

Complaint Investigation Report

Complaint # 22.070C

Report Date: July 26, 2022

Complaint Investigator: Leigh Lardieri

Date of Appointment: May 31, 2022

I. Identifying Information

Complainants: Parents

Respondent: Schools

Student:

II. Summary of Complaint Investigation Activities

On May 26, 2022, the Maine Department of Education received this complaint. The complaint investigator was appointed on May 31, 2022. Therefore, the current investigation covers the period of May 26, 2021 to present.¹ See MUSER XVI(4)(B)(3). The complaint investigator received 192 pages of documents from Schools (“the District”). The investigator also received two pages of documents from the parents (“the Parents”). On July 8, 2022 the Parents were interviewed. The same day, the following staff were interviewed from the District: The Occupational Therapy Assistant/ Licensed (CODA/L), and the Special Education Teacher/ Case Manager (Special Education Teacher). On July 12, 2022 the following staff members were interviewed from the District: the Speech and Language Pathologist, the Special Education Director, and the General Education Teacher.

The complaint investigator reviewed all documents, emails and information obtained through interviews, as well as the responses provided by the parties to complete this complaint investigation.

III. Preliminary Statement

The Student is an year- old who qualifies for special education services under the disability category of Autism. In the spring of 2021, the team convened the annual review of the Student’s IEP program. The IEP included functional goals based upon need for support in the areas of Occupational Therapy (OT), and Speech, and social skills. Supplementary supports and services were added to the IEP as well including support from an Educational Technician (Ed Tech)

¹ Any discussion of events which occurred prior to May 26, 2021 are included in this report for historical purposes only.

throughout the day. Academically, the Student has a history of performance at or near grade level, with some assistance needed for initiating tasks, and work completion, particularly in writing. In anticipation of the 2021-2022 school year, the Parents and Student looked forward to a second year of remote instruction per the Parents' request as the District continued to have this option available to all students.

Prior to the start of the 2021-22 school year, the Parents of all students participating in remote learning were informed of changes to the instructional platform. Once the school year was underway, other changes emerged including the onboarding of a new Special Education Teacher assigned to work with the Student. Moreover, an amendment without a meeting occurred where the Student's direct OT service moved to a consultative model. Simultaneously, the Student was also receiving specially designed instruction in social skills but the Student stopped participating due to the Parents' concern about the skill level and age-appropriateness of the group. In the spring of 2022, the IEP team met again for the annual review. By this time, the Parents' expressed frustration that had been building over time due to what they believed to be a lack of communication, as well as the way in which the Student's special education programming had been managed over the course of the school year. Currently, the Student remains enrolled in the school, although the Parents have informed the District that they plan to provide home instruction for the 2022-23 school year.

The present complaint was filed by the Parent, alleging that the District has violated the Maine Unified Special Education Regulations ("MUSER"). After the receipt of the Parent's complaint, a Draft Allegations Memorandum was sent to the parties by the complaint investigator on June 8, 2022 alleging five violations of MUSER. A telephonic Complaint Investigation meeting was held on June 13, 2022.

IV. Allegations

The following MUSER violations are alleged by the present complaint:

1. The District denied the Student a free and appropriate public education (FAPE) by not providing 90 minutes per week of specially designed instruction in social skills with an age-appropriate peer group in the least restrictive environment (LRE). **MUSER II (13); 34 CFR 300.1; MUSER X 2 (A)(2); MUSER X 2 (B); 34 CFR 300.114 (a).**
2. The District denied the Student FAPE by not providing monthly consultative services. **MUSER II (13); 34 CFR 300.1; MUSER X 2 (A)(1); MUSER IX 2 B (1)(3); 34 CFR 300.323 (a).**
3. The District denied the Student FAPE by not providing the accommodation of support by an educational technician (Ed Tech) throughout day. **MUSER II (13); 34 CFR 300.1; MUSER IX 2 B (1)(3); 34 CFR 300.323(a).**

