

Complaint Investigation Report

Parent v.

Complaint # 22.016C
Complaint Investigator: Leigh Lardieri

Report Date: December 15, 2021

Date of Appointment: October 22, 2021

I. Identifying Information

Complainant: , Parent

Respondent:

Superintendent

, Special Education Director

Student:

II. Summary of Complaint Investigation Activities

On October 19, 2021, the Maine Department of Education received this complaint. The complaint investigator was appointed on October 22, 2021. Therefore, the current investigation covers the period of October 19, 2020 to present. See MUSER XVI(4)(B)(3).

The complaint investigator received seventy pages of documents from (the “District”). The investigator also received sixteen pages of documents from the complainant. On November 17, the Director of Special Education was interviewed from the District. Interviews were conducted with the student’s father and stepmother (“the Parents”) on November 18, 2021. From November 18, 2021 through November 22, 2021, the following individuals were interviewed: A Children’s Behavioral Health Services (CBHS) Case Coordinator from DHHS; A Case Coordinator from a targeted case management program, as well as the student’s child targeted case manager; and a member from the student’s treatment team at .

III. Preliminary Statement

At the time the complaint was filed, the Student was a old , and in treatment on the at in , Maine. has since turned eighteen

and is under the legal guardianship of the Parents.¹ On May 20, 2021, upon intake to the _____ at _____ Hospital, the Student began attending _____ in a full day Special Purpose Private School (SPPS) as a state agency client. The Student qualifies for special education and related services under the disability category of Multiple Disabilities (Specific Learning Disability, Speech and Language Impairment, Emotional Disturbance) as documented in the IEP implemented while the Student attended the _____ (_____) in _____, Maine.² On September 21, 2021, _____ was transferred to the _____, thus ending the state agency client status, and reverting the responsibility for the provision of a free and appropriate public education (FAPE) back to the sending district. While receiving treatment on the _____, _____ received educational services consisting of two hours per day of voluntary tutoring from an in-person tutor.

The present complaint was filed by the Parents, alleging that the District has violated the Maine Unified Special Education Regulations (“MUSER”) and IDEA. After the receipt of the Parent’s complaint, an Allegations Memorandum was sent to the parties by the complaint investigator on October 22, 2021, alleging three violations of MUSER, and IDEA. A telephonic Complaint Investigation Meeting was held on November 1, 2021. A revised Allegations Memorandum was sent to the parties on November 4, 2021.

IV. Allegations

The following violations are alleged by the present complaint:

1. The complainant alleges that Student _____ is being denied FAPE as the District is not providing the 31.5 hours per week of specially designed instruction in the special education setting as written in the IEP. **MUSER II(13); 34 CFR 300.101(a); MUSER XI; 34 CFR 300.34.**
2. The complainant alleges that the District did not provide prior written notice of an amendment to the IEP, and a change of placement was made without parent participation in the decision and IEP process. **MUSER IX (3)(C)(4); 34 CFR 300.324(a)(4); 34 CFR 300.503; MUSER VI(2)(A); MUSER VI(2)(H)(1)(a); MUSER VI(2)(I) .**
3. The complainant alleges that the Student’s treatment team was neither informed nor given an opportunity to participate in the decision to change the Student’s placement. **MUSER VI (2)(B)(5); 34 CFR 300.324(a)(4).**

¹ See State of Maine, _____ Letters of Guardianship, dated October 26, 2021.

² At _____ the Student was receiving specially designed instruction, 28.5 hours per week; Speech and Language Therapy, 30 minutes per week; 60 minutes/ week of group and individual therapy provided by a social worker; and special transportation. Extended School Year services were also in the IEP with the plan to take place in July 2021.

