

**Complaint Investigation Report**  
v. Harpswell Coastal Academy  
July 17, 2020

Complaint # 20.088C

Complaint Investigator: Julia N. Pothen, Esq.

Date of Appointment: May 21, 2020

**I. Identifying Information**

Complainant: \_\_\_\_\_, Parent & Guardian

Respondent: Harpswell Coastal Academy  
Scott Barksdale, Head of School  
9 Ash Point Road  
Harpswell, ME 04079

Deryl Holt, Director of Special Education

Student:

DOB

**II. Summary of Complaint Investigation Activities**

On May 18, 2020, the Maine Department of Education received this complaint. The complaint investigator was appointed on May 21, 2020. Therefore, the current investigation covers the time period of May 21, 2019 to present. See MUSER XVI(4)(B)(3).

The complaint investigator received 142 pages of documents from Harpswell Coastal Academy (“HCA”). The investigator also received 251 pages of documents from the complainant. An interview was conducted with the Student’s parents (“Parents”) on June 18, 2020. On June 22, 2019, the following school staff from HCA were interviewed: the Director of Special Education; the Head of School, and the Student’s Certified Special Education Teacher, and an Education and Human Resources Specialist from Drummond Woodsum law firm.<sup>1</sup> The complaint investigator reviewed all

---

<sup>1</sup>As per the standards of practice for conducting complaint investigations, the Complaint Investigator used her discretion with regards to which witnesses were interviewed; therefore, not all of the witnesses identified by the parties were interviewed as part of this investigation.

documents, email chains, information, and responses provided by the parties, as well as numerous documents from two prior complaint investigations.

### **III. Preliminary Statement**

The Student is      years old, and      is in the      grade. The Student's parents ("Parents") have legal guardianship of the Student, and      resides with      Parents in      , Maine. The Student qualifies for special education and related services based on a variety of diagnoses that have an adverse impact on      education, including Tourette Syndrome, specific learning disability, and autism spectrum disorder, bipolar disorder, unspecified anxiety disorder, mood dysregulation disorder, and expressive language disorder.

Harpwell Coastal Academy ("HCA") is a public charter school authorized by the Maine Charter School Commission. The Student initially enrolled at HCA near the start of the 2018-2019 school year, and HCA remains responsible for the provision of the Student's special education services. The Student was recently placed at the      in      , Maine, which is a therapeutic day treatment program.

This complaint was filed by the Student's parent ("Parent") alleging that Harpswell Coastal Academy ("HCA") 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 May 27, 2020, alleging three violations of the MUSER. A telephonic Complaint Investigation Meeting was held on May 29, 2020. A revised Allegations Letter was sent to the parties by the complaint investigator on June 2, 2020, alleging four total violations of the MUSER.

Although the regulatory time frame for the present complaint investigation extends from May 21, 2019 to present, the scope of this investigation is somewhat limited by the procedural history of two prior due process complaints filed by the Parent against HCA. Back on July 25, 2019, and again on November 20, 2019, the Parent filed complaints on behalf of the Student with the Maine Department of Education against Harpswell Coastal Academy. See Complaint Investigation #20.007C and Complaint Investigation #20.047C. On September 20, 2019 and on January 14, 2020, the Maine Department of Education published Complaint Investigation Reports, finding non-compliance on the part of the HCA with respect to a number of provisions of the MUSER. HCA was then ordered to complete a corrective action plan, which includes a requirement that HCA provide 65 total hours of compensatory education to the Student prior to May 15, 2020. The first complaint was investigated by complaint investigator Jeannette Sedgwick, and the second complaint was investigated by the present complaint investigator, Julia Pothén. The present complaint investigator has thoroughly reviewed the complaints, documentation, information, and responses from Complaint Investigation #20.007C and Complaint Investigation #20.047C in order to ascertain which of the

present allegations, if any, were previously addressed. One of the allegations in the present complaint investigation overlaps with allegations from the previous complaints, and with respect to the repeated issue, the complaint investigator has only considered HCA's conduct from the date of the previous determinations (January 14, 2020) to the present. With respect to new allegations that were not addressed in the prior complaint investigations, the full regulatory time frame of May 21, 2019 to present remains applicable.

#### **IV. Allegations**

The Parent has alleged that HCA did not provide a free appropriate public education (FAPE) (see MUSER II(13); 34 CFR 300.101(a)) because of the following four violations:

- A. The school staff and administration did not take prompt and appropriate action in response to an incident of bullying where the Student was called a "school shooter." The school's failure to act affected the Student's ability to access a free appropriate public education. MUSER I(2); MUSER II(13); 34 CFR 300.101(a).
- B. The Student's removal from educational program on February 28, 2020 was improper because:
  1. The Student's removal constituted a disciplinary change of placement for which no manifestation determination review was held. MUSER XVII(1)(E).
  2. The school staff and administration did not return the Student to the educational placement from which was removed, which resulted in a lack of educational services for approximately 11 days. MUSER XVII(1)(F)(2); MUSER IX(3)(B)(3).
- C. The school staff and administration has not fully implemented the Student's IEP regarding the provision of a 1:1 Educational Technician because the Student's Educational Technician was also caring for a baby while providing services to the Student. MUSER IX(3)(B)(3).
- D. The school staff and administration did not provide the Parents with access to the Student's education records. MUSER XIV(3).

