

Complaint Investigation Report

Complaint # 23.024C

Report Date: November 23, 2022

Complaint Investigator: Leigh Lardieri

Date of Appointment: September 26, 2022

I. Identifying Information

Complainant: _____, Parent

Respondent:

Case name: Parent v.

Student:

II. Summary of Complaint Investigation Activities

On September 26, 2022, the Maine Department of Education received this complaint, and the investigator was appointed on the same day. The current investigation covers the period of September 26, 2021 to present with some exceptions.¹ MUSER XVI(4)(B)(3). The complaint investigator received 797 pages of documents from _____ (the District). The investigator also received 366 pages of documents from the Parent. On November 15, 2022 the Parent was interviewed with the Student present. On November 16, 2022 the following other parties were interviewed: the Special Education Director (Director), the Special Education Teacher (Teacher), the Speech Pathologist (Speech Therapist), the Occupational Therapist (OT), and the Principal. The Student's outside psychologist (Psychologist) was interviewed on November 21, 2022.

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

III. Preliminary Statement

¹ See allegation # 2, due to the completion of the previous complaint investigation within the same 12 month period.

The Student is in the _____ grade attending a public _____ school. In the fall and winter of 2021-22, the Student was receiving home schooling (home instruction). At the time _____ had in-home BHP, and Clinical Counseling, and BCBA services.² _____ also receives outside counseling, OT and psychiatric services. In late January, and February of 2022, the parent and District began implementing a plan to have the Student return to public school at the _____ school. This plan also included the completion and review of updated evaluations at an IEP meeting in March 2022. The Student was attending a self-contained special education classroom for partial days, as a student with Multiple Disabilities, due to _____ diagnoses of Autism and Intellectual Disability. In April 2022, another IEP meeting was held to review the Student's progress. By May 2022, the Student was attending the _____ school for full days.

In September 2022, the Student continued to attend the _____ school for full days, with programming occurring in the self-contained classroom for most of the day. On September 13, 2022, the IEP team met again to review the Student's program. Shortly after this meeting, the Parent informed the District that she did not agree with what was written in the prior written notice, and subsequently she did not want to make any changes to the IEP.

On September 26, 2022 the Maine Department of Education (MDOE) received a request for a complaint investigation filed by the Parent against the District alleging violations of MUSER. Upon receipt of the complaint, a Draft Allegations Memorandum was sent to the parties by the complaint investigator on October 11, 2022 alleging two violations of MUSER. A telephonic Complaint Investigation meeting was held on October 17, 2022.

IV. Allegations

The following violations are alleged by the present complaint:

1. The District denied the Student FAPE when it failed to conduct evaluations in a manner necessary to accurately measure the Student's academic and functional needs. **MUSER V 1 B (1)(2); 34 CFR 300.303; MUSER V 2 A B C; 34 CFR 300.304.**

² As reported by the Parent, these section 28 and section 65 services were in place until the Student returned to school in March 2022. The services providers were unable to schedule times for hours outside of the school day. _____ continues to receive outside Counseling, OT and Psychiatric services.

2. After January 11, 2022, the District denied the Student FAPE when it did not afford the Parent an opportunity for meaningful participation and input in the IEP decision-making process in consideration of a review or revision of the IEP to appropriately meet the Student's needs.

MUSER II (13); 34 CFR 300.1; MUSER VI 2 H I; MUSER IX 3 D; 34 CFR 300.324 (b).

V. Factual Findings

1. The Student is a _____ year-old who lives with _____ mother, father and sister. The family also has a dog and a cat. The Student has an older brother who lives outside of the home. The Parent reported that the Student and family love to go camping. The Student also likes to swim and play basketball. Recently, the Student had attended a basketball practice at the family's church.³ While at home, the Parent explained that she has to closely supervise the Student because of _____ aggression towards family members and pets.⁴ The Student has been diagnosed with Autism with aggression and irritability, an Intellectual Disability, Obsessive Compulsive Disorder (OCD), Selective Mutism and Anxiety.⁵ _____ takes medication for _____ symptoms of Anxiety. The Parent also reported that the Student's Psychiatrist wanted to put _____ on an anti-psychotic medication.⁶
2. In the fall of 2021, the Student was receiving home instruction.⁷ The Parent enrolled _____ in school and in October 2021, an annual IEP meeting was held where the completion of updated evaluations was discussed, and the district proposed a program for the Student.⁸ The Parent declined the offer of FAPE, and requested that the Student be referred for a placement at the special purpose private school.⁹ On November 8, 2022 another IEP

³ As reported during the Parent interview on 11/15/22. The Student accompanied the Parent to the in-person interview with this investigator. The interview took place in a public location familiar to the Student.