V. Factual Findings

1. The Student has a history of significant emotional, behavioral, and educational needs, including involvement with residential placements. On January 15, 2020, a neuropsychological evaluation and report (January 22, 2020) were completed by _____, M.S. NCSP School Psychologist, and yielded the following results.³ Behaviors assessed in the school setting revealed clinically significant Anxiety, ADHD, Oppositional Defiance, and Conduct Problems in the School. The Student's father reported clinically significant Depressive Problems, ADHD Problems, Oppositional Defiance, and Conduct Problems. The Student's cognitive profile included average Visual Spatial skills, low average Verbal Comprehension, Fluid Reasoning skills, and a Nonverbal and General Ability index all falling in the low average range. The profile also included Processing Speed and Cognitive Efficiency in the extremely low range, and a Full-Scale IQ score in the very low range. Academic achievement scores fell in the very low range for Basic Reading, the low range for Written Expression and Math Fluency, and the below average range for Mathematics. The report also noted that along with special education eligibility of Multiple Disabilities, the Student was diagnosed with Autism while at _____ Hospital.⁴ At the time of this evaluation, the Student was attending school at the _____ and residing at home.⁵
2. On May 20, 2021, the Student was admitted to _____ Hospital. Leading up to this admission, consistent with what was reported in the above evaluation regarding emotional and behavioral presentation, the Student exhibited significant difficulties in the home setting with family members, and in-home support staff. _____ was physically and verbally aggressive and would elope from the home. _____ also engaged in property destruction. Reportedly, these behaviors were triggered when the Student was presented with non-preferred tasks; when _____ was presented with non-preferred staff; when things did not go the way the Student had planned; and when _____ was told "no."⁶ Similarly, behaviors in the school setting were reported to be unsafe for the staff and other students at _____.⁷ These behaviors included physical and verbal aggression, elopement and property destruction.
3. Once the hospital intake was complete, the receiving school district assumed responsibility for providing FAPE.⁸ The Parents were present at the intake meeting. At

³ The completion of the Psycho-educational evaluation by this provider was conducted under the supervision of _____, Licensed Psychologist Clinical Supervisor, _____ Counseling and Testing Services Inc.

⁴ Ibid

⁵ Ibid.

⁶ See notes from interview conducted with the targeted child case manager on 11/22/2021.

⁷ See notes from _____ Special Education Director.

⁸ MUSER II; MUSER IX (3) (I)

that time described the educational program in which the Student would be placed. An amendment without an IEP meeting was completed and the Parents gave verbal permission for services to begin immediately.⁹ Weekly meetings with the hospital treatment team were held, and the Parents attended these meetings by phone. These meetings were also attended by the child targeted case manager and clinical coordinator of case management services.¹⁰

4. On June 16, 2021 the receiving school department initiated a 30-day review of program IEP meeting. The Parents received seven days advance written notice however they were unable to attend.¹¹ Members of the treatment team¹² were present at that meeting, along with a representative from the receiving district, as well as the Special Education director from .¹³ During the IEP meeting the staff reported that a behavior plan was developed to target the unsafe behaviors that the Student was presenting at intake (aggression, self-injurious behavior, property destruction, elopement, and making statements of harm).¹⁴ It was also reported that the Student, although initially resistant to school, was warming up to the staff.¹⁵ A determination was made to add a behavior goal to the plan to address target behaviors.¹⁶ The amended IEP also included specially designed instruction, speech and language therapy, social work services and extended school year (ESY) services, which were provided by the program July 5-23, 2021.¹⁷ During this time, the Parents remained in touch with the Student by phone almost daily.

5. During the ESY programming, the Student was restrained on 7/23/2021 for exhibiting unsafe behaviors and self-harm.¹⁸ Later in the summer, on August 4, 2021 the Student was again restrained for similar unsafe and self-harming behaviors.¹⁹ No other incidents requiring restraint or seclusion were reported to this investigator. By mid-August, a CBHS Behavioral Health Program Coordinator from DHHS assigned to the case joined the weekly meetings. He shared that in July 2021, an application was completed to begin

⁹ As documented in the Prior Written Notice dated 5/20/2021, the team determined that the Student would receive specially designed instruction, 31.5 hours/ week; speech and language services 30 min/ week; Psychological or BCBA Consultation 1 hour per week.

¹⁰ In the interview with the case management clinical coordinator, it was reported that he attended the meetings from August through October 2021 in support of the Student and targeted case manager.

¹¹ See Advanced Written Notice sent to the Parents on 5/21/2021.