#### **V. Factual Findings**

1. The Student is years old, and is in the grade. The Student resides with Parents in , Maine. The Parents have legal guardianship over the Student.

2. HCA is a public charter school authorized by the Maine Charter School Commission. HCA is responsible for providing the Student's educational services.
3. The Student began attending Harpswell Coastal Academy ("HCA") during the 2018-2019 school year, after previously receiving education in a day treatment program that focused on behavioral interventions. Recently, as of March 23, 2020, the Student has been placed at the \_\_\_\_\_ in \_\_\_\_\_, Maine, which is another therapeutic day treatment program. HCA remains responsible for providing the Student's educational services.
4. The Student qualifies for special education and related services based on a variety of diagnoses that have an adverse impact on \_\_\_\_\_ education, including Tourette Syndrome, specific learning disability, and autism spectrum disorder, attention-deficit hyperactivity disorder, bipolar disorder, unspecified anxiety disorder, mood dysregulation disorder, and expressive language disorder.
5. The most recent educational evaluations conducted by HCA, dated January 12, 2020, show the Student's predominantly low average to below average cognitive abilities, as measured by the Weschler Adult Intelligence Scale – Fourth Edition (WAIS-IV) and the Wide Range Assessment of Member and Learning – Second Edition (WRAML-2).
6. The Student was assessed as low average (13<sup>th</sup> percentile) for verbal comprehension, average (39<sup>th</sup> percentile) for visual/spatial memory, low average (9<sup>th</sup> percentile) for working memory index, and below average (5<sup>th</sup> percentile) for processing speed. Additionally, \_\_\_\_\_ scored below average (4<sup>th</sup> percentile and 0.3<sup>th</sup> percentile) for verbal memory index and verbal recognition index, and \_\_\_\_\_ scored low average (12<sup>th</sup> percentile and 14<sup>th</sup> percentile) for \_\_\_\_\_ visual memory index and visual recognition index.
7. The Student was administered the Kaufman Test of Educational Achievement, second edition (KTEA-II) in May 2019. \_\_\_\_\_ was assessed in the 9<sup>th</sup> percentile for reading index, the 14<sup>th</sup> percentile for letter/word identification, and the 10<sup>th</sup> percentile for reading comprehension. In math, the Student scored in the 14<sup>th</sup> percentile for math index, the 14<sup>th</sup>

percentile for applied problems, and the 16<sup>th</sup> percentile for calculation. The Student's written language index was scored in the 25<sup>th</sup> percentile.

8. The most recent Functional Behavioral Assessment ("FBA") was also completed in May 2019. The FBA noted that the Student's disruptive behavior in the classroom appeared to be an effort to be more disruptive than peers or an attempt to make peers laugh. Additionally, the FBA recognized the Student's motivation to disrupt the classroom in order to maintain control, even when adults were making reasonable requests of the Student.
9. The Student's psychological evaluation from January 12, 2020 concluded that the Student's performance on the WRAML-2 and the WAIS-IV "documented that [the Student] is struggling to focus attention and regulate behavior." The evaluation also noted that a follow up neuropsychological evaluation might want to consider whether the Student's social and pragmatic communication deficits are better explained by a diagnosis of social pragmatic communication disorder.
10. The Student's most recent Individualized Education Program ("IEP"), dated January 21, 2020, provides for 30 hours per week of specially designed instruction in a therapeutic day treatment program. Additionally, IEP notes that "an abbreviated-day schedule will be provided on a temporary basis at during the time it takes for the referral process to a therapeutic day treatment program." According to the IEP, this plan for a temporary abbreviated day was applicable between January 21, 2020 and February 14, 2020.<sup>2</sup>
11. Additionally, according to IEP dated January 21, 2020, the Student receives 30 minutes per week of Speech/Language Services, 30 minutes per month of Speech/Language consultation, and 30 minutes per week of Social Work Services. IEP specifies that the Student currently spends 0% of educational time with non-disabled children, where is being educated in a therapeutic day treatment setting.

---

<sup>2</sup> Based on interviews with HCA staff, it appears that the Student's IEP has not been further amended since the IEP meeting on January 21, 2020.

12. The Student's IEP also requires a number of supplementary aids and services, including, but not limited to, 1:1 adult support throughout school day, a positive behavioral support plan, a crisis plan, frequent supervised motor breaks, extended time for work, separate break locations, visual aids, and "an alternative location to be used for instruction, work completion, or supported study in order to provide a quieter, calmer learning environment" at
  
13. On October 29, 2019, multiple children at HCA reported a rumor to the Head of School. The rumor alleged that the Student had threatened to bring a gun to school the next day. The Head of School promptly investigated the rumor, and he immediately determined the story to be false. Yet, out of an abundance of caution, the Head of School reported the rumor to the local police, and he contacted the Parents.
  
