

Complaint Investigation Report
Parents v.
Complaint 22.022C
Complaint Investigator: David C. Webb, Esq.
January 10, 2022

I. Identifying Information

Complainants: (“Parents”)

Respondent: ; , Superintendent and , Director of Special Services. (“District”)

Student:

II. Summary of Complaint Investigation Activities

On November 18, 2021 the Maine Department of Education received this complaint. The Complaint Investigator was appointed on November 22, 2021.

The Complaint Investigator received 231 pages of documents from the Parents and 167 pages of documents from the District. Interviews were conducted with the following people: , Parent; , Director of Special Services; , Special Education Teacher; , M.D., Child and Adolescent Psychiatrist, , BCaBA, .

III. Preliminary Statement

The -year-old student (“Student”) resides with parents and sister in , Maine and is the educational responsibility of the District where qualifies for special education and related services as a student with multiple disabilities. attended District schools until the fall of 2019 when the Parents removed the Student from the District and registered as a home school student.

This complaint was filed by the Parents alleging that the District violated the Maine Unified Special Education Regulations (“MUSER”). After the receipt of the Parents’ complaint, a Draft Allegations Letter was sent to the parties by the complaint investigator on November 23, 2021 alleging four separate violations of the MUSER.¹ A telephonic Complaint Investigation Meeting was held on December 1, 2021.

¹ MUSER §XVI.4.B.3 provides that complaints filed under this section must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with paragraph (1) of this section [§300.151] unless a longer period is reasonable because the complainant is requesting compensatory services for a

IV. Allegations

1. The IEP Team has not developed an IEP that allows the Student to make progress in goals, denying a free appropriate public education (FAPE) in violation of MUSER IX(3)(A) and (C); MUSER §VI.2.J.(4) and 34 CFR 300.101(a). see: *Andrew F. v. Douglas County School District*, 137 S. Ct. 988; RE-1, 2017 WL 1066260 (Mar. 22, 2017);
2. Not utilizing the Student's IEP Team, including parents, as the vehicle for determining whether the Student's educational placement is in the least restrictive environment and that a continuum of alternative placements is available to meet educational needs in violation of MUSER §X.2.B and MUSER §VI.2.I;
3. Not adequately including or considering the concerns of the Parents in the IEP decision making process in violation of MUSER §VI.2(H), §VI.2(I), §IX.3.C(1)(b), and MUSER App. 1 (34 CFR 300.501(b) and (c)); and
4. Not providing qualified staff in violation of MUSER §X.2(5);

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

V. FACTUAL FINDINGS

1. The Student is _____ years old and resides with _____ family in _____ Maine, where is currently homeschooled by _____ Parents. _____ is in the _____² and is the educational responsibility of the District where _____ qualifies for special education and related services as a student with multiple disabilities (Autism Spectrum Disorder (ASD) and Intellectual Disability). The Student has been diagnosed with ASD, Obsessive Compulsive Disorder (OCD), Anxiety Disorder and an Intellectual Disability.
2. The Student entered _____ during _____ year (2016-2017), attending the _____ School within the District (_____). At that time, _____ IEP team found _____ eligible for special education under the category of multiple disabilities (ASD and Intellectual Disability).

violation that allegedly occurred not more than two years prior to the date that the written complaint is received by the Department. In the present case, the allegations with regard to the Student's special education programming prior to _____ removal from the District in November, 2019 are more than one year prior to the date that the complaint was received by the Department and will therefore not be considered within this complaint investigation with regard to the District's compliance with MUSER or IDEA, other than for background information. (The Parents in this case are not requesting compensatory services; rather they allege that the Student's IEP and placement is inappropriate to meet _____ needs and request a specially designed autism program or an out of district placement for the Student based upon _____ level of need.) During the period of time that the Student was homeschooled (October 2019-September 2021), the District did not have a duty to provide special education services for the Student. *MUSER IV.4(H)(3)*. Therefore, this complaint investigation will examine the actions of the District and the IEP developed for the Student from the time that the Parent notified the District that she wished to re-enroll the Student in September, 2021.

² Based on the Student's age, _____ would be eligible to attend school as a _____ however _____ stayed back and repeated _____ year during the 2018-2019 school year.

3. While attending the _____ school, the Student participated in the _____ program, a specialized _____ self-contained classroom within the _____ school providing services to students with significant disabilities including ASD and Intellectual Disabilities.
4. At the end of the Student's _____ year, (the 2017-2018 school year), the Student's IEP team determined that _____ would stay in the _____ program during _____ year (the 2018-2019 school year) instead of moving up to the _____ School, the _____ school within the District, which at that time did not have a specialized program comparable to the _____ program.
5. In January and February of 2019, the Student underwent _____ triennial evaluation which included academic, speech, and occupational therapy evaluations.³
6. The Written Notice prepared in connection with the February 11, 2019 IEP team meeting documented the team's review of the Student's evaluations and provided updates from teachers and support staff as follows:

³ January 2019 — Wechsler Achievement Test (WIAT III): Numerical Operations: 63 (LOW), Math Problem Solving: 60 (LOW), Composite Mathematics: 61 (LOW), Addition Fluency: 65 (LOW), Subtraction Fluency: 56 (LOW), Multiplication Fluency: 60 (LOW), Total Math Fluency: 59 (LOW), Spelling: 48 (VERY LOW), Sentence Composition: 55 (LOW), Essay Composition: 74 (BELOW AVERAGE), Composite Written Expression: 57 (LOW), Oral Expression: 74 (BELOW AVERAGE), Listening Comprehension: 70 (BELOW AVERAGE), Reading Comprehension & Fluency: 51 (VERY LOW), Word Reading: 59 (LOW), Pseudoword Decoding: 67 (LOW) Oral Reading Fluency: 41 (VERY LOW), Total Reading: 43 (VERY LOW), Basic Reading: 63 (LOW), Total Achievement: 56 (LOW)

Speech/language results: Results of the CELF-5 reveal below average core language, receptive language, expressive language, language content and language memory skills. [The Student] demonstrated a relative strength in formulated sentences and following directions. _____ had the most difficulty with word definitions, understanding spoken paragraphs, sentence assembly, and semantic relationships. [The Student] also had a difficult time with word classes and recalling sentences. Testing in the area of expressive vocabulary using the EVT-2, revealed scores in the below average range. Testing in the area of receptive vocabulary using the PPVT-4, revealed scores in the below average range. [The Student's] overall social language skills according to the SLDT-E fall within the below average range. [The Student] demonstrated difficulty with making inferences, problem solving, making multiple interpretations, and supporting peers. Results of the GFTA-3, revealed articulation skills in the average range for sounds-in-words and below average range for sounds-in-sentences. [The Student] presented with distortions and substitutions for sounds l, s, z, sh, unvoiced-th, and voiced-th. [According to the Maine Department of Education Rating Scales], the results of the current evaluation measures demonstrate that [The Student]'s intelligibility rating and articulation skills at the word level fall within the average range (<1.0 standard deviations below the mean). _____ articulation skills at the sentence level fall within the mild range (1.0 to 1.5 standard deviations below the mean). [The Student]'s core language, receptive language, expressive language, language memory and receptive vocabulary skills fall within the moderate range (1.5 to 2.0 standard deviations below the mean). [The Student's] language content score, expressive vocabulary, and social language index score fall within the severe range (>2.0 standard deviations below the mean). Recommendations: frequent check-ins for understanding of directions; directions being repeated/restated; frequent review of new vocabulary and concepts.

OI: [The Student] has proper muscle tone, strength and stability in the larger muscles of _____ body, that are used for gross motor skills. _____ has reduced muscle tone, and stability in _____ hand and finger muscles, which are used for fine motor skills and for an efficient pencil grasp. _____ also demonstrates proper motor planning skills for larger movements, and weak motor planning skills for fine motor tasks. This relates to challenges with performing multi-step fine motor tasks, such as shoe tying, tracing, cutting with scissors, and manipulating beads and blocks for assembly. [The Student's] balance and ball skills are appropriate. _____ fine motor control and visual-motor integration skills are significantly delayed. [The Student] is challenged with fine motor manipulation, isolating _____ fingers for tasks requiring dexterity and control, and using both hands in a coordinated manner (bilateral coordination), such as managing clothing fasteners, stabilizing the paper while cutting with scissors, assembling Legos or pop beads, and shoe tying. _____ has made very nice progress this year in _____ ability to form letters and numbers, and to color with accuracy. [The Student] has significant delays with visual perceptual skills, which affects _____ ability to visually plan and make _____ way through mazes, trace around a stencil, cut along a line, imitate basic block designs, and assemble puzzles. [The Student] continues to benefit from direct Occupational Therapy intervention to develop _____ hand muscle stability and coordination, fine motor control, visual-motor integration, visual perceptual skills, and bilateral coordination. At home and in school, _____ should engage in activities to further develop these skills, including: building with Lego blocks, assembling 15-24 piece puzzles, tracing through basic mazes, dot-to-dot worksheets, color-by-number worksheets, rolling and manipulating Play Doh with both hands and in one hand, tracing stencils, cutting out basic designs with scissors, Lite Brite, stringing small beads, using tweezers or tongs to pick up small items, clipping clothespins to the edge of a ruler, stretching elastics around the pegs of a geoboard, and writing/drawing/coloring on a slanted surface to develop _____ wrist and hand muscle stability.