¹² The staff interviewed declined to give specific information about this treatment team. However, it was noted that a “treatment team” typically included a BCBA, social worker, psychologist, and special education staff.

¹³ See Prior Written Notice from 6/16/2021 IEP meeting.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ See IEP amended on 6/16/2021.

¹⁸ See Incident Report (Physical Restraint or Seclusion of a Student), 7/23/2021.

¹⁹ See Incident Report (Physical Restraint or Seclusion of a Student), 8/4/2021.

the search for a children's residential treatment placement however there were no beds available.²⁰ In August 2021, the student was approved for out-of-state residential treatment, but there were no beds available.²¹ During this time, the Parents reported that the Student's behaviors had decreased, and did not begin to escalate again until a week before knee surgery, scheduled for 9/17/2021. On 9/15/2021, the knee surgery was cancelled. The Student told to Parents that had bad behaviors due to nerves about surgery.²²

6. On September 16, 2021 the Parents were contacted by three hospital staff (two of the medical directors, and one member of the medical staff).²³ They were informed that the Student was to be transferred from the to the . No set date had been established. The next day, the Parents were told the Student would no longer be attending school. Subsequently, they contacted the advocate at Hospital who told the parents he would look into the matter.²⁴ On September 20, the Parents were informed that the transfer would happen the following day.²⁵
7. On September 21, 2021 The Parents called the District Special Education Director to inform her of the hospital's decision. The parties were told the decision had been made to move the Student from the to the due to medical reasons.²⁶ A discharge summary was provided to the Parents, and the District.²⁷ Upon discharge from the , the Student no longer was a state agency client. Upon the transfer, the responsibility for the provision of FAPE returned to .²⁸ The parties have provided corroborating evidence to support the claim that the decision was made without input from the Parents, their targeted case management team, the District, or the Student's treatment team.²⁹ It was also reported that adult placements would be sought as the student was due to turn eighteen on October 30, 2021.³⁰

²⁰ See interview notes with the CBHS Behavioral Health Program Coordinator from DHHS from 11/18/2021.

²¹ Ibid.

²² See Parent's notes.

²³ See

²⁴ See Parents' notes. They reported that they never heard back from the hospital advocate.

²⁵ Ibid.

²⁶ As documented in the District's response to the complaint, the District was told in no uncertain terms that two hours of tutoring were the only educational services available to the Student. Regardless of IEP or individualized needs.

²⁷ The Parents noted that at the time, they never received a copy of the discharge summary from . The discharge summary indicated that the Student made minimal progress on both academic and behavioral goals.

²⁸ See MUSER IX 3.I and Communication Log from the District.

²⁹ From the District response and exhibits; Parent's notes; interview notes.

³⁰ From the District Communication log.

8. When the Student was transferred into the _____, a new hospital treatment team took over the case.³¹ The parties were told that enrollment at _____ was no longer an option. Instead, the Student would receive two hours of one-to-one voluntary tutoring daily.³² The Parents continued to voice their concerns citing that they were under the impression that as long as the Student was at _____ Hospital, _____ would be enrolled in _____.³³ They requested that the Student be able to continue to attend _____. The request was declined as the Parents were told the transfer occurred for medical reasons, and that the only option for _____ education on the _____ was tutoring.
9. On October 6, 2021 the District scheduled a transfer IEP meeting.³⁴ At the Parents' request, the meeting was rescheduled to October 13, 2021 to allow members of their targeted case management team to attend. The prior written notice summarized the following:³⁵ the Student was transferred to the _____ because _____ was struggling and no longer thriving. A clinical decision was made to transfer _____ to the _____. When it was proposed that the Student continue to attend _____ at the District's expense, the hospital representative asserted that _____ was not an option. While remaining on the _____, the _____ will continue to receive tutoring two hours per day.
10. The Parents did not agree to the determinations of the meeting. They asserted that they were not consulted in the process when the Student was transferred to the _____. They reiterated that an exception should be made so the Student could return to the structure of the _____ program. They shared with the team that the Student does not do well with down time, packets and online schooling. The Parents felt that the Student's mental health needs were being caused by not following the IEP.³⁶
11. On October 19, 2021 the Special Education Director received an email from the targeted case manager stating that the hospital was going to discharge the Student for _____ safety, and that of the staff.³⁷ A meeting was held that afternoon where the hospital asserted that the only option available was for the student to be discharged to return home as they could no longer meet _____ needs.³⁸ The Parents objected and filed a grievance with DHHS against _____ Hospital.³⁹ Subsequently the Student was transferred to the _____

³¹ From an interview with a treatment team staff member.

