specifies that for parents of students with Individualized Education Plans (IEPs), LEAs must ensure that parents are able to understand the proceedings of the IEP meeting and access the IEP document as needed. The Department cites a 2016 Dear Colleague Letter from OSEP which states, in relevant part:

Under Title VI, all vital documents, including a student's IEP, must be accessible to Limited English Proficient (LEP) parents, but that does not necessarily mean that all vital documents must be translated for every language in the district. For example, a timely and complete oral interpretation or translated summary of a vital document might suffice in some circumstances. A district must, however, be prepared to provide *timely and complete translated IEPs to provide meaningful access to the IEP and the parental rights that attach to it. This is because a parent needs meaningful access to the IEP not just during the IEP meeting, but also across school years to monitor the child's progress and ensure that IEP services are provided.* (emphasis added)

In the present case, there is limited evidence that the requirements in §300.503(c)(2) (i), (ii) and (iii) have been met. First, the translation services were provided to the Parent in Somali, a language that is not preferred by the Parent for parent conferences with the school. The Parent doesn't read or write in the Somali language and has acknowledged difficulties understanding different Somali dialects. The Parent stated that she told District staff at meetings that she would prefer a French interpreter as she spoke and read French and did not understand the dialect of the Somali interpreter.

At the October 18, 2018 meeting, it was noted that with the Somali interpreter "the Parent was not able to understand the evaluations and how they relate to the Student." The written notice, however, states that the procedural safeguards were provided to the Parent *in French*, "as this is the language she can best read," however the interpretation of the evaluation and other aspects of the meeting were conducted in Somali. The Student's BHP, Aden Hilowle, stated that with the Somali interpreter, the Parent was frustrated with regard to some interpretations due to the Parent having a different dialect. In contrast, when he recently attended a meeting with a French interpreter, he said that the Parent "seemed more engaged."

The District argues that the Parent "had elected interpretation in Somali", which is apparently a reference to a "Lewiston Public Schools Home Language Survey" signed by the Parent on June 8, 2015. This form, however, only asks the Parent for the language that she "most often used at home when speaking to the Student." While the form asks whether the

Parent wanted an interpreter for parent conferences, there is no place on this form that requests the language the Parent prefers for these conferences.¹⁰

The District also relied on its evaluator, Dr. Jennifer Robert, to directly send her evaluation report to the Parent. Dr. Robert said that she is not certain whether her report was sent by mail or whether it was sent home with the student in a sealed envelope. There was no interpretation notice sent with her report. While the Parent received a copy of the report at the October 2018 IEP team meeting, she did not receive an actual copy of the report until she returned from Africa in February, 2019.¹¹ The District failed to send a copy of the Student's October 18, 2018 IEP to the Parent until April 10, 2019.¹² These facts support the credibility of the Parent's statement that she did not consistently receive notices from the District with regard to translation services for interpreting the content of key documents.

While the District committed several procedural violations with regard to providing notice and appropriate translations to the Parent, the evidence does not support a finding that these violations resulted in a loss of FAPE for the Student. First, based on the Student's previous success and progress, his placement in the "Basics" classroom and the RISE program in his September, 2017 IEP was reasonably calculated for the Student to make progress based on the information known to the IEP team at the time of the development of this IEP. Second, it is evident that the Parent was able to understand much of the content of the discussion at the IEP team meetings. The written notices and the witnesses interviewed reported that the Parent was an engaged and active participant at the Student's IEP team meetings and provide detail with regard to her concerns and requests.

When the Parent was having difficulty understanding the discussion at the October, 2018 meeting, the team appropriately refrained from making any determinations until a follow up meeting could be held on October 31, 2018.¹³ The Parent did not attend the October 31, 2018 follow up meeting and removed the Student from school during the 2018-2019 school year for a trip to Africa where he was absent from November 5, 2018 to February 7, 2019. Although the Parent provided some tutoring in math and English, and some on-line instructional programs, the Parent made no effort to coordinate with the Student's teachers during this time and it is not clear

¹⁰ The District appears to overlook the fact that the parent can read and write in French when stating in its response to the complaint that it "is not obligated to provide a written translation where, as here, a parent's language is "not a written language."