14. The local police investigated the rumor immediately. The Student and parents cooperated fully with the investigation, and the local police also promptly determined that the rumor was unfounded. The Student was never disciplined with respect to the rumor, and the Head of School remains certain that the rumor was false.
  
15. In most recent interview with the complaint investigator, the Head of School reported that there were three individual students who reported and potentially spread the rumor at HCA. The Head of School stated that the three students believed the rumor to be true, which is why they reported the rumor to the HCA administration. The Head of School did not discipline any of the three students involved with the rumor (or any other students) for initiating, reporting, and/or spreading the false rumor about the Student.
  
16. The Head of School maintains that students at HCA must feel comfortable reporting potential threats to the administration; therefore, disciplining students for coming to the Head of School with a rumor, even a false rumor, would be counterproductive. Nonetheless, the Head of School also recognizes that irreparable harm can result from the spreading of false rumors with the HCA community or on social media.<sup>3</sup>

---

<sup>3</sup> HCA's response to this October 29, 2019 incident was thoroughly examined in the prior investigation report, (*see* Complaint Investigation #20.047C) where the Parent alleged that HCA failed to take prompt and appropriate action in response to this act of bullying (initiating and spreading a false rumor about the

17. The Student was educated at an alternate location at \_\_\_\_\_ following the false rumor until the Student returned to \_\_\_\_\_ educational program at HCA on December 2, 2019.<sup>4</sup>
18. On December 12, 2019, the Student reported to \_\_\_\_\_ counselor at HCA that “thought somebody might have” said something about a school shooting on \_\_\_\_\_ bus ride to school in the morning. The Student reported that two peers were talking about school shootings, and \_\_\_\_\_ overheard the conversation.
19. The counselor immediately contacted the Head of School about this incident, and the two peers were interviewed. HCA staff determined that one peer commented on the bus that HCA was going to have a school shooting someday, but the conversation did not mention the Student.
20. HCA staff also reviewed the bus surveillance video from the Student’s ride to school on December 12, 2019. According to an email from the Head of School to the Parents on December 14, 2019, the video showed that no peers interacted with the Student during the ride to school, and the Student did not interact with any of \_\_\_\_\_ peers. Additionally, the audio recording did not reveal any discussion about school shootings, but the Head of School conceded that, “the audio can be hard to hear with all of the ambient noise on a bus.”
21. Neither of the two peers who discussed a school shooting at HCA on the bus were involved in the false rumor from October 29, 2019. The Head of School did not discipline the two peers for their discussion about a school shooting. Instead, it was determined that the peers were not engaged in bullying and that their discussion was not directed towards the Student.
22. On January 17, 2020, the Student had an altercation with a number of peers during lunch, some of whom were the same peers who had reported the false rumor about the Student threatening to bring a gun to school to the Head of School back on October 29, 2020.

---

Student). As a result, additional details about HCA’s initial response and handling of the false rumor and the related MUSER implications will not be revisited here.

<sup>4</sup> The circumstances of the Student’s relocation to \_\_\_\_\_ due to the false rumor were also thoroughly addressed in the prior complaint investigation report (see Complaint Investigation #20.047C), and therefore, those details and the related MUSER implications of \_\_\_\_\_ relocation will not be revisited here.

23. The Student's account of what happened on January 17, 2020 differs from some of the accounts provided by peers to HCA staff members. The Student reported to Parents that was eating lunch and having a verbal disagreement with some of peers, when one peer (the same peer who the Student believes originated the false rumor on October 29, 2020) called "the school shooter." The Student says that reported this immediately to the Head of School, who was present in the lunchroom at the time, but the Head of School took no action and did not believe .
24. Immediately following the incident at lunch on January 17, 2020, the Head of School and the School Counselor interviewed a number of peers to investigate the allegation of bullying further. The Head of School spoke to one group of students, while the School Counselor spoke to a second group of students.<sup>5</sup>
25. The staff members at HCA concluded, based on the interviews of the students and based on some direct observations from staff members, that the following sequence of events happened in the lunchroom on January 17, 2020: The Student voluntarily sat down to eat lunch with a number of in the 10<sup>th</sup> grade. This group of was a preferred peer group for the Student, but the group included a number of individuals who originally reported the false rumor to the Head of School about the student threatening to bring a gun to school back on October 29, 2019.
26. Shortly after joining the lunch table, the Student threw away tray of food before eating it, and a peer criticized commenting something to the effect of, "Why are you throwing away your food? There are starving children in Africa?" The Student made a joke about people in Africa needing to walk long distances to get water. The Student's peers accused of being racist, and one peer went to tell the School Counselor. The School Counselor came to the lunch table to intervene, and she asked the Student to change language and listen to the feedback from peers.
27. After the School Counselor left the lunch table, someone brought up the school shooter rumor from October 29, 2019. Some students

---

<sup>5</sup> The Head of School explained during an interview with the complaint investigator that the students were interviewed in two groups, rather than individually, because of the time-sensitive nature of the situation. Specifically, the situation was still ongoing when the interviews were first completed.



interviewed claimed that the Student brought up the rumor, accusing a peer of starting the rumor. One student told HCA staff members that the peer brought up the rumor first, not the Student. After the conversation became heated, the Student's peers all got up from the table and walked outside. The Student was escalated and felt hurt, and followed peers outside.