⁴ During the interview, the Parent said that the Student has bitten the dog and tried to poke it in the eyes. In addition, when she babysits her grandchild, (the child of her older son), she is very guarded, making sure that there is at least one other person at home to assist with the supervision of the Student.

⁵ As reported by the Parent. See also the letter from Dr. _____ dated 2/28/22, and the letter from Dr. _____ dated 4/8/22.

⁶ As reported during the Parent interview on 11/15/22.

⁷ For historical purposes, the Student had been receiving home instruction for a year at the start of the 21-22 school year.

⁸ See prior written notice dated 10/22/21.

⁹ Ibid.

meeting was held at the Parent's request. The Parent declined the District's FAPE offer, and decided to re-enroll the Student in home instruction.

3. On November 18, 2021, the Parent filed a request for a Complaint Investigation with the Maine Department of Education for alleged violations of MUSER.¹⁰ The Parent decided to continue with home instruction until the conclusion of the investigation. On January 10, 2022 a report was issued finding no violations of MUSER.¹¹
4. On January 14, 2022 the Parent reached out to the District via email stating that she had accepted the decision of the investigation, and that she wanted to move forward, working together with the District to make a plan for the Student. The Parent wanted to pursue the completion of evaluations and set up an IEP meeting.¹² The Director responded the same day and was in agreement.¹³
5. On January 19, 2022 the District provided a parental consent for evaluation form to the Parent¹⁴. The team proposed the following evaluations be completed: psychological, academic achievement, speech and language, and occupational therapy.¹⁵ From this point forward, the majority of the communication between the Parent and the District occurred through email.
6. From January 19 through March 23, 2022 (the date of the IEP meeting), there were almost fifty email exchanges¹⁶ between the Parent and the District.¹⁷ The majority of the exchanges were initiated by the Parent. In late January, the Parent and District discussed scheduling evaluations for the Student with the request that the Student's BHP be present during the evaluations.¹⁸

¹⁰ See Complaint Investigation Report 22.022C from 1/10/22.

¹¹ Ibid.

¹² See email from the Parent dated 1/14/22.

¹³ Ibid.

¹⁴ See Parental Consent for Evaluation form from 1/19/22.

¹⁵ Ibid.

¹⁶ For the purpose of this investigation, one email exchange is defined as an occasion where "one party sends an email, and the other party responds."

¹⁷ See emails from 1/19/22 to 3/23/22.

¹⁸ Ibid.

7. By the end of January 2022, the Parent completed the enrollment process so that the Student could begin the transition from home schooling back to public school. The parties agreed that a transition into the _____ school, in place of returning to the _____ school would reduce the number of changes for the Student.¹⁹ The _____ school stood ready to accept the Student into a self-contained classroom for students with similar needs.²⁰

8. In early February 2022, the Parent asked when the IEP meeting would be scheduled. The Director explained that the District had forty-five school days to conduct evaluations and schedule an IEP meeting.²¹ She also explained that upon completion of their testing, the staff required time to complete and submit their reports.²² During this time, the Parent reached out to the evaluators, asking about the status of their reports. The Parent also advocated for the implementation of Maine Care services within the school, using the Student's outside providers. She provided information from the Student's Doctor that she asked the District to take into consideration as a part of the Student's IEP program.²³ The Director responded that any services providers in the school would be employees of the District.²⁴

9. Also by the end of February 2022, the Parent had emailed the District the link and guide to billing Maine Care in schools. The Director reiterated that the District would provide personnel for any school-based services. She also informed the Parent that the District had made the decision not to bill for Maine Care. At the same time, the Parent reached out to the evaluators requesting copies of the reports. The Director explained to the Parent that

¹⁹ The parties agreed that returning to the _____ school for the end of the year, then preparing for a transition to the _____ school would not be beneficial for the Student.

²⁰ See communications between the District and Parent dated 2/7 and 2/8/22.

²¹ See MUSER V 1 2.

²² See MUSER V 4 B.

²³ See the Doctor's letter dated 2/28/22. In the letter, the Doctor opined that the Student required Section 28 and 65 services in school.