¹¹ MUSER V(1)(B)(2)(a) provides that a reevaluation shall occur not more frequently than once a year. Although the Student's evaluations were completed within the required time frame, the results of the evaluations were not properly provided to the Parent as noted. Due to the family's long-term absence, the record supports a finding that the Student was not denied a FAPE as a result of the delay in providing this information to the Parent.

¹² The District claimed that the failure to mail the IEP relates to the fact that the "mother left the country abruptly in early November 2018."

¹³ While the District offered to have more women staff members at this meeting to allow the Parent to "feel more comfortable", it does not appear that the District made additional efforts to have documents translated for the Parent at this meeting.

that any of these programs dovetailed with his specially designed programming at the school. Over the entire year, the Student missed 54 days of school. Melissa Burgess, the Student's special education teacher and case manager during the 2018-2019 school year said that the Student missed a significant amount of time this year and that when he returned, she noticed a regression in his skills, including his interpersonal skills which she characterized as "drastically different."¹⁴

After the Student returned in February, 2019, the IEP team arranged to meet again in March, which meeting was interrupted by unforeseen sickness of the interpreter, and then again in April 2019, which meeting was delayed to the unforeseen sickness of the Parent.

2. Failure to timely complete the Student's speech-language evaluation. MUSER V(1)(A).

4. Failure to ensure that the Student's three-year evaluation was not thorough or comprehensive enough to gather relevant functional, developmental, and academic information about the Student. MUSER V(2)(B).

NO VIOLATION FOUND

MUSER V(1)(A) provides in relevant part that a School Administrative Unit (SAU) shall conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability.

MUSER V(2)(B) provides, in relevant part, that in conducting the evaluation, the SAU shall:

- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining:
 - (a) Whether the child is a child with a disability under 34 CFR 300.8 [Section VII]; and
 - (b) The content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;
- (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

¹⁴ The Student's risk of regression is supported by the team's determination that he attend ESY services.

- (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

As an initial matter, the Student was given a psychological evaluation in 2012, and re-evaluated when he transitioned to the Lewiston public schools in 2015. In a written notice prepared in connection with the September 12, 2017 IEP team determined that the Student would be given a speech/language evaluation as part of his triennial evaluations in the fall of 2018 due to his propensity to whisper when he speaks.¹⁵

The written notice from the June 6, 2018 IEP team meeting, however, notes that the Student has improved his speaking skills and “no longer speaks in a whisper.” Anna Mathieu, the Special Education Supervisor for the high school, stated that the Parent agreed that a speech language evaluation was not necessary as she reported that the Student had seen his doctor who said that his whispering “was not an articulation or pragmatic issue-rather that he was ‘afraid’ of his new voice.” Ms. Mathieu was able to independently confirm this and stated that if the Student was asked to speak in regular tone, he could do so. Matt McKinny, the Student’s Behavioral Analyst, agreed that a speech language assessment was necessary as part of his triennial evaluation in October 2018 in part due to the Student’s ability to control and discontinue whispering with prompts from staff.

While the Parent was identified as having objected to the Student’s placement in the FLS program on the June, 2018 written notice, there is no indication that she objected to the determination that the Student would not be given a speech/language evaluation.

With regard to the Student’s triennial evaluations, the Parent has also failed to establish that the evaluations performed by Dr. Jennifer Robert were inappropriate or insufficiently comprehensive for the Student. In her report, Dr. Robert, a licensed and certified school psychologist since 1999, reviewed the Student’s 2012 and 2015 assessments and noted that some of the Student’s scores had dropped from his previous evaluation in 2015. Dr. Robert noted that the drop in the Student’s scores is also a reflection of the comparison of his scores to similar age peers, i.e. the Student’s scores were now being compared to other 15 year old students, instead of 12 year old students.