28. Outside, the Student announced that peer (the peer who the Student believes started the false rumor back in October) had threatened to bring a gun to school. The Student's peers all argued that was not true, and they walked back inside.
29. The Student followed the group back inside, and the Student continued to claim that the same peer had threatened to bring a gun to school. In response, the peer stated something to the effect of, "I am not the school shooter, you are."
30. The Head of School could now hear and see the situation escalating, and approached the Student and asked to "take some space." At the time, the Head of School was holding a plate full of food for lunch. The Student became angry, used inappropriate and threatening language, and hit the plate of food that the Head of School was holding into face, covering the Head of School with food. The Student then walked out of the building.
31. The Student walked away from the building, as is encouraged and allowed to do per positive behavioral support plan whenever becomes escalated and needs space. The Student phoned Parent to come pick up at HCA. However, when the Student returned to the building a few minutes later and tried to re-enter the building, the Head of School did not allow to come back inside. It was very cold outside, and the Head of School offered that the Student could sit on a school bus that was parked at the school. The bus was not running, but the Head of School believed it would be relatively warm inside the bus, while everyone waited for the Student's father to arrive.
32. When the Parent arrived, an argument erupted. The Parent was angry at the Head of School for not protecting son from bullying. He raised voice. The Student and the Parent were also arguing with each

other,<sup>6</sup> and the Student asked the Head of School, “How would you feel if someone brought a gun to your school and killed everybody?” (or words to this effect). The Student also threatened to assault the Head of School, and moved towards the Head of School, but the Parent got in between the Student and the Head of School. Eventually, the Student got into the Parent’s car, and they left without further incident.

33. The Student was issued a five-day, out-of-school suspension for “physical aggression and threatening.”
34. A few days later, while the Student was still suspended from school, the Student’s IEP Team came together on January 21, 2020 for a previously scheduled IEP Meeting. According to Written Notice from the January 21, 2020 meeting, the IEP Team determined that the Student required a therapeutic day treatment environment. Additionally, the IEP Team decided that the Student would receive an abbreviated-day schedule and would be educated at an off-site location at ( ) during the referral process to the therapeutic day school program.<sup>7</sup>
35. Upon returning to school after suspension on Monday, January 27, 2020, the Student was educated in a one-on-one environment at . The Student was mainly assisted by 1:1 educational technicians, but Certified Special Education Teacher and various related service providers also came to see at to provide services. This continued until February 27, 2020.
36. On February 27, 2020, staff at told HCA’s Head of School that the Student could not return to their campus. The librarian believed that the Student smoked a cigarette in the bathroom on February 26, 2020 and again on February 27, 2020. Because is a tobacco-free campus, the Student was asked not to return.
37. The Head of School informed the Parents of this news by email on February 27, 2020. The email stated, “We will begin looking for an alternative location tomorrow. Until then, will need to work from home. We can check in with via email and/or on the phone.”

---

<sup>6</sup> A number of HCA staff members reported that the Parent and the Student were pushing each other, but the Parent denies this.

<sup>7</sup> There was no allegation brought by the present complaint that the IEP Team’s decision was improper to pursue a therapeutic day treatment program or to implement an abbreviated-day schedule at . Instead, all parties agree that the IEP Team unanimously felt that these steps were necessary to support the Student’s learning. As such, this complaint investigation did not review the IEP Team’s January 21, 2020 determination with respect to the new placement or the abbreviated-day program.

38. The Parent responded immediately by email, suggesting two alternative locations (the Bath and Brunswick public libraries). The Parent also stated, “We feel this method of teaching via internet and phone is not acceptable and will not work for [the Student].”
39. No IEP Team meeting was scheduled to address the unavailability of or the Head of School’s proposed solution to institute virtual learning. During the first few weeks of March, the Parent sent multiple emails to the Head of School, asking for updates about the placement search for a therapeutic day treatment program and seeking information about alternative locations for the Student’s abbreviated-day program. Many of these emails went unanswered.
40. During an interview with the complaint investigator, the Head of School and the Director of Special Education explained that they began searching for an alternative learning space for the Student after became unavailable on February 27, 2020. However, they cited safety and staffing concerns as reasons why the Bath and Brunswick public libraries were inappropriate locations.<sup>8</sup> The Head of School wanted to find a location closer to the HCA campus, and HCA staff members took steps to potentially rent a space in a building nearby. Nonetheless, both the Head of School and the Director of Special Education felt that the Student’s potential placement at the School was imminent, and no alternative location was ever secured.
41. When asked why the Student was not permitted to return to HCA on February 28, 2020 while an alternative learning environment could be found, the Head of School stated that, after the incident on January 17, 2020, felt it would be unsafe for the Student to return to the school building. Additionally, the Director of Special Education noted that there was no appropriate space within the HCA building to work with the Student in a one-on-one capacity.
42. As a result, the Student received no educational services at all between February 28, 2020 and March 23, 2020.
43. On March 16, 2020, as a result of the Covid-19 pandemic, school buildings closed across the State of Maine, and school staff began to make arrangements for remote instruction to begin.