²⁴ See email response from the Director dated 2/14/22.

she would receive evaluation reports at least three days prior to the IEP meeting.²⁵ On February 28, 2022 the Parent submitted a request for a Facilitated IEP meeting.²⁶

10. In the weeks leading up to the March IEP meeting, the Parent was sent copies of the following Evaluations:²⁷ Psychoeducational, Speech and Language, Occupational Therapy and Academic Achievement. At the same time, the Parent shared feedback with the psychological examiner about her report. Subsequently, the psychological examiner amended her report twice to reflect the changes requested by the parent. She also shared a copy of an adverse effect form with the District documenting her parental impressions of the Student's functioning.²⁸

11. On March 23, 2022 the IEP team met to review evaluations, and the IEP program. Embedded in the most current psychoeducational evaluation, are the results obtained from a previous psychological evaluation completed by Dr. _____ less than a year prior to the date of the current Psychoeducational Evaluation.²⁹ It is important to note that the since the Student was receiving home instruction, rating scales provided to _____ were completed by the Parent. On the Adaptive Behavior Assessment System (ABAS: 3rd edition) the Parent endorsed adaptive scores well below the norm for a Student of _____ age in the areas of Conceptual, Social, Practical, and General Adaptive Skills.³⁰ On the Connors 3rd Edition (Connors-3)³¹, the Parent endorsed the following: the Student presents with very elevated scores in the areas of: inattention, learning problems, defiance /aggression, peer relations, restless-impulsive behaviors and emotional lability. The Social Responsiveness

²⁵ See MUSER V 4 B.

²⁶ See FIEP request dated 2/28/22. IEP meeting Facilitators are provided to requesting parties by the MDOE at no cost to the parent or school district. Facilitators are neutral and impartial individuals who are trained to assist the parties in communication and resolution during the IEP meeting. They are neither members of the IEP team, nor do they participate in making determinations with the parties.

²⁷ All copies of these evaluations were sent to the Parent prior to the IEP meeting.

²⁸ See emails from 3/8 and 3/9/22. See also Parent-generated Adverse Effect form dated 3/9/22.

²⁹ See the Psychoeducational evaluation report dated 3/10/2022 by _____, MA NCSP.

³⁰ The Adaptive Behavior Assessment System 3rd Edition (ABAS- 3), published by Pearson Assessments (2015) measures skills across three adaptive domains (Conceptual, Social and Practical) which focus upon everyday activities required to function, meet environmental demands, care for oneself, and interact with others. www.pearsonassessments.com.

³¹ The Connors-3 published by Pearson Assessments (2008) measures behavior across a number of clinical domains. www.pearsonassessments.com.

Scales-2nd edition (SRS-2)³² were completed by the Parent. Endorsements of behaviors across all domains (SRS total, Social Awareness, Social Cognition, Social Communication, Social Motivation, and Restricted Interest/ Repetitive Behavior) fell in the severe range.

The Psychoeducational Evaluation also included scores from a Vineland Adaptive Behavior rating scale, 3rd edition (VABs-3) completed by the Parent in December 2021.³³ The Parent endorsed scores in the low range for overall communication, socialization, and daily living, placing the Student's overall adaptive scores in the low range.

The evaluator proceeded to administer the Weschler Intelligence Scale for Children- Fifth Edition (WISC-V).³⁴ The Student demonstrated extremely low ability across all skill domains (visual spatial, fluid reasoning, working memory, and processing speed).

This report also included the academic achievement evaluation completed by the Teacher.³⁵ The Wechsler Individual Achievement Test, 4th Edition (WIAT IV) was completed over five sessions. Across all academic tests and subtests of reading, mathematics, written expression, and listening comprehension, the Student demonstrated the skills of addition fluency and oral fluency in the very low range, and all other skills in the extremely low range.³⁶

³² The Social Responsiveness Scales 2nd Edition (SRS-2) (2012) published by WPS measures the presence and severity of social impairment within the autism spectrum. www.wpspublish.com.

³³ The Vineland Adaptive Behavior Rating Scale, 3rd Edition (VABs-3) published by Pearson Assessments (2016) measures an individual's skills across the domains of communication, daily living skills, and socialization. www.pearsonassessments.com. This rating scale was scored and interpreted by _____, BCBA, as cited in the Psychoeducational evaluation dated 3/10/2022.