³² It was reported that the Student did not participate in the tutoring.

³³ From Parent's notes, and interview notes on 11/18/2021.

³⁴ See Advanced Written Notice sent to the Parents on 9/22/2021.

³⁵ See Prior Written Notice dated 10/13/2021.

³⁶ Ibid.

³⁷ See District communication log.

³⁸ Ibid.

³⁹ See Grievance form dated 10/19/2021, Department of Health and Human Services.

ICU unit pending the outcome of the DHHS grievance. was the only patient on the unit. The hospital had posted a police officer on the unit for safety.

12. The Special Education Director from the District reached out to staff at the to determine if the Student may be able to return to that placement. staff asserted that they had maxed out any benefit with .⁴⁰ While attending it was reported that the student had a pattern of eloping from the program and refused to go home on a few occasions. They stated they could try to do something remotely, provide work for the student, or have staff work with after 2:00pm, when other students had gone home.⁴¹

13. Over the course of the weeks following the student's placement in the ICU unit, the student's targeted case management closed with the childhood case manager (10/29/2021) and opened with an adult case manager (10/30/2021). Then, on November 10, 2021 the new targeted case manager reported that they had found a placement in an adult independent living group home.⁴² The Parents completed the intake paperwork on the morning of November 18, 2021. The Student was scheduled to move into the placement in on the following Monday, November 22, 2021.⁴³

VI. Determinations

1. The complainant alleges that Student is being denied FAPE as the District is not providing the 31.5 hours per week of specially designed instruction in the special education setting as written in the IEP. **MUSER II(13); 34 CFR 300.101(a); MUSER XI; 34 CFR 300.34. NO VIOLATIONS. COMPLIANCE FOUND.**

Under State and Federal law Maine students with disabilities have a right to a free and appropriate public education. Public agencies including School Administrative Units and Out-of-Unit placements are responsible for providing special education and related services as prescribed by the IEP team. When students move into placements outside their district of residence, the district in which the Out-of-Unit placement is located assumes the responsibility of FAPE.⁴⁴ In this case, upon the Student's admission to the hospital, worked jointly with the receiving district and parents through the IEP process to transfer the student into the Out-of-Unit educational placement of . From that point on, the receiving

⁴⁰ See District communication log.

⁴¹ Ibid.

⁴² During the interview with the DHHS CBHS case coordinator, it was reported that the Student was very motivated to be discharged from the ICU and move to this new placement. parents accompanied on two visits. During the first visit, the student was hesitant. By the second visit, met prospective roommates, and ate lunch with the staff and other residents. One of the staff offered to help pick up belongings from home and bring them to the placement. It was also mentioned that a plan was in place for the Student to spend Thanksgiving day with family

⁴³ See interview notes from the Parents.

⁴⁴ MUSER IX (3) (I)

district collaborated with the treatment team and the parents to ensure the student's IEP as amended would be implemented. When the decision was made to transfer the student to the , the District in this complaint was not involved in that decision and after the fact, was informed by the parent. Nevertheless, the District responded immediately resuming responsibility for FAPE and by scheduling an IEP meeting.

The District did not violate MUSER in the above allegation. The unilateral decision to transfer the Student to the and out of the agreed upon educational placement was made for medical reasons and not for educational purposes. Throughout this case, corroborating evidence from the parties established that hospital administration rendered this decision without the input of the treatment team, the District, or the parents. Hence, the District had neither control over the decision to transfer the Student, nor the decision to provide two hours of tutoring daily in place of the educational programming available at .