- _____, Speech Language Pathologist, shared the results from the speech and language testing, noting that the Student “has improved greatly with articulation from the last testing. _____ is now 97% understandable. _____ also knows 90% of letter sounds and is able to pronounce 82% of sounds in sentences. [The Student] does a nice job with identifying sentences and matching them to pictures. [The Student] continues to need support with listening comprehension, which is a great opportunity for a new goal for _____. Recalling sentences which were read out loud to _____ was difficult as the sentences got longer and harder as the test went on. [The Student]'s vocabulary is low with both expressive (labeling - 65) and receptive (71). Social language was difficult for [the Student]. _____ did a nice job with identifying the problem but has a hard time with developing a solution.”
 - _____, OTR/L, shared that she tested the Student in the areas of gross motor, fine motor and visual perception. “[The Student] has good balance and hand/eye coordination. _____ has reduced muscle development within _____ smaller muscles (hands). _____ foundation is great and has more strengthening to do. _____ is able to identify body parts. _____ is working on patterns, mazes and puzzles. [The Student] is able to complete the first part of shoe tying, but needs assistance with the second part of it... _____ has a hard time with buttons and zippers.”
 - _____, Special Education Teacher, shared [that] she sees [The Student] for math (30 minutes) and reading (60 minutes) each day. She has noticed that in the last 2 months [The Student] has been having a lot of fun in the Resource Room and is also smiling. “[The Student] is working on subtracting, adding, least to most, more/less and number sentences during _____ math time. _____ is doing well with those concepts, but continues to work on each of them. [The Student] is making improvements with _____ reading skills as well. _____ is currently able to spell 19/36 kindergarten sight words. _____ is able to decode readings with 82% accuracy. _____ is able to read 38 words per minute...”
 - _____, Special Education Teacher, shared the results from the academic testing and classroom observation. During the classroom observation, [the Student] was doing what was expected of _____ both academically and behaviorally. _____ was working on spelling, matching pictures to words/words to pictures, and letter sounds. [The Student] was able to identify and spell CVC words. The academic testing showed that [The Student] is working very low to below average when evaluated at a _____ level. [The Student] did have some strengths during the testing, but _____ continues to need Special Education Services in order to be successful.
7. At the February 11, 2019 IEP team meeting, the Student’s team determined as follows: “Continue Speech and Language Services and Occupational Therapy Services at a frequency of 2 times per week for 30 minutes; continue Specially Designed Instruction for 5 times per week for 5.5 hours in the special education and regular education

locations.” The IEP also offered the following supplementary aids, services, modifications and supports: “modeling and practicing social skills, ed tech support throughout the day as needed, two step directions, daily home/school communication and emotional data sheet.” This IEP provided that the Student spent 28% of time with non-disabled children. The Written Notice prepared in connection with this meeting noted that “the Parent agreed to the updates of the amended IEP...and requested that the Student continue to receive social skills in a small group with anticipated move to School.”

8. The Student’s March 18, 2019 and June 7, 2019 progress reports showed that was partially meeting goals in the area of speech/language, writing skills, reading, math and OT.

9. In September, 2019, the Student started school at the School to repeat year. The Student’s IEP team met on September 12, 2019 for annual review and to develop IEP for the 2019-2020 school year. The Written Notice prepared in connection with this meeting noted as follows:

- the Student’s regular education teacher noted that the Student “was doing very well with the routines is familiar with in classroom....[although] does not always take clues from what other students are doing in the class.”
- The Parent was concerned with how the Student “reacts to environment and how is doing academically.”
- The option of having [the Student] in the resource room for the majority of the day was rejected because is gaining information from the general education classroom in Science and Social Studies. also is with peers for all extra curricular activities.

10. The September 12, 2019 IEP noted as follows with regard to the Student’s present levels of functional/developmental performance:

[The Student] has made great progress towards many of goals. has improved answering of listening comprehension questions from < 20% to 50% which meets goal. has improved understanding of synonyms and antonyms from 33% to 70% which meets goal. is demonstrating understanding of comparative relationships (from a baseline of < 20% to 86%) and temporal and sequential (from a baseline of < 20% to 90%) which meets goal. [The Student] is able to make inferences when given choices in 100% of opportunities, independently is 33% accurate. is able to state solutions independently in 33% of opportunities and justify problems independently in 66% of opportunities which meets goal, [The Student] has also improved ability to make multiple interpretations and show support to peers from a baseline of < 20% to 50% which meets goal. [The Student] has improved conversational skills from 63% to 75% which meets goal. In the area of articulation, [the Student] is stimulable for unvoiced-th. is approximating the sound in 100% of

opportunities. [The Student] continues to form incomplete complex sentences when shown a picture and given a word.

