

SYSTEMIC COMPLAINT INVESTIGATION REPORT

Disability Rights Maine v. Portland Public Schools

Complaint 21.040C

Complaint Investigator: Rebekah J. Smith, Esq.

June 9, 2021

I. INVESTIGATION PROCEDURE

Complainant: Disability Rights Maine (“DRM”)

24 Stone Street, Suite 204

Augusta, Maine 04330

Respondent: Portland Public Schools (“School District”)

Xavier Botana, Superintendent

Jesse Applegate, Director of Student Support Services

353 Cumberland Avenue

Portland, Maine 04101

I. BACKGROUND

This systemic complaint was filed by Disability Right Maine on behalf of students receiving special education services within Portland Public Schools. Although the complaint investigation initially focused on students in the ██████ Program, Disability Rights Maine alleged that students throughout the School District were being impacted. At the conference held on January 14, the parties agreed that the first stage of the analysis would be focused on the ██████ Program grades 3 to 5 from June 2020 to the present. The parties agreed the Department had the authority to expand the investigation into other programs after the initial report. Accordingly, although the Draft Allegations Report focused on students in the ██████ Program grades 3 to 5, the response of Disability Rights Maine, consistent with the understanding of the Investigator, noted that the issues identified in the Draft Allegations Report were much narrower than the issues presented in the complaint. DRM noted its understanding that if violations were found with regard to the ██████ students, further investigation would be conducted to determine the scope of the problem.

A report was issued by the Department of Education (“Department”) on April 28, 2021, concluding that the School District had inappropriately utilized Individualized Remote Learning Plans and had denied a free and appropriate public education (“FAPE”) to students in the ██████ K to 5 programs. The report required the School District to deliver the services identified in the IEP of each ██████ student, including both the K-2 and 3-5 classrooms, and to undertake an analysis regarding the compensatory and recovery services required for each student in the ██████ program. The report also noted that the Department would communicate with Disability Rights Maine and the School District regarding the application of this decision to other students in the School District who receive special education services and the potential course of any further investigation.

On April 29, 2021, the Department issued Guidance Regarding Determination of Compensatory Services for Students with Disabilities as a Result of COVID-19. The Guidance noted that changes in school schedules during the 2020-2021 school year due to COVID-19 could have significantly impacted the services identified in a Students' IEPs. The Guidance indicated that “[s]tudents with disabilities who did not receive the services included in their IEPs may be entitled to compensatory services if it is determined that the failure to provide those services caused a denial of the student’s right to a free and appropriate public education.” The Guidance suggested that IEP Teams should utilize upcoming IEP meetings, or a meeting requested by a parent or the school district, to “discuss services that have not been provided during remote or hybrid instruction, consider the impact of missed services on student progress toward meeting IEP goals and objectives, and determine the need for compensatory services.”

In determining if compensatory services are required, an IEP Team must understand the student’s present level of educational and functional performance. To do so, the IEP Team may review formative and summative, formal and informal assessment data to determine progress towards a student’s IEP goals and objectives during the period of remote and/or hybrid instruction. Once a Team has reviewed the student’s achievement and progress data, the Team should determine what goals and objectives the student was expected to achieve but did not due to the disruptions in service. Finally, the Team should determine if compensatory services are required to ensure that the student can achieve his or her goals and objectives. If a Team determines that compensatory services are warranted, the Team may agree to amend or modify the student’s IEP. School districts must ensure proper written notice if the IEP Team proposes or refuses changes to the student’s IEP, including the type, frequency, and location of compensatory services; notice must include the right of parents/guardians to seek compensatory services by requesting a special education mediation or due process hearing. (The Guidance is available at <https://www.maine.gov/doe/learning/specialed/director>.)

On May 7, 2021, at the request of the Department, the Investigator convened a status conference with the parties regarding the remaining allegations in the matter. No agreement was reached at the conference regarding what process should be undertaken to conclude the investigation.

III. ALLEGATIONS

1. Whether, from the start of Extended School Year services in 2020 to the present, the School District has had a policy and/or practice of failing to provide IEP services to special education students for reasons unrelated to the individual needs of students, resulting in the School District’s failure to provide services determined necessary to provide a free and appropriate public education in violation of MUSER I (stating that each school district must provide special education students with a free appropriate public education) and MUSER IX.3(A)(1)(d) (stating that the elements of a student’s IEP should include a statement of the special education and related services and supplementary aids and services to be provided to the student or on behalf of the student).
2. Whether, from the start of Extended School Year services in 2020 to the present, the School District has failed to develop and implement a plan to meet the needs of special education

students who cannot receive a free and appropriate public education through remote instruction and who need in-person services even during periods where in-person instruction may be limited for many students in the District in violation of MUSER I (stating that each school district must provide students with a free appropriate public education).

IV. CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

The School District must resume delivering all services identified in the IEPs of each special education student in the School District. In lieu of conducting extensive investigation into the services provided to all special education students within the School District during the 2020-2021 school year, the Department instructs the School District to undertake the analysis set forth in the Department's April 29 Guidance regarding the compensatory and recovery services required for each student in the School District who receives special education services. The School District should communicate this process to the Department at 60-day intervals in the following manner:

- a spreadsheet identifying the students who receive special education services,
- the date on which compensatory education services were discussed (at an IEP meeting or in a specific compensatory education discussion), and
- an indication of whether compensatory education services were determined to be required due to a denial of FAPE during the 2020-2021 school year.

The Department will thereafter conduct spot checks of cases in which services were indicated to be required by requesting written notices from the meetings for review.