³⁴ The Wechsler Intelligence Scale for Children, 5th Edition (WISCV) published by Pearson Assessments (2014) is a comprehensive clinical assessment of intelligence for children. www.pearsonassessments.com.

³⁵ Ms. _____, certified teacher of Special Education. See also certification document in the District exhibits.

³⁶ The Wechsler Individual Achievement Test 4th Edition (WIAT IV) published by Pearson Assessments (2020) is a comprehensive assessment designed to measure skills in reading, writing, mathematics, speaking and listening. www.pearsonassessments.com.

The final portion of this evaluation was the Behavior Assessment Scales for Children, 3rd Edition (BASC-3)³⁷, also completed by the Parent. She endorsed Externalizing and Internalizing problems as at-risk, and Adaptive Skills as clinically significant.

The following reflects a summary of the Speech and Language Evaluation results:³⁸

On February 11, 2022, The Student participated in a Speech and Language Evaluation at an outpatient clinic. This testing was completed remotely from the clinic. On the Clinical Evaluation of Language Fundamentals Metalinguistics (CELF-M), and Pragmatic Communications Profile, the Student obtained severely low scores on both tests.³⁹

During the remote session with the school-based Speech Therapist, the Student was administered the Peabody Picture Vocabulary Test 5th Edition (PPVT-5)⁴⁰, and the Expressive One Word Picture Vocabulary test, 3rd Edition (EVT-5)⁴¹. The Student's scores on both of these tests were well below the mean. The Functional Communication Profile-Revised was completed remotely with the Speech Therapist and the Parent.

Overall results suggest that the Student presents with severe to profound deficits in receptive and expressive language falling well below expectations for a student of age. The Student also presents with a significant deficit in word retrieval skills. In addition, The Student presents with severe to profound pragmatic/ social language skills.

The following reflects a summary of the Occupational Therapy Evaluation results: the Student's eye movements are generally adequate although it was noted that the Student's eyes fatigue when tracking objects. It was also noted that the Student blinks excessively, squints or looks away

³⁷ The Behavior Assessment system for Children , 3rd Edition (BASC-3) published by Pearson Assessments (2015). The rating scales help the user to understand the behaviors and emotions of children and adolescents. www.pearsonassessments.com.

³⁸ See report completed by [redacted], M.S. SLP-CCC dated 3/21/22.

³⁹ Clinical Evaluation of Language Fundamentals Metalinguistics (CELF-M), and Pragmatic Communications Profile measure an individual's language usage in social contexts.

⁴⁰ The Peabody Picture Vocabulary Test 5th Edition (PPVT-5) measures the comprehension of single word vocabulary in single picture identification.

⁴¹ The Expressive One Word Picture Vocabulary test, 3rd Edition (EVT-5) measures expressive vocabulary as per word labeling and use of synonyms.

as eyes fatigue. shows adequate motor planning with slightly irregular skills. has difficulty identifying body parts on . has slightly reduced muscle tone.⁴²

The Student's fine motor and self-care skills were also observed. held pencil with right hand in an adapted tripod grasp. handwriting revealed very large letters, with reduced use of the lines and spaces between words. also used firm pressure on pencil.⁴³ It was also reported that the Student is able to dress . can snap and zip a zipper when the zipper tip is at its base. generally wears pull up pants with elastic waists. is able to brush teeth with verbal prompts. The Student can shower independently with assistance to adjust the water temperature and prompts to rinse the shampoo out of hair. is unable to cut with a knife, but can feed safely and independently.⁴⁴

On the Beery Visual Motor Integration test (5th Edition) the Student presented with visual motor integration, visual discrimination, and fine motor control skills significantly below what is expected of a student age. Likewise, the Goodenough-Harris Draw-A-Person (DAP) test, the Student's picture revealed skills to be well below what is expected of a student age. In addition, the Student's performance on the Print Tool assessment⁴⁵ also revealed that the Student's scores fell well below the expectations for students of age.

12. The IEP team determined that the Student was eligible for special education services and supports under the disability category of Multiple Disabilities with the diagnoses of Autism and Intellectual Disability. The Student would receive specially designed instruction in Social Emotional Learning, ELA and Math ; Speech and Language therapy; and Occupational therapy; BCBA consult, and Special Transportation. In addition, the team determined the Student would have Ed Tech support throughout day, as well as other

⁴² See Clinical Observations of Neuromotor Skills in the OT Evaluation report by , OTR-L dated 2/9/22.