4. When the District informed the Parents that Ed Tech support would not be provided during the 21-22 school year, the District neither obtained parent input regarding this change, nor provided the Parents with prior written notice of this amendment to the IEP. **MUSER VI 2 (H)(I); 34 CFR 300.324 (a)(4)(6); MUSER IX 3 C(4); 34 CFR 300.324 (a)(4)(6).**

5. The District denied the Student FAPE by not providing IEP progress reports concurrent with the issuance of report cards. **MUSER II (13); 34 CFR 300.1; MUSER IX 2 B (1)(3); 34 CFR 300.323 (a); MUSER IX 3 (A)(1)(c); 34 CFR 300.320 (a)(3).**

V. Factual Findings

1. The Student lives with Parents. The Parents shared that they first took the Student into foster care when was a newborn, and ultimately adopted . Reportedly, enjoys fishing, swimming, and using technology. just completed the grade at a preK-6 elementary school. receives special education services and supports as a student under the disability category of Autism.²
2. A psychological evaluation was completed in April 2018. The results are as follows:³ the Student demonstrated cognitive abilities in the average range for verbal comprehension, and working memory; visuospatial skills, fluid reasoning, and processing speed were in the below average range. Behaviorally, the Student presented with internal and external behavioral scores in the significantly elevated range for somatic problems and the borderline elevated range for no other behaviors.⁴ Significantly elevated scales were also reported for attention problems, social problems, rule breaking behavior, aggressive behavior, attention deficit/hyperactivity disorder, oppositional defiant disorder, conduct problems and stress problems.⁵ On the Gilliam's Autism Rating Scale (GARS), both the Parent and teacher endorsed scores producing an Autism index of "very likely", consistent with a diagnosis of Autism Spectrum Disorder.⁶

In 2019, an occupational therapy evaluation was completed. The results revealed the following:⁷ the Student presented with visual perceptual skills in the average range, visual motor integration in the low range, and motor coordination in the very low range. fine motor skills were in the below average range, with fine manual control falling in the well below average range. manual dexterity, upper limb coordination and manual coordination were in the below average range. On a measurement of sensory

² As reported during the interview with the Parents. See also the IEP dated 4/15/2022 to 4/14/2023.

³ See Behavioral Developmental Pediatric Psychological Evaluation report completed by , PsyD dated April 5, 2018. This is the most recent psychological evaluation provided to this investigator.

⁴ As endorsed by the Parent on the Achenbach Child Behavior Checklist (CBCL) included in the psychological evaluation report.

⁵ As endorsed by the Teacher on the Achenbach Teacher Report Form (TRF) included in the psychological evaluation report.

⁶ See p. 2-3 of the Psychological Evaluation Report.

⁷ See the Occupational Therapy Evaluation and report completed by , Occupational Therapist dated 4/23/2019.

processing, the Student presented with “some problems” with touch, body awareness, balance and motion, and planning and ideas (16th percentile).

3. By end of the 2020- 21 school year, by all accounts the Student had successfully completed the remote instruction program. Multiple sources have indicated that the Student is quite capable academically and is able to handle grade level material with support for task completion and writing.⁸ Due to this level of success, the Parents chose to continue with the remote instruction option for the next school year. On May 18, 2021, the IEP team met for a review of program and determined that no changes would be made to the IEP.⁹ As written, the IEP services the Student received included specially designed instruction in social skills for 90 minutes per week; Consultation between the special education and general education teachers for 15 minutes per month; Speech and Language therapy for 60 minutes per week; Occupational Therapy for 30 minutes per week; and Special Transportation twice a day.¹⁰
4. As the Student began the 21–22 school year the remote learning platform had changed. The District shifted to Edgenuity¹¹, an asynchronous platform of learning across the subjects of English Language Arts (ELA); math; social studies and science. Unlike the previous year, the Student would log on each day and watch instructional videos from online teachers and then complete the assigned work. The Parents stated that they were not aware of this change until the a few days before the school year started, although they reported that they looked forward to the online instruction based upon the Student’s success from the previous year.¹² The Student’s mother became the learning coach for remote instruction.¹³ There was no Ed Tech support provided for the Student as written in the IEP.¹⁴ During this time, the Special Education Director was responsible for the Student’s special education case management.¹⁵
5. A General Education Teacher of record was responsible for the supervision of the Edgenuity platform, including the progress monitoring for all K-12 remote students¹⁶. In this model, if any parents or students had questions or needed technical support, she was available each day for to help assist and troubleshoot any issues. She met with the grade book group weekly. It was reported that the Student looked forward to these