---

<sup>8</sup> Specifically, the HCA staff reported that the Student was displaying a “manic presentation,” during numerous sessions at , and the Head of School cited the Student’s physical aggressions and threats during the January 17, 2020 incident. The Parents adamantly dispute this assessment, and they question the expertise of the HCA school staff to diagnose a “manic presentation.”

44. Like other schools in Maine, HCA closed its school building on Monday, March 16, 2020. On Thursday, March 19, 2020, HCA began to offer remote instruction to all enrolled students.
45. On March 19, 2020, the Student's Certified Special Education Teacher emailed the Parents, requesting a Zoom session with the Student to deliver one hour of specially-designed instruction the next day. The Parent emailed back to inquire who would be available to assist the Student while was completing remote schoolwork. The Special Education Teacher replied that the Student could seek help from individual teachers at any time by email or that the Student could get help during SDI block on Fridays from 1:00pm to 2:00pm.<sup>9</sup>
46. On March 20, 2020, the Parent notified staff members at HCA that the School would begin working with the Student virtually on Monday, March 23, 2020. The Student engaged in remote learning with the School for the remainder of the 2019-2020 school year.<sup>10</sup>
47. Throughout the 2019-2020 school year, the Parents reported concerns about a staff member at HCA who was breastfeeding and caring for her young child during the school day, while also providing the Student with support as an Educational Technician.
48. All recent versions of the Student's IEP have provided the Student with 1:1 Adult Support in both special education and regular education settings throughout school day. HCA staff maintains that this aspect of the Student's IEP was fully implemented both while was educated at HCA and during the periods of time when the Student was receiving services independently at .
49. HCA staff members acknowledged that, on numerous occasions, the Student worked with a substitute Educational Technician ("Substitute") who was permitted to bring her infant child to HCA. The Student also worked with the Substitute on one occasion while the Student was

---

<sup>9</sup> The Parent responded to these emails, questioning how the Student would receive 1:1 adult support throughout school day at HCA during the period of remote learning. This issue was never resolved because the Student began receiving remote instruction at the School a few days later on Monday, March 23, 2020.

<sup>10</sup> This complaint does not raise any allegations related to remote learning at the School. As such, there is no determination made in this complaint regarding the provision of FAPE to the Student during the Covid-19 pandemic.

receiving educational services at \_\_\_\_\_ between January 27, 2020 and February 27, 2020.

50. Both the Parents and HCA staff members agreed that the Substitute was a preferred staff member for the Student, and the Substitute worked successfully to support the Student on numerous occasions. No information was shared with the complaint investigator about the Substitute's inability to provide appropriate 1:1 adult support to the Student, as a result of her bringing her infant child to work.
51. However, the Parents emailed the Head of School multiple times throughout the school year to convey the Student's discomfort about the Substitute's decision to publicly breastfeed her child during school hours.
52. While the Student was being educated at \_\_\_\_\_, the Substitute provided support on January 31, 2020. The Parent emailed the Head of School to complain because the Substitute was breastfeeding her baby on January 31, 2020. The Head of School responded, assuring the Parent that the Substitute was nursing her baby during a break requested by the Student, and the Student returned sooner than the Substitute expected. After providing support for the Student at \_\_\_\_\_ on January 31, 2020, the Substitute did not work with the Student again.
53. The Parents also reported to the complaint investigator that they first requested access to the Student's educational records at HCA in mid-November 2019. The Parents sought these records to consult with an attorney about the Student's educational rights. The Parents maintain that they were not provided with access to the Student's records at that time.
54. HCA staff maintains that they have no knowledge about and no documentation of a request for the Student's educational records in mid-November 2019. No documents were provided by either party regarding the alleged request for the Student's educational records in mid-November 2019.<sup>11</sup>

---

<sup>11</sup> While the Parents did not provide documentation of a written request for the Student's records, the Parents did provide their emails with a potential attorney who offered to review the Student's educational records in November 2019.

55. On January 17, 2020, the Parent emailed the Head of School following the lunch-room incident described in detail above. The email was relatively lengthy, and it was largely related to the Student's account of what occurred on January 17, 2020. But, at the end of the email, the Parent clearly stated, "I am formally requesting a copy of [the Student's] entire school record and by law you need to provide this in a timely fashion. Please provide me with an ECD by Tuesday at the IEP."
56. The Parent filed the present complaint with the Maine Department of Education on May 18, 2020.
57. HCA mailed a copy of the Student's educational records to the Parents on June 6, 2020.

Other relevant facts are included in the determinations below.