⁴³ See Clinical Observations of Fine Motor Skills in the OT Evaluation.

⁴⁴ See report by the Student's in-home BHP of regarding self-care skills included in the OT Evaluation. This BHP was present during the evaluation.

⁴⁵ The Print Tool measures students' capital, lowercase, and number formation across the areas of: memory, orientation, placement, size, start, sequence and control.

accommodations and supplementary supports.⁴⁶ would also have Extended School Year services (ESY) for three hours per week for seven weeks.

13. The Parent expressed the following concerns: She is happy with the proposed program, but she is concerned about the Student's safety around others.⁴⁷ The Student's outside providers were also at the meeting. They too opined that the Student presented with behavioral and safety concerns, due to anti-social personality traits, lack of empathy, and poor impulse control. They too opined that the Student demonstrated the characteristics of an Emotional Disturbance.⁴⁸ The Director indicated that since the Student had been homeschooled for two years, she was reluctant to put the label of Emotional Disturbance in place at this time.⁴⁹

14. From March 23, 2022 until the next IEP meeting scheduled for April 14, 2022 approximately twenty more email exchanges occurred between the Parent and District.⁵⁰ The length of the Student's day continued to increase. In addition, the Parent continued to express concerns about the student's behavior.⁵¹ In multiple communications, she asked the District to consider adding Emotional Disturbance to the identification of Multiple Disabilities.⁵² The Director replied to the Parent's request by stating that the diagnoses already has (Autism and Intellectual Disability) sufficiently represent the Student's profile at this time, and that programming would not differ if Emotional Disturbance were added as a disability category.

15. On April 14, 2022 the IEP meeting was held with a facilitator present. The following determinations were made:⁵³

⁴⁶ See prior written notice from 3/23/22. See also amended IEP dated 3/23/22.

⁴⁷ See prior written notice from 3/23/22.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ See emails dated 3/23/22 through 4/14/22.

⁵¹ As reported during staff interviews on 11/16/22.

⁵² See email exchanges dated 3/23, 3/24 and 3/25/22. See prior written notices dated 3/23/22.

⁵³ See prior written notice dated 4/14/22.

- Add background information provided by [The District Psychologist's] Psychoeducational report on 3/10/22 to [the Student's] IEP in section 4 of the IEP.
- Add [the outside Psychologist's] report to the IEP date on 4/8/22 in section 4 of the IEP.
- Add the [Child and Adolescent Psychiatrist's] report dated 12/1/21 to the IEP in section 4 of the IEP.
- Increase duration of 30 minutes to 60 minutes for speech services.
- Re-evaluate speech needs. Goals will be added to speech after a formal assessment if necessary.
- The team accepts all other components of the IEP as they were presented.

16. During the meeting, the parent expressed the following:⁵⁴ She reported that she was happy that the Student was back in public school and that she wished for all those who worked with to have access to who truly is and needs.

17. In May 2022, the Student began to attend school for full days. The staff reported that the Student was doing well, and becoming more and more comfortable with the routines in the classroom.

18. From May 19-26, 2022 the Student completed additional Speech and Language testing as an addendum to the testing given on March 9, 2022.⁵⁵ The testing was performed remotely from the school with the same Therapist who had completing the testing before.

The following is a summary of the results: On the Goldman-Fristoe Test of Articulation, 3rd Edition (GFTA-3)⁵⁶, the Student performed well below expectations for sound production in words and sentences. The Therapist opined that the Student presented with a severe sound production or articulation disorder.

⁵⁴ Ibid.

⁵⁵ See report completed by , M.S. SLP-CCC dated 6/16/22.

⁵⁶ The Goldman-Fristoe Test of Articulation, 3rd Edition (GFTA-3) assesses an individual's speech sound production ability in both words and sentences.