⁸ As reported in interviews Parents, the General Education Teacher, the OT CODA/L, and the Speech and Language Pathologist.

⁹ See prior written notice dated 5/18/2021.

¹⁰ See IEP dated 3/9/2021 to 3/8/2022. This IEP was in effect in the beginning of the 2021-22 school year, until the annual review on 4/15/2022.

¹¹ Edgenuity, Inc. is a provider of K-12 online learning solutions nationwide. See www.edgenuity.com.

¹² As reported during the Parent interview. See also the Parent response to signing up for virtual learning via Google forms dated 8/23/2022.

¹³ The provision of a learning coach in the home was a requirement for all student participating in the Edgenuity platform.

¹⁴ See IEP dated 3/9/2021 to 3/8/2022, p. 48 of the District documents.

¹⁵ As reported during the staff interviews.

¹⁶ See the District’s response. There were 25 students total. Among them, 11 students had IEPs.

meetings, and engagement and interactions were age appropriate.¹⁷ It was also reported that academic skills were commensurate with those of typically developing peers.¹⁸

6. The Parents were content with the delivery of Speech and Language therapy and OT services on the remote platform. However, regarding the social skills instruction, they had concerns because the Student, a grader was grouped with students who were much younger and not at the same level of social skills development.¹⁹ When the Special Education Director explained that there were no other group options available remotely for students to participate in social skills instruction, the Parents began seeking other options.²⁰ The Special Education Director and Special Education Teacher offered to provide the Student one-on-one social skills instruction.²¹ The Parents rejected this offer and stated that the Student would not participate in any school-based specially designed instruction in social skills. Instead, going forward, the Parents stated they would work with the Student on social skills development.²²
7. The Student continued to work with mother each day to complete academic assignments through the Edgenuity platform. By the end of the first trimester, the Student obtained the following grades based on a 1-4 scale of academic performance on grade level standards: In reading, the scores ranged from “partially meets” to “meets the standards”; in math, the Student met the standards on all but one concept where partially met the standard (multiplying and dividing decimals); in social studies and science, the student partially met the standards.²³
8. The Speech and Language Pathologist continued to deliver services remotely and maintained regular communication with the Parents. The Student had a grade peer working with during the sessions. When this student was discharged from services, the Speech and Language pathologist obtained permission from the peer’s parents to *occasionally* join the group and continue the interactions with the Student. The sessions emphasized: social thinking skills, following the group or peer plan, accepting things out of control, minimizing off-topic comments, being an engaged listener, and thinking about others.²⁴ The following information reflects progress reports for the Speech and Language goals for trimesters 1 and 2: the Student partially met goals for the skills mentioned above by 11/1/2021, and again by 3/8/2022.²⁵

¹⁷ As reported in the interview with the staff.

¹⁸ See progress reports and report cards. The general education teacher monitored the Student’s progress, and then completed report cards which were mailed home by the school on a trimester basis.

¹⁹ As reported during the interview with the Parents, they made a point to say that the Ed Tech who facilitated this small group was very nice. Their concern was not about her interactions with the Student.

²⁰ Ibid.

²¹ As reported during the Parent and staff interviews.

²² The Parents reported that they worked with these skills within the home and out in the community.

²³ See School Grade report card, T1.

²⁴ See Speech/ Language goals in the IEP dated 3/9/21-3/8/22.