11. The IEP developed for the Student at the September 12, 2019 meeting included specially designed instruction 5 times per week for 60 minutes each in ELA and math in the special education setting, 60 minutes per week of speech/language therapy and 60 minutes a week of OT. This IEP also offered modeling and practicing social skills, ed tech support throughout the day as needed, smaller step directions⁴, [and] use of manipulatives to complete classroom work. This IEP provided that the Student would spend 60% of time with non-disabled children.
12. Progress reports from the first reporting period on the new IEP in November 2019 showed that that the Student was “partially meeting” goals in specially designed instruction in math, reading, writing as well as speech/language and OT goals.
13. In a November 26, 2019 email to _____, Principal of the _____ School, the Parent said that the Student was “dealing with some major issues that we can’t work through any longer without help. I know you aren’t seeing the issues at school since _____ internalizes everything and doesn’t communicate.” In her email, the Parent said she would be withdrawing both the Student and the Student’s sister from the District in order to be home schooled. In her email, the Parent noted that “this is not a complaint” and she “will regret having to let go of the valuable services they have both received through all of you” but that it was the “best choice for _____” to be fully homeschooled.
14. The Parents withdrew the Student from the District and home schooled _____ for the remainder of _____ year and _____ year (2020-2021). During this time, _____ received in-home Specialized Section 28/BHP support services through _____. The Student received Section 65 services through _____ and received O.T. services through _____, in _____, Maine. _____ was treated by _____ M.D., Child and Adolescent Psychiatrist at the _____ in _____, Maine.
15. In an interview with the Complaint Investigator, the Parent stated as follows:
 - She opted to homeschool the Student only because the District was “not meeting _____ needs” after _____ transitioned out of the _____ program at the end of the 2018-2019 school year. She said that District staff at that time told her that the only option for the Student was to place _____ in a mainstream setting, which made her feel that the District did not have the resources or qualified staff to provide an appropriate “autism specific” program for _____

⁴ and an opportunity for the Student “to view what is going on in the classroom to see if _____ will follow through before intervention is needed.”

- Even though she was concerned about the lack of special education services provided by the District in the fall of the 2019-2020 school year, she did not file a complaint because she didn't realize that "placing the Student at [redacted] in [redacted] was an option for the Student.
 - During the time that the Student has been homeschooled, [redacted] has made progress academically but has not made progress socially.
16. In August 2021, the Parent sent an email to [redacted], Principal of the [redacted] School, asking if the Student could attend the music program at the school. In her email, the Parent said that [redacted] "would be attending with support (either myself or a BHP...)" while [redacted] continued with [redacted] home schooling program. [redacted], the District's Special Education Director, responded that the Student "was welcome to participate in the school band program" as a home school student if [redacted] had BHP support, however the District was unable to provide ed tech support for [redacted]. In a follow up email, the Parent said that after checking with the company that provides the Student's BHP services she learned that it was unable to provide this support for the Student during band.
17. September 20, 2021, the Parent emailed [redacted] stating she would like to "discuss placement options" for the Student because she "now sees the need for intervention." [redacted] replied that the first step would be for her to register the Student at the [redacted] and then they would set up a meeting to discuss [redacted] programming and determine what evaluations are needed to help develop programming.
18. In an email dated September 21, 2021, the Parent specifically requested an out of district placement, stating in relevant part:
- I don't want to enter [redacted] in mainstream again as it was not successful back in [redacted] [redacted] is a great school system but I am requesting a transfer to a local school district that has an Autism program for [redacted] grade level since [redacted] does not provide any Autism specific program after [redacted] or [redacted]. I have documents from multiple resources to support and plan to homeschool as the only feasible alternative until [redacted] can be placed in an Autism Program.
19. [redacted] responded to the Parent's September 21, 2021 email stating that "typically we do not place students out of the district unless the level of support needed is no longer feasible in the public school setting."
20. The Parent subsequently contacted [redacted] Superintendent [redacted] and [redacted] requested that the Student attend the [redacted] Autism program at the [redacted] School for the 2021-2021 school year. By letter dated September 28, 2021, [redacted] notified the Parent that this request was denied due to the requirement that students attend school in the district where their parents reside.

21. In an interview with the Complaint Investigator, _____, Director of Special Services, stated:

- She has been the special education director at _____ for six years and has over 16 years of experience in special education.
- The Student participated at the _____ program while _____ attended _____ School through the end of the 2018-2019 school year. The _____ program is a self-contained classroom with an autism specific program where students develop a strong connection with their teacher.
- During the 2019-2020 school year, the Student attended the _____ school where _____ IEP was implemented. The program at _____ provided services in a resource room, which _____ described as having more students but “a bit less restrictive than self-contained room in place at the _____ program.”
- The District currently has specific programs suitable for students with disabilities similar to the Student’s at the _____ and at the _____. At the time that the Parent re-enrolled the Student in the fall of 2021, the _____ program was full; however the _____ program had an opening for the Student, which she offered to the Parents. _____ noted that the Student was age appropriate for the _____ program which has other students of similar and younger ages, even though _____ was technically a _____ due to _____ staying back during _____ year. While the _____ program is the equivalent of an autism program like the _____ program, the District intentionally refers to the program as _____ to avoid the label or potential embarrassment for students attending an “autism room” that can negatively impact students, especially during their _____ years. She noted that the initial IEP from November, 2021 offered a shortened day to help _____ transition into public school.
- All special education teachers and ed techs working with the student are certified and have the appropriate credentials to work with the Student and implement IEP.

22. In an interview with the Complaint Investigator, _____, Special Education Teacher at _____ School, stated:

- She has over 30 years of experience working as either an ed tech or special education teacher, including experience with “severely disabled” students with autism and intellectual disabilities.
- Her current caseload in her room, which is typical of her caseload over the past 15 years, consists of seven students: four with intellectual disabilities and three with autism. She said that the Student’s developmental and chronological age is appropriate for this class.
- Based on her review of the Student’s history, including evaluations and reports from the Parent, she believes that her program would be appropriate for the Student.