19. In the summer of 2022, the Parent continued to communicate with the District staff, asking if an IEP meet could be convened. The District responded that the staff were not available to work in the summer or attend IEP meetings. However the Principal reached out to the Parent and scheduled to meet with the Parent in August. The Parent wanted to discuss a proposal for adaptive Allied Arts classes in the school. The meeting was postponed due to family illness.
20. On September 13, 2022, another IEP meeting was held to review the Student's program per parent request. The following determinations were made: ⁵⁷
- The team accepted the Speech and Language Evaluation Results performed by [The Speech Therapist] late last school year (May 2022).
 - Add the Speech Evaluation results, by [the Speech Therapist] to the IEP.
 - Add the diagnosis of Selective Mutism to the IEP.
 - The duration of SEL services will change from 2 hours/ 5 days a week to 50 minutes a day.
 - A Functional Behavior Assessment (FBA) will be conducted.
 - [The Medical Doctor's] letter of recommendation will be added to the "Parent Concerns" section of the IEP.
 - [The Student] will receive Therapeutic Social Work services 60 minutes a week. Once it is determined, with collaboration with [the Psychologist and the Teacher] a goal will be added as an amendment to [The Student's] IEP.
 - Another meeting will be held in early November to conduct the Student's annual review and review data.
 - [The Student] will not attend any mainstream classes at this time.
 - The IEP will go into effect no later than September 26, 2022.
21. On September 23, 2022 in an email exchange with the Teacher, the Parent stated that she did not want to change anything in the IEP at the time. She requested another IEP meeting. The Teacher gave her the dates of October 4th or 6th as possible dates. Initially, the parent

⁵⁷ See prior written notice dated 9/13/22.

was in agreement with these dates. However, on September 26, 2022 the Parent filed a request for a Complaint Investigation with the Maine Department of Education.⁵⁸

22. In response, the Director sent an email to the Parent stating that her rejection of the proposals from the September 13, 2022 meeting invoked “Stay Put” and that the team would have to follow the last agreed upon IEP which was implemented on April 25, 2022.⁵⁹
23. Once the complaint investigation was fully underway, the Parent and District staff were interviewed. On November 15, 2022 the investigator met the Parent and Student at a public location familiar to the Student. The following reflects a summary of the interview with the Parent:⁶⁰

In September 2021, the Parent registered the Student back into school. Initially, she wanted to attend the Steps program at the school, but she was told there were no openings. She requested that the District consider a Special Purpose Private School, because she believed that going to the school would be a huge jump for the student. She reported that she filed a request for a complaint investigation in November 2021, and subsequently decided that the Student would go back to home instruction. In January 2022, the Complaint Investigator found no violations.⁶¹

In March 2022, the Parent reported that although the District did evaluations, the Psychoeducational evaluation only involved a cognitive assessment. At this time, the Parent also asked for the District to allow a Section 28 Behavioral Health Professional (BHP) into the school to support the Student, but the District declined. She opined that the District is not responding to the things she proposes.

The Parent also reported that they [the Student and family] “lost Section 65 and Section 28 services in the home when the Student went back to school. The BHP, and clinician coming into the home had scheduling issues.”

⁵⁸ See emails exchanged between the Teacher and Parent on 9/23/2022.

⁵⁹ See email from the Director dated 9/26/22.

⁶⁰ As reported by the Parent on 11/15/22. Before the interview the Parent and Student ordered food. During the interview, the Student interacted only with mother. The investigator greeted the Student and attempted to ask a couple of questions. The investigator told the Student there was no pressure on to interact. ate food independently, with the exception of mother’s assistance in opening up packets of ketchup. went to the bathroom independently with verbal prompts from the Parent to wash hands.

⁶¹ See 22.022C complaint investigation report dated 1/10/22.

The Parent also opined that the Student is regressing. She stated that [redacted] is not able to communicate with others, and she wants [redacted] to be able to do so. She stated that [redacted] IEP says [redacted] has the use of a communication board, but she hasn't seen it. She has taught the Student to use the Translator app on the iPhone, where [redacted] has started to type short phrases which then translate from "English to English."

The Parent believes that the Student's needs are very high. She reported that the District has stated that they can meet [redacted] needs at the [redacted] school in the self-contained Autism/Life Skills program. She stated that [redacted] wants to join band, play basketball, and eventually attend the high school. She said she was told that [redacted] could not be in [redacted] grade band because students have to try out. She believes the Student has no friends and she wants [redacted] to have friends. She believes the Student does not want to hurt people, but she is concerned that ideations and fantasies [redacted] has put [redacted] at-risk for hurting someone at school. She believes the District is underreporting the severity of the behavioral incidents that have happened at school.