²⁵ Ibid.

9. The OT COTA/L reported that she had been working with the Student since kindergarten or first grade. She described _____ as being a bright student with a good sense of humor. Under the supervision of an occupational therapist this provider maintained regular communication with the Parents. She continued to work with the Student remotely on the following: sensory awareness, handwriting skills, emotional regulation, accepting disappointments, and calming strategies.²⁶ The following reflects the Student’s progress on the OT goals for trimesters 1 and 2: the Student partially met _____ goals for the skills mentioned above by 11/1/2021, and again by 3/8/2022.²⁷

10. When the first trimester progress report indicated that the Student was doing well and making progress, the OT COTA/L proposed to the Parents that they move from a direct therapy model to a consultative model. The Parents agreed that this would be sufficient for school-based services as the student was also receiving occupational therapy support outside of school.²⁸ When this provider reached out to the Special Education Director regarding the amending of the students IEP from direct to consultative services, it took several weeks for the Director to produce a prior written notice to amend the IEP without a meeting.²⁹ During this time the OT COTA/L continued to meet directly with the Student and _____ mother remotely to ensure that there was no lapse in services. The prior written notice for the amendment without a meeting was generated on 11/4/2021.³⁰

11. On October 20, 2021, a new Special Education Teacher was hired and assigned to the Student’s case. In early November, _____ reached out to the Parents through email.³¹ In those email exchanges, the Parents reported that the Student would no longer be accessing the social skills group as they would instead provide _____ with home and community experiences. In addition, the Parents reported that the Student was supposed to have Ed Tech support but they had “yet to hear anything about this.”³² The mother also wrote to the Special Education Teacher that [she] was a bit confused about how _____ IEP was being met.”³³ During the interview with this investigator, the teacher reported that during this time, he was getting up to speed on _____ caseload, and job responsibilities.³⁴ _____ was also consulting with the General Education Teacher as written in the Student’s IEP

²⁶ See OT Daily notes pgs. 172-175 in the District documents, and OT goal progress reports from the IEP dated 3/5/2021 to 3/4/2022.

²⁷ See OT goal progress reports from the IEP dated 3/9/2021 to 3/8/2022.

²⁸ See emails exchanged between the Parents and OT COTA/L dated 9/23-9/27/2021, pg. 100 in the District documents.

²⁹ See emails exchanged between the parties dated 9/30-11/5/2021, pg. 101-106 in the District documents.

³⁰ See prior written notice dated 11/4/21.

³¹ See emails exchanged between the Special Education teacher and the Parents, dated 11/2/21-11/4/21.

³² See email from 11/2/21.

³³ See email from 11/4/21.

³⁴ As reported during the interview with the Special Education Director, this teacher had regular meetings with the Director early on, and then would call with questions as needed.

for 15 minutes per month.³⁵ The teacher confirmed that the Parents had declined offers to change the way the social skills instruction was delivered.³⁶

12. By mid-February, the Special Education Teacher reached out to the District scheduler to request a date be added to the calendar for the annual IEP meeting.³⁷ This IEP meeting was to be held in early March 2022. As March passed into April the Parents were upset that the meeting was not yet held.³⁸ The Parents were frustrated with what they reported to be a lack of communication from the school about the Student's special education programming.³⁹
13. In April 2022 the annual review was held. According to the prior written notice, it was reported that a determination was made at the meeting in May of 2021, indicating that the triennial review and annual review would be held at the same meeting.⁴⁰ Instead, the Parents reported that they did not receive a consent for reevaluation nor were there evaluations ready to be reviewed at that IEP meeting.⁴¹
14. At this annual review meeting, when the District asked the Parents to provide signed consent so that the evaluation could be completed, the Parents rejected that proposal. Moreover, at this meeting when the District offered to share progress reports for the Student for the 2021-22 school year, the Parents declined the offer to hear those reports.⁴² The Parents also declined all but Speech and Language services for the remainder of the 2021-22 school year.⁴³
15. Ultimately, the Parents indicated that they were going to homeschool the Student for the 2022-23 school year. Regardless of this announcement, the District proposed a new IEP be in place should the Parents decide to keep the Student enrolled in the school for the coming school year. The prior written notice for this meeting was sent home on 4/8/2022.⁴⁴ The Parents received a copy of the new IEP reflecting the services determined at this meeting on 4/21/2022.⁴⁵ As of July 10, 2022, the Parents had not yet completed the enrollment process for home instruction.⁴⁶

³⁵ See IEP dated 3/9/21 to 3/8/2022.