## **VI. Determinations**

- A. The school staff and administration did not take prompt and appropriate action in response to an incident of bullying where the Student was called a "school shooter." The school's failure to act affected the Student's ability to access a free appropriate public education. MUSER I(2); MUSER II(13); 34 CFR 300.101(a). **NO FINDING. NO DENIAL OF FAPE FOUND.**

Both Complaint Investigation Report #20.007C and Complaint Investigation Report #20.047C investigated allegations by the Parent that the Student was the target of bullying such that it affected the Student's ability to access a free appropriate public education. On September 20, 2019, the Department found *no finding* and *no denial of FAPE* on this allegation with respect to MUSER I(2); MUSER II(13); 34 CFR 300.101(a). Then on January 14, 2020, the Department again found *no finding* and *no denial of FAPE* on this allegation with respect to the same regulations, MUSER I(2); MUSER II(13); 34 CFR 300.101(a). Therefore, with respect to this allegation regarding HCA's response to bullying where the Student was called a "school shooter," the present complaint will focus on the period of time between January 14, 2020 and the present.<sup>12</sup>

---

<sup>12</sup> That said, the bus incident on December 12, 2019 will be discussed briefly because it was not specifically addressed in the prior complaint investigation and because both parties presented information about the December 12, 2019 during the document disclosures for the present complaint.

There can be no question that the Student faced a serious and significant incident of bullying when a false rumor was initiated and spread on October 29, 2019. The malicious rumor deeply impacted the Student and family, and the Student and Parents were understandably frustrated when HCA staff was unable to pinpoint which student or students originated the rumor. The three students who initially reported the rumor to the Head of School were never disciplined due to the Head of School's belief that those three students believed the rumor to be true and made a responsible choice to immediately report the alleged threat to the HCA administration.

While the prior complaint investigation considered HCA's initial response to the false rumor, the present complaint considers whether or not HCA properly handled the aftermath of the false rumor to ensure that the Student could access free appropriate public education ("FAPE").

There is no basis to conclude that HCA's response to the incident on the school bus on December 12, 2019 impacted the Student's access to FAPE. It appears that two students, neither of whom was involved in the false rumor incident from October 29, 2019, discussed "school shootings" or "school shooters" during their bus ride to school. While it is understandable why any discussion about school shootings could make the Student feel targeted and deeply uncomfortable, HCA's interviews of the two peers, the Student's own recollection of the conversation, and the review of the bus camera footage from December 12, 2019 confirmed that the two peers were not specifically referencing or targeting the Student. Without a finding that there was a specific issue of bullying, there can be no conclusion that a resulting denial of FAPE occurred.

On the other hand, it appears likely that the Student was subjected to a degree of bullying during the incident in the school cafeteria on January 17, 2020.<sup>13</sup> At least one of the Student's peers confirmed the Student's account of events, admitting to HCA staff that the Student was being teased for being "the school shooter." While other peers

---

<sup>13</sup> This conclusion does not discount the likely possibility that the Student's own behavior and statements to peers on January 17, 2020 were likely aggravating factors in the dispute. However, it is hardly surprising that the Student's behavior may have exacerbated a difficult social situation; the Student's most recent psychological evaluation documents limited social communication skills and relates social difficulties with peers at school to impulsive decision-making style, struggles to read social cues, and inability to understand social expectations, such as emotional and social reciprocity. See Student's Psychological Evaluation, dated January 12, 2020, by Dr. Robert Carnicella.

insisted that the Student was the first one to bring up the school shooting incident during the argument, those same peers were involved in the original October 29, 2019 incident. No staff members were present to hear the conversation between the Student and peers, and there is no question that the Student felt ostracized by the actions of the group of at lunch table on January 17, 2020.

Nevertheless, as the situation between the Student and peers escalated, HCA staff members attempted to intervene quickly and professionally. First, before the argument escalated between the Student and peers, the school counselor responded to the group, asking the Student to redirect the conversation. Then, after a peer allegedly referred to the Student as “the school shooter,” the Head of School approached the Student, who had already become very escalated, attempting to remove to a separate space to discuss the problem. The Student immediately became physical and aggressive, knocking a plate of food onto the Head of School and later making threatening remarks, to the effect of, ‘How would you feel if someone came and shot up the school?’ and ‘I am going to beat you up.’ Once the Student’s behavior escalated, it was natural that HCA’s staff was forced to focus on the presenting safety concerns, rather than immediately addressing and identifying the bullying issue.

The Student was suspended from school due to threatening and aggressive behaviors on January 17, 2020, and while suspension was still in effect, IEP Team met and concluded that a therapeutic day treatment program was the most appropriate, least restrictive setting for the Student.<sup>14</sup> In the meantime, the IEP Team adopted an abbreviated day program where the Student would be educated in a one-on-one environment at . As such, the HCA staff never had the opportunity to formally resolve the dispute between the Student and peers, and the process whereby the Student would be reintegrated into the school community and into peer group never occurred.

Other than the unrelated bus incident in December (described above) and the lunchroom incident in January, neither party presented any other incidents after the

---

<sup>14</sup> Again, the present complaint did not raise the regulatory issue of whether it was appropriate for the IEP Team to place the Student in a therapeutic day treatment program and an abbreviated school day program during the placement process. As such, no finding is made about the regulatory implications of these unanimous IEP Team decisions.