- With regard to the Student’s bathroom and hygiene needs, she noted that her room is set up with its own private bathroom and changing areas. She also noted that she and the ed techs in her room have experience working with children with similar needs.
- She works with three ed techs in her classroom. Due to the Student’s need for a 1:1 ed tech, the District would need to hire or transfer an additional ed tech to her room if the Parents agreed to have the Student placed in the District.
- Her typical daily class schedule is broken into six periods which includes daily planning and activities, social studies, social skills-communication, math and ELA. She noted that speech, OT and other supportive services are offered in separate rooms. She said that a parent notebook goes home with her students each day, outlining each child’s progress for the day.
- She tried to communicate with the Parent about the specifics of her program but noted that “Mom didn’t want to hear about it.”
- She recalled that the Parent may have served briefly as a substitute teacher in her room in 2019, but that her student population was “very different” than her current population and would not provide an accurate reference to the programming that would be offered to the Student.
- She is aware that the Parent discussed an incident where the Student exhibited abusive behavior towards pets and other children at home. She has not seen any history of abusive behaviors in school, but noted that she and her staff have experience and resources at the school to address these behaviors or even consider a different placement, should behavior become more dangerous to or others in school.

23. An Individualized Treatment Plan prepared on October 18, 2021 by _____, ⁵ noted “Interfering Behavior/Presenting Problems” including:

- [The Student] will attack people and animals based on various triggers... [The Student’s] tantrum behavior leads to aggression that has the potential to be very dangerous.
- The Student speaks through mother...and will only look at mother when speaking...
- When speaking to others speaks out of the corners of mouth with teeth clenched making language difficult to understand.
- The Student engages in interfering behavior in stores or in restaurants... fixates on electronics which often is a trigger... engages in active refusal when given a direction to do something that doesn’t want to do.

24. The October 18, 2021 Individualized Treatment Plan recommended a variety of positive behavioral supports including Applied Behavioral Analysis services to be provided five times per week for three hours per day.

⁵ _____ is the agency providing Specialized Section 28 Services to the Student.

25. The Student's IEP team met on October 22, 2021 to develop IEP for the 2021-2022 school year. IEP consisted of a shortened day and included eight hours per week of specially designed instruction in the special education setting, 60 minutes a week of speech and 60 minutes a week of OT. In addition, the IEP included 1:1 ed tech support throughout the day and modeling and practicing appropriate social skills. This IEP provided that the Student was to spend 0% of time with non-disabled children.
26. The Written Notice prepared in connection with the October 22, 2021 IEP team meeting stated, in relevant part, as follows:
- The District suggested completing evaluations “to get updated information about the Student’s academic and functional abilities since has been home-schooled for the past year and a half and is reported [by the Parent] to have significant needs at this time.”
 - The Parent said that the Student needs a “self contained 1:1 instructional setting...[the Parent] understands that the District has such a program but [the Parent] feels it is not one that can meet needs.”
 - The Parent stated that she “does not agree with the placement at the , since she is against promoting to , which she said is not appropriate, and she does not feel that the program being offered is self contained.”
 - explained that “steps need to be followed before making a referral to a special purpose private school. The first step is to have [the Student] attend school in again. In this way, the school can then conduct observations and collect data on whether or not the placement is appropriate for [the Student].
 - “The program being offered to the Student is located at the and is a continuation of the program that [formerly] attended at . [The Student] is of the chronological age to attend this program in spite of developmental age.... clarified that the program is self contained, but ...students are able to leave the classroom for lunch or allied arts ... explained that the transition could be slow, so as to not overwhelm the Student and that the team could discuss an abbreviated day as well.”
 - , the special education teacher from the , reported that the developmental levels of students currently in her program are between and years of age developmentally, where [the Student] is reported to be at about years. Her program serves students identified with Autism as well as Intellectual Disability, both exceptionalities that the Student possesses. She assured the team that her program is set up to meet students' individual needs and that she is able to develop a program unique to the Student's needs. Students are mainstreamed only if they are able to handle the expectations.

- The Parent declined the District’s program and plan for the Student and said that the Student would not be attending school at this time and would continue homeschooling.
- The IEP team considered a referral to an out-of-district special purpose private school for the Student, but rejected that option given that [The Student] needs to attend special programming offered in the district first as it's least restrictive.

27. In an email to _____ dated October 25, 2021, the Parent declined further evaluations for the Student and stated: “I would like to proceed based on _____ current evaluations since [they are] all good through 2022. There are no changes other than OCD has worsened. Additional evaluations at this point would not add any value.”