³⁶ See prior written notice from 4/5/2022.

³⁷ As reported during the interview with staff.

³⁸ As reported during the Parent interview.

³⁹ See emails between the Parents and Special Education Teacher dated 11/2/21 and 11/4/21. See also the email from the Special Education Teacher dated four months later (March 25, 2022), when another check in was done to see how the Student was doing.

⁴⁰ See prior written notice dated 4/5/2022.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ See IEP dated 4/15/2022 to 4/14/2023.

⁴⁶ As reported in the Parent interview.

VI. Determinations

The following MUSER violations are alleged by the present complaint:

1. The District denied the Student a free and appropriate public education (FAPE) by not providing 90 minutes per week of specially designed instruction in social skills with an age-appropriate peer group in the least restrictive environment (LRE). **MUSER II (13); 34 CFR 300.1; MUSER X 2 (A)(2); MUSER X 2 (B); 34 CFR 300.114 (a). NO VIOLATION FOUND.**

No one disputes that the remote social skills group to which the Student was assigned did not include peers who were similar in age and skill level. In the remote program, there was no other group of students who were also in need of explicit social skills instruction. In addition, independent of the age of the students in the group, it was reported that the skills being taught were accessible to children at various levels, including the Student.⁴⁷ Nonetheless, when the Parents expressed their concern about the group, the District made an alternative FAPE offer which was to provide one-on-one social skills instruction. This was rejected.

Concurrently, the Student was also receiving the related services of Speech and Language and Occupational Therapy. During these sessions, the Student was working on skills that were similar to those that were addressed in the social skills goals in the IEP.⁴⁸ There was enough of an overlap that the Student had ample opportunity to practice social skills with another peer similar in age and make progress during Speech and Language Therapy sessions.⁴⁹ In the fall, the Student was doing so well in practicing skills in OT sessions, that the Parents agreed to an amendment to the IEP without a meeting where the direct OT service was replaced with OT consultation.⁵⁰ In addition, it was reported that the Student did well and participated appropriately in the weekly book group facilitated by the General Education Teacher.⁵¹ In the end, District was not obligated to provide the picture-perfect social skills group. Compliance was found because the District met their FAPE obligation to offer a program reasonably calculated to provide meaningful benefit to the Student.⁵²

2. The District denied the Student FAPE by not providing monthly consultative services. **MUSER II (13); 34 CFR 300.1; MUSER X 2 (A)(1); MUSER IX 2 B (1)(3); 34 CFR 300.323 (a). NO VIOLATION FOUND.**

⁴⁷ See the District response.

⁴⁸ See Social Skills, Speech and Language, and OT goals in the IEP dated 3/9/2021 to 3/8/2022.

⁴⁹ See Speech and Language goal progress reported in the IEP from 3/9/2021 to 3/8/2022.

⁵⁰ See prior written notice dated 11/4/2021.

⁵¹ During the interview, the General Education Teacher reported that the Student gave appropriate responses and looked forward to seeing peers.

⁵² See *Andrew F. v Douglas Co Schools* (2017).

As written in the IEP, consultation occurred for 15 min/ month between the special Education Teacher and General Education Teacher.⁵³ The purpose of consultation is for the *teachers* and other service providers to work together to enable children to appropriately progress in the general curriculum and to appropriately advance toward achieving the goals set out in their IEP.⁵⁴ During these conversations, it was reported that the Student was doing great, completing assignments and participating in the sessions.⁵⁵ The documentation provided in this case illustrated that the Student not only met the end of year/ standards/ expectations in general education academic performance, but also met the end of the year standards/ expectations for the grade : Responsive classroom expectations.⁵⁶ In light of this evidence, compliance was found.