Student's return to HCA on December 2, 2019 where the Student was allegedly bullied or targeted as "the school shooter." Additionally, HCA staff had no reason to predict that the Student would be bullied or targeted on January 17, 2020. The Student had successfully interacted with the same peer group on numerous occasions between return to HCA on December 2, 2019 and the incident on January 17, 2020. Therefore, it was not feasible for HCA's staff to intervene before this particular incident occurred.<sup>15</sup>

In conclusion, this complaint does not present evidence indicating that HCA failed to take prompt and appropriate action in response to incidents of bullying that impacted the Student's ability to access a free appropriate public education. The evidence gathered in this investigation does not support a finding for this allegation.

- B. The Student's removal from educational program on February 28, 2020 was improper because:
1. The Student's removal constituted a disciplinary change of placement for which no manifestation determination review was held. MUSER XVII(1)(E).
  2. The school staff and administration did not return the Student to the educational placement from which was removed, which resulted in a lack of educational services for approximately 11 days. MUSER XVII(1)(F)(2); MUSER IX(3)(B)(3).

**NON-COMPLIANCE FOUND. DENIAL OF FAPE FOUND.**

Because this allegation refers specifically to the Student's removal from educational program on February 28, 2020, the two prior due process matters, Complaint Investigation Report #20.007C and Complaint Investigation Report #20.047C, have no bearing on the time-frame of this allegation.

There is no dispute that the Student's IEP Team provided for an abbreviated-day program at starting on January 27, 2020. The Student primarily received tutoring from 1:1 educational technicians, and the Student's Certified Special Education Teacher also visited the Student at to provide instruction. The Student continued to receive Speech and Language services and Social Work services while at

---

<sup>15</sup> The complaint investigator notes that the Parents are deeply dissatisfied by HCA staff's inability to be proactive, instead of reactive, about all issues stemming from the false rumor on October 29, 2020. However, bullying itself, as well as issues related to individual disciplinary actions, falls outside the scope of MUSER. The question considered here is narrower – did HCA fail to take appropriate action, which then resulted in a denial of FAPE for the Student?

According to the Student's IEP, dated January 21, 2020, the Student's abbreviated-day schedule was only intended as a temporary arrangement "during the time it takes for the referral process to a therapeutic day treatment program." The duration of this arrangement is listed on the Student's IEP as "1/21/2020 to 2/14/2020." Nevertheless, the abbreviated-day program continued on past February 14, 2020, without a further IEP Meeting to assess the status of the Student's placement search or to evaluate the need for a continued abbreviated-day program.

On February 27, 2020, HCA staff members were notified that the Student was no longer welcome at \_\_\_\_\_ because \_\_\_\_\_ had allegedly smoked cigarettes in the bathroom two days in a row, ignoring a warning from \_\_\_\_\_ staff on February 26, 2020. At that point, the Head of School informed the Parents that the Student could not attend school and would need to receive \_\_\_\_\_ education remotely. The Head of School seemingly made that determination unilaterally, as if it were a disciplinary removal from school. The Parents immediately disputed the change in the Student's educational placement, arguing that virtual learning would not meet the Student's needs. No IEP Team meeting was held to account for the unavailability of the Student's prescribed programming, no manifestation determination was conducted, and the Head of School also unilaterally determined that possible alternative locations for the Student's educational programming, which were proposed by the Parents, were unacceptable locations, due to concerns about safety and staffing.

Districts must provide a free appropriate public education to all children with disabilities enrolled within the District. MUSER I and MUSER IV(4). Children with disabilities are entitled to access a continuum of alternative placements that are available to meet a child's special education needs. 34 CFR 300.551. When an IEP is unable to be implemented, Districts must reconvene an IEP Team to identify alternative service options. *See* MUSER IX(3)(B)(3). HCA violated law and regulation when the Head of School instructed the Student that \_\_\_\_\_ could not attend school simply because the physical space at \_\_\_\_\_ became unavailable to the Student and to HCA.

By changing Student's proposed programming outside of the IEP Team process, HCA also violated MUSER VI(2)(A); MUSER VI(2)(B); MUSER VI(2)(H) and MUSER VI(2)(J). MUSER VI(2)(I) outlines the IEP decision making process:

“The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding: (1) the children’s needs and appropriate goals; (2) the extent to which the child will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and (3) the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP Team must consider the parents’ concerns and the information that they provide regarding their child in determining eligibility; developing, reviewing, and revising IEPs; and determining placement.”

In *Andrew F. v. Douglas Cty. Scho. Dist.*, 137 S.Ct. 988 (2017), the Court found that an IEP must be created in such a way that the Student is able to make progress in accordance with his own unique needs. *Id.* at 999. The IEP team is tasked with considering the child’s academic growth, the child’s progress towards grade-level proficiencies, the child’s behaviors that may interfere with their growth, and additional information and input provided by the child’s parents. See MUSER V(2)(B); MUSER VI(2)(J).