24. On November 16, 2022, the District staff were interviewed. A summary of these interviews follows:

The Special Education Director (Director) reported that she has been the director in the District for seven years. Prior to this position, she worked at a charter school, and before that she was a special education teacher in a Behavioral Day Treatment program. She reported that in March 2022, the Parent was looking to enroll the Student back into the District, and at the same time was requesting a placement at a Special Purpose Private School.

The District developed a plan for a slow transition back into the [redacted] school. It was suggested that the Student enter the [redacted] school instead of returning to the [redacted] school for the few months left in the 2021-22 school year. The reasoning behind this decision was that by transitioning into the [redacted] school from March to June 2022, this would minimize the changes and disruptions for the Student. In addition, [redacted] would be able to join the self-contained classroom. Along with this plan, the Special Education Director stated that the District proposed to complete updated evaluations, as the Student had been receiving home instruction for approximately two years. At the time, the Parent agreed to both the gradual transition plan, and the completion of updated evaluations.

When the Student began attending, [redacted] was coming to school for an hour per day, as a [redacted] grader. [redacted] remained in the self-contained classroom, and was not attending mainstream classes. By May 2022, The Student began attending school full time. In the summer of 2022, [redacted] also attended Extended School Year (ESY) services.

In September 2022, the Student continued to attend full time. The Director opined that the Student was doing well and making progress. [redacted] was eating breakfast and lunch in the mainstream. The District wanted to see [redacted] in the least restrictive environment (LRE) The Director reported that the Parent asked again about a placement at a Special Purpose Private School. She also asked that the Student be reassigned as an [redacted] grader, and was granted this request.⁶² The Parent is also requested that the Student not attend unified arts classes at the beginning of the year. In addition, the Parent wanted to start the process of post-secondary transition planning for the Student.

When an IEP meeting was held on September 13, 2022 the Director reported that the Parent rejected the entire prior written notice. This is not the first time the Parent had challenged the accuracy of a written notice.

The Director went on to say that the District staff had worked tirelessly with the Parent to address her concerns and respond to her requests with respect to the Student's needs and programming. When an issue is addressed, the Parent's focus changes and another issue is raised.

The Special Education Teacher (Teacher) shared that she has been the Life Skills teacher at the [redacted] school since 2005. She said she met the Student in February 2022 and did some testing with [redacted]. [redacted] started with a slow transition to the [redacted] school and began to attend a full day by May, 2022. [redacted] had been in the room all day except for breaks, lunch and recess. The teacher went on to describe some of the behaviors they had seen at school. During the 2022-23 school year, there was an incident where [redacted] touched another student. [redacted] went to the office and was spoken to by the Principal. Another time the Student made a threatening gesture towards a student [redacted] doesn't like. The teacher handled this in the classroom. To document and share inappropriate behaviors, the Teacher started a Google doc and shared it with the Parent.

The Teacher described her classroom and program. There are eight students, four Educational Technicians (Ed Techs) and herself. Across the hall is the bathroom with a shower and cabinets. The students' desks are arranged in a circle. Throughout the day the students do group work. The

⁶² See letter from the Principal dated 9/21/22.

Student uses an iPad throughout day. The students follow a daily schedule that includes daily breakfast, lunch, math (time, money, addition), reading (print and digital books and indoor/outdoor sight words), breaks and snack. The Student also checks in for 15 minutes per day with the School Guidance Counselor. In addition, the Student assists the teacher by sorting and preparing the snacks (e.g., Goldfish or chocolates in small bags) for classmates.

Depending upon individual student needs, the day may also include Speech and Language, OT, and unified arts classes. She also reported that the class does laundry, and cooking (about once a month) and that the Student takes part in all of these activities. The Student has 1:1 support throughout day, and now goes to Art class with that support. According to the Teacher, the Student can now independently go to locker, and go through the breakfast and lunch lines. In the cafeteria, sits with the peers from class. The classroom staff (teacher and Ed techs) are present to assist the Student during this time.

The Teacher also reported that the Student needed to work on social skills. She said has a hard time with this, and won't initiate conversations. Sometimes needs prompting to answer in a group. The Student is friendly and will wave to others. works well with the Ed Techs in the room. stays on task and tries. Overall, the Teacher stated the Student is an awesome kid to have in class. She said they know wants to get out with peers. She opined that the Student is doing well and can make progress.