3. The District denied the Student FAPE by not providing the accommodation of support by an educational technician (Ed Tech) throughout day. **MUSER II (13); 34 CFR 300.1; MUSER IX 2 B (1)(3); 34 CFR 300.323(a). VIOLATION FOUND.**

4. When the District informed the Parents that Ed Tech support would not be provided during the 21-22 school year, the District neither obtained parent input regarding this change, nor provided the Parents with prior written notice of this amendment to the IEP. **MUSER VI 2 (H)(I); 34 CFR 300.324 (a)(4)(6); MUSER IX 3 C(4); 34 CFR 300.324 (a)(4)(6). VIOLATION FOUND.**

Allegations three and four will be addressed together. First, the Parents' expectations of the level of support the Student would receive was significantly altered when they found out that there would be no Ed Tech support as written in the IEP. Second, the Parents were denied of the right to meaningful participation in the IEP decision-making process regarding the change made when the Ed Tech support was removed from the Student's IEP. The current IEP states that the Student should have Ed Tech support throughout day.⁵⁷ As the 2021-22 school year approached, no changes were made to the IEP. The Parents were informed that with remote instruction as an option, should they choose to do so, they needed to register the Student by August 27, 2021.⁵⁸ The Parents reasoned that since the Student did so well remotely in the previous year, they believe this would be a good option again for their child.⁵⁹ The Parents had confidence in the District staff who also believed the Student would do well with a second year

⁵³ See IEP dated 3/9/2021 to 3/8/2022.

⁵⁴ See MUSER X (2)(A)(1).

⁵⁵ As reported during the staff interviews.

⁵⁶ See Trimester 3 grades on the Schools Grade Report Card 2021-2022.

⁵⁷ See IEP dated 3/9/21 to 3/8/22.

⁵⁸ See pg. 95 of the District Documents.

⁵⁹ As reported during the interview with the Parents. See also pg. 96 of the District documents.

of remote instruction and were anticipating another successful year of remote instruction.⁶⁰ They assumed the IEP would be followed as written as was the case in the previous school year.⁶¹

In September 2021, once the District knew that they would not be able to provide Ed Tech support, a review of program IEP meeting should have been held to allow the Parents an opportunity to make joint informed decisions as to what alternative supports could be considered in place of the Ed Tech support.⁶² Alternatively, in making changes to the Student's IEP, the District and Parents could have agreed to amend the IEP without a meeting, once the IEP team members were informed, and had an opportunity to provide input.⁶³ Instead, the District unilaterally made the decision that the Student would not receive Ed Tech support. Subsequently, the Parents were informed that an adult in the home environment (in this case, the Student's mother) would be expected to assume the role of the learning coach for the Student. This information was given without the provision of a prior written notice to document the proposed amendment to the IEP.⁶⁴

By early November 2021, in an email sent to the Special Education teacher, the parents expressed confusion about how the Student's IEP was being followed. Two days earlier, in a previous email, the Parents stated that they had yet to hear about the Ed Tech support; they also stated that they were withdrawing the Student from the social skills group and would be providing that instruction themselves.⁶⁵ In response to these concerns, the District neither reached out to schedule a review of program IEP meeting, nor garnered input from the IEP team members to generate a prior written notice without a meeting, reflecting the changes to the Student's IEP.

With regard to the IEP process, MUSER states the following:

“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 child'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

⁶⁰ As reported during the interview with the Parents.

⁶¹ As reported during the interview with the Parents.

⁶² See MUSER VI 2 (H)(I).

⁶³ See MUSER IX 3 (C)(4).