The dispute between the Head of School and the Parents about whether a virtual learning program would be effective and about whether alternative locations, such as the Bath or Brunswick public libraries, could be utilized to meet the Student’s unique needs underscores the purpose for the IEP Decision-Making process as outlined in MUSER VI(2)(I). Because there was no IEP team meeting, there was no mechanism for team members to assess whether another plan could meet the Student’s educational needs, and there was no conversation about whether the Student should return to HCA while waited for the referral process to a therapeutic day treatment program to conclude. Additionally, there was no formal means for the Parents to present as equal partners in the decision about the Student’s placement. Instead, there was a full interruption of the Student’s educational services between February 28, 2020 and March 13, 2020, which amounts to 11 school days during which FAPE was not provided.<sup>16</sup>

---

<sup>16</sup> Notably, the Student did not begin receiving educational services again until remote instruction began with the school on March 23, 2020. However, HCA’s school building was closed between March 16, 2020 and March 19, 2020 due to the Covid-19 pandemic, while HCA school staff made arrangements to transition to remote learning. Like all of HCA peers, the Student was offered a remote learning

Finally, during their interview with the complaint investigator, the Head of School and the Director of Special Education both emphasized that the Student was on the verge of being accepted into the School, a therapeutic day treatment program, and the IEP Team had already concluded that this was what the Student needed to achieve educational progress. However, awaiting acceptance at an alternative school placement does not alleviate a District's responsibility to provide special education and related services. It was not appropriate to remove the Student from educational placement outside the IEP process while a day treatment option was being secured. As such, HCA has not complied with law and regulation with respect to this allegation.

- C. The school staff and administration did not fully implement the Student's IEP regarding the provision of a 1:1 Educational Technician because the Student's Educational Technician was also caring for a baby while providing services to the Student. MUSER IX(3)(B)(3). **NO FINDING. NO VIOLATION OF FAPE FOUND.**

Children in Maine, ages birth to twenty who have disabilities, may not be excluded from the benefits of services to which they are entitled under the IDEA. 34 CFR 300.34; MUSER XI. The Department of Education shall ensure the provision of appropriate services regardless of the nature and severity of the child's disability of developmental delay. MUSER I(2).

Federal and State law provide that all children with disabilities have available to them a free appropriate public education ("FAPE") that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. See 34 CFR 300.101; 34 CFR 300.531; MUSER I. A failure to implement a student's individualized education plan can result in a denial of FAPE. See *Andrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988 (2017). However, not every deviation from an IEP results in a denial of FAPE. See *L.C. and K.C. v. Utah State Bd. Of Ed. et al.*, 43 IDELR 29 (10<sup>th</sup> Cir. 2005).

During the 2019-2020 school year, the Student occasionally received 1:1 adult support from an Educational Technician who served as a substitute for HCA. As detailed

---

schedule on March 19, 2020, and discussions about the adequacy of proposed program had just begun between HCA staff and the Parents when the Student was able to begin remote learning at the school on March 23, 2020.

above, the Substitute was permitted to bring her infant child to work with her. There was no specific evidence provided by either party that suggested that the Student did not receive 1:1 adult support from the Substitute, as prescribed and intended by IEP. Other issues raised by the Parents regarding the Substitute fall outside the scope of MUSER.

- D. The school staff and administration did not provide the Parents with access to the Student's education records. MUSER XIV(3). **PROCEDURAL VIOLATION FOUND.**

MUSER XIV(3) provides that each school administrative unit must “permit parents to inspect and review any education records relating to their child which are collected, maintained, or used” by the District in connection with the special education regulations. The regulation further provides that the District must comply with a request without unnecessary delay, and in no case more than 45 days after the original request was made.

Even putting aside the disputed record request in mid-November 2019, HCA did not comply with the regulatory time frame regarding the Parents' record request. There is clear email documentation of a record request by Parents on January 17, 2020, and the specific records requested were collected and maintained by HCA in connection with its delivery of special education services to the Student. As such, the Parents had a right to review them. The records were not provided until approximately June 6, 2020, which falls well outside the 45-day limit. The explanation provided for the delay was that it was an oversight. Even assuming that the lack of response was not intentional, it nevertheless did not comply with the regulatory requirements.

## VII. Corrective Action Plan

1. HCA must provide a total of 87 hours of compensatory education to the Student (inclusive of the 65 hours owed to the Student from two prior complaint investigation reports). The school must provide services that address the Student's academic, functional, behavioral, and transition goals. The compensatory services must be provided in addition to the Student's existing educational program. Services must be provided by a certified special educator or an educational technician with oversight by a certified special educator specifically for these services. **The school will choose the provider and provide documentation of the provision of these services to the Department by December 31, 2020.**
2. HCA must provide an in-person or virtual training to all HCA administrators, special education directors, special education teachers, and others who write IEPs about the following laws and regulations:
  - a. MUSER VI(2)
  - b. MUSER IX(3)(B)(3)
  - c. MUSER XIV(3)

**Training must occur by September 30, 2020. The District must send the attendance sheet, with names and titles of participants, to the Department by October 2, 2020.**