28. In a letter dated November 3, 2021, _____, BHP at _____ Maine noted that during the time she has worked with the Student⁶:

[that _____ need level was] “fairly profound.... _____ functional skill levels are severely lacking and _____ is not always independent in the bathroom, often needing help to properly clean _____ and _____ OCD rituals completely control _____ life... _____ requires support and therapy as these rituals will continue to limit _____ quality of life.... _____ is incredibly successful in masking _____ true feelings...[and] does not have the skills to advocate for _____ I would like to see [the Student] be placed in a self-contained, Autism-specific program. This meaning, a room where _____ is receiving one-on-one instruction 100% of the time. _____ lack of social skills makes _____ incredibly susceptible to being bullied by peers. When [the Student] is not in a self-contained room, for instance during recess, lunch, and appropriate specials, _____ should have access to a one-on-one technician to support _____ needs.

29. In an interview with the Complaint Investigator, the Parent stated:

- Prior to filing this complaint she did not consent to additional evaluations for the Student after _____ return to public school because _____ had previous evaluations from February of 2019 and that she “had worked with _____ and knew what _____ needed.” She said that she is now willing to have the Student evaluated.
- She does not agree with the placement as proposed in the October 2021 IEP since “_____ will not be in an independent setting” and she was not given information about the educational/support strategies or staff qualifications.”
- While being homeschooled, the Student has received OT services at _____ in _____ Maine. The Student is scheduled to begin specialized OCD treatment with _____ on January 7, 2022.

⁶ The Student received Specialized Section 28 Services through _____ Maine. Sec. 28, also known as Rehabilitative and Community Services (RCS) is for children or youth up to the age of 21 who have a developmental disability that affects their everyday functioning. (Ex. Autism Spectrum Disorders & Intellectual Disability). Services include skill building in activities of daily living and behavior management.

30. The Parent arranged for the Student to be given a Vineland-3 standardized test by _____ on December 1, 2021.⁷ _____ provided a summary of the Student's Vineland scores as follows:

[The Student's] overall level of adaptive functioning is described by _____ score on the Adaptive Behavior Composite (ABC). _____ ABC score is 31, which is well below the normative mean of 100 (the normative standard deviation is 15). The percentile rank for this overall score is <1. The ABC score is based on scores for three specific adaptive behavior domains: Communication, Daily Living Skills, and Socialization. The domain scores are also expressed as standard scores with a mean of 100 and standard deviation of 15. The Communication domain measures how well [the Student] listens and understands, expresses _____ through speech, and reads and writes. _____ Communication standard score is 30. This corresponds to a percentile rank of <1. The Daily Living Skills domain assesses [the Student's] performance of the practical, everyday tasks of living that are appropriate for _____ age. _____ standard score for Daily Living Skills is 41, which corresponds to a percentile rank of <1. This domain is a relative strength for [the Student]. [The Student's] score for the Socialization domain reflects functioning in social situations. _____ Socialization standard score is 20. The percentile rank is <1. This domain is a relative weakness for [the Student].

31. In an interview with the Complaint Investigator, _____ M.D., stated as follows:

- She has been in practice for eight years and her practice focuses solely on children with autism. She started working with the Student in the spring of 2021.
- She noted that _____ has "severe" OCD, has a lot of sensory/routine needs and "has had a lot of aggression where _____ hit and bit family members in the past." She noted that _____ aggressive behaviors have subsided.
- In her opinion, the Student needs 1:1 support with a Board Certified Behavior Analyst (BCBA) or a person "with that background." She noted that this level of support could be provided in a public school setting "if the school setting is safe and can meet _____ educational needs." She also noted that she hasn't seen _____ in a school setting and "it is the School's job to assess and plan for _____ [academic and supportive] needs.
- She agrees that it would be helpful to have updated academic and psychological evaluations for the Student.

32. In a letter dated December 1, 2021, _____ wrote:

Based on my evaluation of [the Student], I believe to be safe and successful in an educational setting _____ requires a self-contained classroom that provides an alternative curriculum in a highly structured setting, with direct 1:1 instruction. Given _____ low adaptive behavior scores this program should have a long-term focus on life skills and vocation based skills to address transition goals of being as independent as possible as an adult.

⁷ The Vineland-3 is a standardized measure of adaptive behavior--the things that people do to function in their everyday lives. The IEP team did not have access to these test results at their last meeting on November 8, 2021.

33. In an interview with the Complaint Investigator, _____, a BCaBA at _____, stated:

- _____ began working with the Student approximately one year ago. She has worked directly with the Student since August, 2021 and is the supervisor of _____ who is the Student’s BHP. She has over 12 years of experience as a special educator in a school setting prior to working at _____.
- She and Taylor have been teaching and working with the Student on _____ basic daily living skills, such as showering, bathroom use and brushing _____ teeth. They have also been helping _____ with developing appropriate social skills and ways to communicate _____ needs.
- When she first started working with the Student, she noted that the Parent had “over reported” the Student’s skill level; i.e. the Parent believed _____ skills were greater than they really were. She has observed that _____ has needed a lot of prompting, redirecting and working on behavior reduction. She also commented that the Student has some behavior issues and “has made some pretty scary threats to other kids.”
- She agrees with _____ recommendations and feels that a self-contained autism-specific program would be best for the Student. She noted that _____ thrives on scheduling and predictability. She also noted that the Student’s social skill development in a structured setting with _____ peers would be beneficial to _____. In this regard, she noted that she does think that if _____ could be placed in a self-contained room with 1:1 support, “it would be fine” to have _____ at a public school setting. She also noted that she thinks _____ would do better at the _____ school as she feels it would be better and safer that _____ is not with _____ kids.
- She has attended the previous two IEP team meetings and noted that “what the school is recommending makes sense... structured with access to typically developing peers. She also agrees that the Student should get back to school first and then see how _____ does before making an outside referral. She did note that based on _____ higher level of needs, _____ special ed teacher should have a 286 certification.⁸ She also agrees with the District’s approach to reevaluate the Student to determine _____ present levels of need after _____ home schooling experience over the past two years.