2. The complainant alleges that the District did not provide prior written notice of an amendment to the IEP, and a change of placement was made without parent participation in the decision and IEP process. **MUSER IX (3)(C)(4); 34 CFR 300.324(a)(4); 34 CFR 300.503; MUSER VI(2)(A); MUSER VI(2)(H)(1)(a); MUSER VI(2)(I) . NO VIOLATIONS. COMPLIANCE FOUND.**

Overlapping with the fundamental protections of FAPE afforded to students with disabilities, parents have “independent, enforceable rights under [the] IDEA.”⁴⁵ When parent participation is negatively impacted by procedural errors, districts must take measures to remedy those errors and ensure that parents, as members if the IEP team are essential partners in the decision-making process.

When given the opportunity under the educational decision-making model, the District complied with MUSER and IDEA, ensuring parent participation in the IEP process. On September 21, 2021 when notification came that the Student was transferred to the , the following day the District sent an advance written notice to the Parents, scheduling a transfer IEP meeting.⁴⁶ When the Parents asked that the meeting be rescheduled to a mutually agreeable date and time to allow members of the targeted case management team to participate, the District abided by this request and rescheduled the meeting. As evidenced in the prior written notice, the District representative at the IEP meeting offered proposals to have the Student continue at at the District's expense. At every turn, these proposals were met with rejection from the hospital representative attending the meeting.⁴⁷ When the hospital attempted to

⁴⁵ Zerkel, P.A. (2016) Parental participation: The paramount procedural requirement under IDEA? *Connecticut Public Interest Law Journal*, 15 (1) 1-36.

⁴⁶ See Advance Written Notice from 9/22/2021.

⁴⁷ See prior written notice from 10/13/2021.

discharge the Student entirely, the District preemptively took steps by reaching out to the Student's former placement () to advocate for the return of the Student to that program.⁴⁸

3. The complainant alleges that the Student's treatment team was neither informed nor given an opportunity to participate in the decision to change the Student's placement. **MUSER VI (2)(B)(5); 34 CFR 300.324(a)(4). NO VIOLATION. COMPLIANCE FOUND.**

During the course of the Student's hospitalization, the parties shared evidence that the Parents, along with the support of their targeted case management team attended multiple meetings with the hospital staff concerning the care and progress of the Student. Likewise, the targeted case management team was invited to participate in the IEP process with the District. The providers of the targeted case management services were well acquainted with the Student's challenges and needs of the family in attempting to support the Parents in pursuit of the necessary level of care to help the Student thrive and successfully access education.⁴⁹ In terms of the role of targeted case management team, the District made the declaration of "we stand ready" in welcoming the participation of this team into the change-of-placement and IEP decision-making process.⁵⁰

VII. Conclusion

At the heart of this case is the supplanting of the medical decision-making model over the educational decision-making model protected by MUSER and IDEA, which subsequently left the District, the parents and other parties in a difficult position in trying to advocate for the best possible educational placement for this Student. It appears that from the date of hospital admission, and for the duration of stay, the Student's placement was a medical admission and not an educational placement subject to the meaning of the IDEA.⁵¹ Through and through, the evidence presented in this complaint has supported the argument that the District acted with due diligence in an attempt to engage the hospital staff in shared decision-making regarding the change-of-placement brought about for medical reasons. In light of the evidence and as stated above, the District was found to be compliant on all of the allegations brought forth in this complaint.

⁴⁸ See District Communication Log

⁴⁹ In the interviews with the targeted case management agency providers, they noted that the information they have known the Student and family for many years. The information they provided aligns with what has already been shared about the lack of opportunity for the Parents for shared input and decision-making.

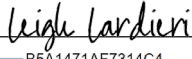
⁵⁰ See the District's response to the allegations.

⁵¹ Parents v. Attleboro Public Schools v. and Massachusetts Hospital School Massachusetts State Educational Agency (April 2011). LRP Publications, 111 LRP 25548 (2020).

VIII. Corrective Action Plan

As this complaint investigation has found no violations of MUSER, no corrective action is required.

Dated: December 15, 2021

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Leigh Lardieri, Ph.D.
Complaint Investigator