⁶⁴ See the Edgenuity Instructional Services Parent/ Guardian Guide (pg. 60), and the Edgenuity: the Role of the Learning Coach (pg. 78). Parents of students who participated in the Edgenuity program were informed that a “learning coach” (e.g., a Parent) had to be present to assist their child throughout the day.

⁶⁵ See email from the Parents dated 11/2/21 and 11/4/21.

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."⁶⁶

When considered individually, procedural violations may not result in the denial of FAPE. However, as in this case, multiple procedural violations can cumulatively result in violations of FAPE.⁶⁷

5. The District denied the Student FAPE by not providing IEP progress reports concurrent with the issuance of report cards. **MUSER II (13); 34 CFR 300.1; MUSER IX 2 B (1)(3); 34 CFR 300.323 (a); MUSER IX 3 (A)(1)(c); 34 CFR 300.320 (a)(3). NO VIOLATION FOUND.**

At various times throughout the year, the Parents communicated consistently with the Speech and Language Therapist, and OT regarding the Student's progress. They also had opportunities to meet with the General Education Teacher through office hours or email to ask questions or discuss the Student's progress. Evidence was presented that the IEP progress reports for the Student were prepared by the Speech and Language Therapist, and OT for the first and second trimester, but due to an oversight, they were never sent out.⁶⁸ By the third trimester, the staff was prepared to share the Student's progress at the annual review meeting, however the Parents declined the opportunity to hear these reports.⁶⁹ Nevertheless, the District included the information from these progress reports in the prior written notice from the meeting and on the IEP that had been written for the 2022-23 school year.⁷⁰ As already mentioned, the student met the 5th grade academic and work completion standards, as well as made progress on goals for speech and language, and OT. As such, the delay in the provision of progress reports alone is not sufficient enough to be considered a violation of FAPE. The District was compliant.

VII. Conclusion

By all accounts the Student in this case has a history of strong academic performance. Throughout the 2021-2022 school year, evidence shows that was able to work through the lessons presented and complete the assignments satisfactorily through the virtual learning platform. With support provided each day by mother (learning coach), it was reported by teacher that the Student's performance was on par with typically developing peers. For this Student, academic performance has always been strength whether learning in person or remotely. Over the years, has thrived when routine and structure were provided by teachers and Parents. challenges have been in functional performance, particularly in the areas of self-regulation, pragmatic language, and social skills development. As such, the Student's current IEP continues to include special education and support services focused upon

⁶⁶ See MUSER VI 2 (I).

⁶⁷ See *Student with a Disability v Maine SAU*. 72 IDELR 169 Maine SEA (January 2018).

⁶⁸ As reported during the interviews with staff.

⁶⁹ See prior written notice dated 4/5/2022.

⁷⁰ As reported during the staff interviews. See also the IEP dated 4/15/22 to 4/14/23.

these same areas of need. In addition, the current IEP includes Ed Tech support throughout the day, deemed necessary by the IEP team for the Student to access education.

Since the beginning of the 2021-22 school year, there were many changes for this Student. In September, academic instruction shifted from a remote model facilitated by teachers and an Ed Tech familiar to the Student to video lessons delivered by teachers from Edgenuity. This in turn triggered a change to the Student's IEP, namely the removal of Ed Tech support throughout the day. When it became known that the Student would not be receiving Ed Tech support as written in the IEP, the District simply informed the Parents, instead of convening an IEP meeting to review the Student's program. The reason given for the oversight for *this* Student was that there was a change in case managers at the beginning of the school year, and therefore a meeting was never convened.⁷¹ Concurrently, the Student was assigned to a new social skills group which included much younger students. Then, in October, a new Special Education Teacher was assigned to manage the Student's special education program. Taken together, these changes evolved into a sequence of unfortunate circumstances for both Student and Parents.

In early November, it has already been reported that the Parents sent two emails to the new Special Education Teacher, expressing concerns and confusion regarding their son's special education program. The concerns shared in these emails should have prompted the scheduling of a review of program IEP meeting or at least a discussion followed by potential amendments without an IEP meeting, where all parties would have been given an opportunity to provide input. In this case that did not happen.