34. District staff identified to provide services to the Student, along with active certification status, include the following:

- _____ : Code 282 Teacher of Students with Disabilities grades K-8;
- _____ : Code 023 Ed Tech III grades B-12, Ed Tech ESEA Grades B-12;
- _____ : Code 022 Ed Tech II grades B-12;
- _____ : Code 021 Ed Tech I grades B-12;

⁸ Teacher of Severely Impaired Students K-12 certificate (286)

- : Speech Language Pathologist;
- : Occupational Therapist; and
- : Occupational Therapy Assistant.

VI. DETERMINATIONS

- 1. Not properly developing or revising an IEP that is reasonably calculated to enable the Student to make progress in light of circumstances, in violation of MUSER §§ IX(3)(A), §IX.3.(D), VI.2.J.(4) and *Andrew F. v. Douglas County School District*, 137 S. Ct. 988; *RE-1*, 2017 WL 1066260 (Mar. 22, 2017);**
- 2. Not utilizing the Student’s IEP Team, including parents, as the vehicle for determining whether a student’s educational placement is in the least restrictive environment and that a continuum of alternative placements is available to meet a student’s educational needs in violation of MUSER §X.2.B and MUSER §VI.2.I;**
- 3. Not adequately including or considering the concerns of parents in the IEP decision making process in violation of MUSER §VI.2(H), §VI.2(I), §IX.3.C(1)(b), and MUSER App. 1 (34 CFR 300.501(b) and (c))**

COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND

Children with disabilities are afforded certain rights and protections under MUSER and the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 et seq. These rights include the development of an IEP and the delivery of special education services and supplementary aids in the least restrictive environment.

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.

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). 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).

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.C provides that an IEP Team must consider the concerns of the parents when developing each child’s IEP. MUSER §§VI (2) (H) and (I) provide, in relevant part, that the IEP team must include the child’s parents who must be afforded the opportunity to participate in all IEP team meetings. the core of the IDEA is "the cooperative process that it establishes between parents and schools." *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 53 (2005).

In the present case, the Student’s IEP team responded to the Parents’ request to re-enroll the Student by developing an IEP that was modeled on the Student’s previous placement at the _____ program at the _____ school, a placement where the Student was making meaningful progress.⁹ The record supports a finding that the November 8, 2021 IEP was reasonably calculated to enable the child to receive educational benefits and was appropriately ambitious in light of _____ circumstances.¹⁰ This IEP also included supports and goals based upon the Student’s most recent evaluations conducted in January and February of 2019.

The record also supports a finding that the District considered the Parents’ concerns and utilized the Student’s IEP Team, including _____ Parents, as the vehicle for determining whether the Student’s educational placement was in the least restrictive environment. Specifically, the District offered 1:1 ed tech support in a resource room setting that was responsive to the Parent’s requests.¹¹ In addition, the proposed IEP included modeling and practicing appropriate social

⁹ At the February 11, 2019 IEP team meeting _____, Speech Language Pathologist reported that the Student “has improved greatly with articulation from the last testing. _____ is now 97% understandable.”

_____, Special Education Teacher, noticed that in the last 2 months [The Student] has been having a lot of fun in the Resource Room and is also smiling. “[The Student] is... doing well with [math and reading] concepts, [and] continues to work on each of them.” _____, Special Education Teacher, shared the results from the academic testing and classroom observation. During the classroom observation, [the Student] was doing what was expected of _____ both academically and behaviorally. The Student’s March 18, 2019 and June 7, 2019 progress reports at the conclusion of _____ enrollment in the _____ program showed that _____ was partially meeting _____ goals in the area of speech/language, writing skills, reading, math and OT.

¹⁰ The October 22, 2021 Written Notice states that the program being offered to the Student is... a continuation of the _____ program that _____ [formerly] attended at _____. [The Student] is of the chronological age to attend this program in spite of _____ developmental age.... _____ clarified that “the program is self contained, but ...students are able to leave the classroom for lunch or allied arts ...” _____ explained that the transition could be slow, so as to not overwhelm the Student and that the team could discuss an abbreviated day as well. It is noteworthy that the IEP team did not have the benefit of updated evaluations when determining the Student’s program, which were requested by the District but refused by the Parents at that time.