Dr. Robert used a variety of assessment tools and provided the following evaluations on the Student: Kaufman Brief Intelligence Test: Second Edition (KBIT:2); Wechsler Nonverbal Test (WNV); Gilliam Autism Rating Scale: Third Edition (GARS:3); Social Responsiveness Scale: Second Edition (SRS:2) and the Vineland Adaptive Behavior Scale: Third Edition. Dr. Robert added the Vineland as it addresses an adaptive functioning component; namely, how the Student is able to apply skills in areas of communication, activities of daily life and

¹⁵ Additional evaluations included a psychological evaluation, autism related assessment, adaptive behavior assessment, academic testing achievement and a classroom observation.

socialization. The thoroughness of Dr. Robert’s testing is underscored by the new revelation that the Student also suffered from an intellectual disability.

5. The IEP Team has not designed an IEP that allows the Student to make progress in his goals and the general education curriculum from the end of the 2017-2018 school year through the 2018-2019 school year, denying him a free appropriate public education (FAPE). MUSER IX(3)(A) and (C); MUSER §VI.2.J.(4); *Andrew F. v. Douglas County School District* , 137 S. Ct. 988; *RE-1*, 2017 WL 1066260 (Mar. 22, 2017).

NO VIOLATION; NO DENIAL OF FAPE FOUND

MUSER §VI.2.J.(4) provides that one of the Major IEP Team Responsibilities is to develop or revise an Individualized Education Program to provide each identified child with a disability a free appropriate public education. MUSER §IX.3. A and C provide in relevant part:

A. The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes:

(a) A statement of the child's present levels of academic achievement and functional performance, including:

- (i) How the child's disability affects the child's involvement and progress in the general education curriculum;
- (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and
- (iii) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;

(b) A statement of measurable annual goals, including academic and functional goals, designed to:

- (i) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum which must be for children 3-5 aligned with the Early Learning and Development Standards and for children 5-20 aligned with the system of Maine’s Learning Results, which may include a core of standards in English language arts and mathematics for kindergarten to grade 12 established in common with the other states; and
- (ii) Meet each of the child's other educational needs that result from the child's disability;
- (iii) The IEP shall reflect the individual goals to successfully meet the content standards of the system of Maine’s Learning Results, which may include a core of

standards in English language arts and mathematics for kindergarten to grade 12 established in common with the other states, in addition to any other diploma requirements applicable to all secondary school children pursuant to 20-A MRSA §4722.

(c) A description of how the child's progress toward meeting the annual goals described in (b) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(d) A statement of the special education (Section X of this rule) and related services (Section XI of this rule) and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum in accordance with (a) and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other children with disabilities and non-disabled children in the activities described in this subparagraph;

(e) An explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in the activities described in (d)(iii);

C. Development of IEP.

(1) In general.--In developing each child's IEP, the IEP Team, subject to subparagraph (3), must consider:

(c) The results of the initial evaluation or most recent evaluation of the child; and

(d) The academic, developmental, and functional needs of the child.

The First Circuit Court of Appeals has declared that “the IDEA entitles qualifying children to services that target ‘all of [their] special needs,’ whether they be academic, physical, emotional, or social.” Lenn v. Portland Sch. Comm., 998 F.2d 1083, 1089 (1st Cir. 1993) “Educational performance in Maine is more than just academics.” Mr. and Mrs. I v. Maine School Administrative District No. 55, U.S. Court of Appeals, First Circuit 06-1368 06-1422 107 LRP 11344, March 5, 2007.

In Roland M. v. Concord Sch. Comm., 910 F.2d 983, 989 (1st Cir. 1990), the First Circuit Court held:

Congress indubitably desired “effective results” and “demonstrable improvement” for the Act’s beneficiaries. *Burlington II*, 736 F.2d at 788. Hence, actual educational results are relevant to determining the efficiency of educators’ policy choices... The key to the conundrum is that, while academic potential is one factor to be considered, those who formulate IEPs must also consider what, if any, “related services,” 20 U.S.C. § 1401(17), are required to address a Student’s needs. *Irving Independent School Dist. V. Tatro*, 468 U.S. 883, 889-90 (1984); *Roncker v. Walter*, 700 F.2d 1058, 1063 (6th Cir.), cert. denied, 464 U.S. 864 (1983).

Among the related services which must be included as integral parts of an appropriate education are “such development, corrective, and other supportive services (including psychological services . . . and counseling services) as may be required to assist a handicapped child to benefit from special education.” 20 U.S.C. § 1401(17).