Parents of students receiving special education services and related services have a reasonable and legal expectation that their input will be considered if a district proposes changes to those services.⁷² They also have a reasonable and legal expectation of prior written notice before modifications or amendments are made to the IEP.⁷³ In this case, due to the collective impact of the missteps and administrative oversights revealed in this investigation, the District failed to implement the Student's IEP as written while denying the Parents an opportunity for meaningful participation in the IEP decision-making process. Once the new Special Education Teacher was hired, the District had ample opportunity to convene a review of program IEP meeting. If such a meeting had been held prior to the end of the first semester, perhaps amendments to the IEP would have been made. For instance, the IEP team may have had time to consider whether or not the Student would have benefited from more opportunities for grade level peer interactions, by returning to the building for in-person instruction in the second semester, while also benefitting from Ed Tech support throughout day. The option to return to in-person learning was

⁷¹ As reported during the interviews with staff. It was also reported that program reviews were completed for other students.

⁷² See *Student with a Disability v Maine SAU*. 72 IDELR 169 Maine SEA (January 2018); See also *Parent v Eastern Howard School Corporation*. 121 LRP 9941 Indiana SEA (February 2021); See also *Teachers' Association v Maine SAU*. 121 LRP 26362 Maine SEA (May 2021).

⁷³ *Ibid*.

available for all students working remotely.⁷⁴ While an effort was made to implement the IEP, and the staff may have had the best of intentions, nevertheless the District did not implement the IEP as written nor did it convene an IEP meeting to review or revise the Student's program as required. For the Parents, the confusion which ultimately led to frustration could have been averted as well.

With the exception of allegations three and four, and the need for corrective action as described below, in light of the evidence the District was found to be compliant on all other issues brought forth in this complaint.

VIII. Corrective Action Plan

- Should the Student attend the elementary school in person as a grader for the 2022-23 school year, the District shall do the following:
 - Within the first two weeks of the school year, the District shall convene an IEP meeting with the Parents to review the academic and functional needs of the Student, and by consensus make determinations regarding the supports and services needed for the Student to successfully access education. The District shall provide the Department of Education with a copy of the prior written notice from this meeting.
 - The Parents shall be given an opportunity for meaningful participation in the aforementioned IEP meeting, and in future IEP meetings. The IEP team shall reserve ample time during these meetings to ensure that the Parents are able to provide their input and ask clarifying questions if needed.
- Children receiving home instruction are not entitled to access some or all of the special education services and related services they would receive if they were enrolled in public school. However, if the Student is receiving home instruction and the Parents wish to enroll the Student in some classes in the public school setting to access special education services and related services, the District shall promptly convene an IEP team meeting to develop an Individual Service Plan (ISP) for services provided in a public school. **MUSER IV H 3 (4); 20-A MRSA 5021.** If such a meeting occurs, the District will provide the Department of Education with a copy of the prior written notice.
- By no later than December 31, 2022, the District shall provide professional development and training regarding special education case management responsibilities to the special

⁷⁴ See pgs. 56-57 of the District's documents, Timelines.

education teacher in this case, as well as any other staff the District deems necessary to receive this training. The District shall include in this training:

- the role and responsibilities of special education case managers including a review of the job description for these individuals.
- a review of the District's policies and procedures for when and how IEP meetings are scheduled, when and how special education documents are sent to parents, and who is responsible to ensure these tasks are accomplished.
- A review of **MUSER IX C 3 (4)(6)** which regulates the manner in which amendments to the IEP must occur.
- A review of **MUSER VI 2 (H)(I)** which regulates the manner in which parent participation, and parent input as members of the IEP team must occur.
- The District shall provide the Department of Education with a copy of the agenda for the professional development/ training session(s), along with a list of the participants and their roles by December 31, 2022.

Dated: July 26, 2022

Leigh Lardieri, Ph. D.
Complaint Investigator