¹¹ The Parent requested in her September 21, 2021 email that she didn’t “want to enter _____ in mainstream as it was not successful back in _____. _____ is a great school system but I am requesting a transfer to a local school district that has an Autism program for _____ grade level since _____ does not provide any Autism specific program.” The November 2021 IEP provided that the Student was to spend 0% of _____ time with non-

skills in a small group setting as requested by the Parents¹² and recommended by the October 18, 2021 report and the Student's BHP.¹³ The proposed November 2021 IEP offered a shortened day to help transition into public school and included eight hours per week of specially designed instruction in the special education setting, 60 minutes a week of speech and 60 minutes a week of OT.

As noted in MUSER VI(2)(I), the IEP Team should work toward consensus, but the SAU [District] has the *ultimate responsibility* to ensure 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 environment* (LRE) (emphasis added) MUSER §X.2.B. defines the criteria for the determination of the Least Restrictive Environment:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, shall be educated with children who are not disabled, and special classes, separate schooling, or other removal of students with disabilities from the regular educational environment shall occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [20 USC 1412(a)(5) and 34 CFR 300.114].

See also, *A.B. ex rel. D.B. v. Lawson*, 354 F.3d 315, 330 (4th Cir. 2004).

The First Circuit Court of Appeals has declared that determinations about least restrictive programming are unavoidably part of the determination of an "appropriate" program for a student. See *Lenn v. Portland School Committee*, 998 F. 2d 1083, 1090 n.7 (1st Cir. 1993). (questions about least restrictive programming are "an integral aspect of an IEP package [and] cannot be ignored when judging the program's overall adequacy and appropriateness."). The educational benefit and least restrictive environment requirements operate in tandem to create a continuum of educational possibilities. *Roland M. v. Concord Sch. Comm.*, 910 F.2d 928, 993 (1st Cir. 1990). Supplementary aids and services must be provided within the regular classroom

disabled children; February, 2019 IEP with the program provided that would spend 28% of time with non-disabled children.

¹² The Parent requested that the Student "continue to receive social skills in a small group" at February 2019 IEP team meeting.

¹³ While the October 18, 2021 report noted the Student's "tantrum behavior...that has the potential to be very dangerous", a BCaBA at , clarified that she supported the Student's placement in a public school setting if is placed in a structured self-contained room with 1:1 support, with supervised access to typically developing peers. While recommended that teacher have experience or certification for working with more severely impaired students, she also noted that she thinks the Student would do better at the where would not be placed with younger children. is aware that the Parent discussed an incident where the Student exhibited abusive behavior towards pets and other children at home. Although she has not seen any history of abusive behaviors in school, she noted that she and her staff have experience and resources at the school to address these behaviors, or even consider a different placement should they develop in school.

and placement in a more restrictive setting should only be considered when those services cannot be achieved satisfactorily. MUSER §X.2.B. (emphasis added)

In the present case, the approach offered by the IEP team is reasonable and consistent with the above stated principles of LRE. While it is clear that the Student continues to have significant academic, supportive and behavioral needs, none of the witnesses interviewed, except for the Parent, concluded that these needs could not be met within a public school setting similar to that offered by the District. _____, the Student’s psychiatrist, noted that the Student’s program could be provided in a public school setting “if the school setting is safe and can meet educational needs with 1:1 support and BCBA support or staff with significant behavioral experience. _____, BCaBA, attended the most recent IEP team meetings and said that “what the school is recommending makes sense... structured with access to typically developing peers....the Student should get back to school first and then see how _____ does before making an outside referral.”

It is noteworthy that the District did not rule out a placement to a special purpose private school, depending on how the Student does after returning to the District. Consistent with the above stated LRE principles, _____ noted that “the first step is to have [the Student] attend school [in the District].¹⁴ In this way, the school can then conduct observations and collect data on whether or not the placement is appropriate for [the Student].

4. Not providing qualified staff in violation of MUSER §X.2(5).

COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND

MUSER X.2(5) provides that special education and related services must be provided by “appropriately certified education personnel, or licensed contractors...” If a school administrative unit is unable to hire qualified staff for the provision of related services, the unit shall make an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel to provide related services to children with disabilities.

The record supports a finding that the proposed instructional and therapeutic support has been offered to the Student by appropriately qualified and certified teachers and ed techs.¹⁵ It is noteworthy that _____, the Student’s proposed special education teacher has over 30 years of experience working as either an ed tech or special education teacher, including experience with “severely disabled” students with autism and intellectual disabilities. Certainly updated evaluations and observations of the Student, which are due in February of 2022, will

¹⁴ The October 22, 2021 Written Notice also noted that updated evaluations were recommended by the District and that the IEP team would convene again once evaluations were completed.

¹⁵ Due to the Student’s need for a 1:1 ed tech, the District would need to hire or transfer an additional ed tech to her room if the Parents agreed to have the Student placed in the District.

inform the IEP team as to whether BCBA/BHP support and/or a teacher with a 286 certificate should be part of the team working with this Student.

CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

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