There is a two-part standard for determining the appropriateness of an IEP and placement. First, was the IEP developed in accordance with the Act’s extensive procedural requirements? Second, was the IEP reasonably calculated to enable the child to receive “educational benefits”? See *Board of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley* (“*Rowley*”), 458 U.S. 176, 206 (1982); *Lessard v. Wilton-Lyndeborough Coop. Sch. Dist.*, 518 F.3d 18, 27 (1st Cir. 2008). “Adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.” *Rowley*, 458 U.S. at 205.

The Supreme Court recently explained its *Rowley* standard by noting that educational programming must be “appropriately ambitious in light of a student’s circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” *Andrew F. v. Douglas County School District RE-1*, 2017 WL 1066260 (Mar. 22, 2017).

The Least Restrictive Environment (LRE) requirement reflects the IDEA's preference that “[t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled.” See 20 U.S.C. §1412(a)(5); *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 330 (4th Cir. 2004). MUSER §VI.2.I provides that the School Administrative Unit has the ultimate responsibility to ensure that a student’s placement is in the LRE:

MUSER §VI.2.J.(4) provides that one of the Major IEP Team Responsibilities is to develop and *revise* an Individualized Education Program. (emphasis added). MUSER §§V1.2(I), requires the IEP team to make joint, informed decisions regarding the child’s needs and

appropriate goals. The IEP team must consider the concerns of the parents for enhancing the education of their child. MUSER §IX.3.C(1)(b). The IEP Team should work toward consensus, but the SAU [District] has ultimate responsibility to ensure that a child is appropriately evaluated; that the IEP includes the services that the child needs in order to receive FAPE; and that the child's placement is in the least restrictive educational placement. MUSER VI(2)(I).

Based on the Student's previous success and progress, his placement in the "Basics" classroom and the RISE program in his September, 2017 IEP was reasonably calculated for the Student to make progress based on the information known to the IEP team at the time of the development of this IEP. When it became clear at the June 6, 2018 IEP team meeting that the Student was struggling in the "Basic" program, the District proposed to change the Student's placement to the FLS program to provide more support and individualized instruction in reading, writing and math and additional applied behavior analysis. Due to the Parent's objection, however, the IEP team delayed the decision until the fall of 2018 after completing his triennial evaluations.

The IEP team again recommended the FLS program for the Student following his triennial evaluations at the October, 2018 IEP team meeting.¹⁶ When the Parent was apparently having difficulty understanding the discussion and evaluations at the Student's IEP team meeting, the team again refrained from making any determinations until a follow up meeting could be held with the Parent on October 31, 2018. The Parent, however, did not attend the October 31, 2018 follow up meeting. The Parent then removed the Student from school from November 5, 2018 to February 7, 2019 for a trip to Africa so that the Parent could be with her ailing mother.

A school district is obligated, within a reasonable period of time, to review and develop a programming alternative once it becomes clear the student's IEP is not working. M.C. ex rel. JC v. Central Regional School District, 81 F.3d 389, 396-97 (3d Cir.), cert. denied, 519 U.S. 866, 136 L. Ed. 2d 116, 117 S. Ct. 176 (1996). The evidence in this case supports a finding that the despite the Student's missing 54 days of school, the District took appropriate steps to balance the concerns of the Parent and to offer a revised IEP for the Student in order to provide him with a FAPE.

VII. CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

1. The Parent shall be provided with a French translator for all future IEP team meetings;

¹⁶ Dr. Robert also recommended that the Student would benefit from the FLS program in her October, 2018 report.

2. Written assurance from the Superintendent that a plan is in place for the translation of all *written notices* and *IEPs*, and *parental rights notices* in French, including past copies of IEPs and written notices provided for the Student since June 6, 2018.
3. For all other vital documents or notices, the District the must ensure:
 - a. That the Parent can access an oral or written translation or summary of the document in French;
 - b. That the parent understands the content of the notice or document; and
 - c. That there is written evidence in the Student's file that the requirements of this section have been met;
4. The Student's IEP team shall convene within 30 days after said translated documents have been provided to the Parent to determine the Student's placement, instruction, accommodations, and supports.
5. The statement of assurances should be submitted to the Department by September 15, 2019.