The Speech and Language Pathologist (Speech Therapist) described the Student as an interesting who has speech and language goals which focus upon the use of pragmatic and social language, conversational skills and expressing wants and needs. She said when participates in group activities, is does very well with communication skills. started using the PECS system to request a bathroom break, but now has moved beyond that and is able to verbally express when needs to go. also requests when needs to take a walk. For preferred activities, the Student chooses puzzles, videos, or doing Moby Math. The Speech Therapist also reported that she does group work in the classroom, and also works with the Student in pull out sessions. The Speech Therapist has observed limited interactions with another in class. They greet each other, and eat lunch together.

For new IEP, she had proposed goals that would work on: structured social language behaviors, longer utterances, speech sound production, stating name, greetings others, introducing and giving contact information for personal safety. The Speech Therapist said she understands how the Student has a diagnosis of Selective Mutism, due to the impact of

Anxiety. She stated that as [redacted] has become more comfortable in [redacted] environment, [redacted] has spoken more in [redacted] classroom and in [redacted] sessions. She opined that an Augmentative and Alternative Communication (AAC) evaluation is not necessary at this time.

The Occupational Therapist (OT) has been working in this capacity for thirty-seven years, with all grade levels in the District. The Student attends some sessions with her, and some with the OT assistant (COTA). The OT reports that [redacted] cooperation is better when [redacted] is working with the assistant. Overall, she stated the Student's attendance is good, but [redacted] is reluctant to work on fine motor skills tasks. She stated that [redacted] goals and objectives focus upon handwriting and letter formation, tying shoelaces, and buttoning. She shared that she is proposing to add typing. The OT treats [redacted] individually. She shared that she tried to hold a session with a peer present, and the Student became disruptive. The Parent also asked that [redacted] not be paired with that student.

The Principal is in her second year at the [redacted] school. Prior to being in the District, she was an administrator in another Maine school district having moved from out-of-state. She shared that the grade [redacted] school has over 400 students. There are special education services including resource room level, and two self-contained classrooms: one for children with behavioral issues, and the other for children who need a classroom focused upon Autism and Functional Life Skills. The classroom is located near the office, at the end of the [redacted] grade wing of classes.

The Principal explained that the students are met off the bus, and she sees the Student come through the door every day. They eat breakfast, then go to homeroom. There are some students in the class that go out to allied arts classes, with Ed Tech support. The Principal shared the plan to bring the Student back into public school was amicable and gradual. We never had concerns, and the Parent seemed pleased. In mid-August the Parent reached out to the District to schedule a meeting to discuss adaptive allied arts classes. The Principal set up a meeting with the Parent, but it was postponed due to family illness. When asked about whether the Student could be enrolled in the [redacted] grade band class, she replied that [redacted] could join any of the allied arts classes.⁶³

In September 2022, the Principal reported that the Parent requested that the Student be placed in [redacted] grade due to [redacted] age, and due to her concerns about [redacted] behaviors around younger children. The Principal said she granted the request.⁶⁴ The Principal stated that she has not had concerns about the Student's behavior. She reported that [redacted] did come to see her about touching another

⁶³ The Principal explained that there were no "try out" requirements for [redacted] grade band.

⁶⁴ See letter to the Parents dated 9/21/22.

student. teacher was also present.⁶⁵ She also stated that when it was reported that the Student had kicked a classmate⁶⁶, they [the Principal and Teacher] followed up, talked to the other student but did not obtain corroborating evidence.

All in all, the Principal opines that the Student has transitioned well in the building. The behaviors they have seen at school involve minor stuff. The Teacher has kept the Principal in the loop, and is trying to put the Student’s needs at the forefront. She ended by saying “the Student has done well with us.”

25. On November 21, 2022, the Psychologist who sees the Student outside of school was interviewed. A summary of this interview follows:

She began seeing the Student in January 2022. was referred to her for treatment of Obsessive Compulsive Disorder, as she has expertise in this area.⁶⁷ Although she has not met the Student in person, she sees virtually once a week for 50 minutes. The Parent is also present during these appointments. Throughout the interview, the Psychologist corroborated the information provided to this investigator by the Parent. She stated that the Student presents with profound multiple disabilities. She said also has anti-social personality traits⁶⁸ that are concerning because has fantasies about hurting people. has been aggressive with the family dog, and, as reported by the Parent, has become aroused by watching a cartoon.⁶⁹ At school, she believes requires one-to-one supervision.

The Psychologist reported that these anti-social preoccupations are also concerning to her as the Student is impulsive, and anti- social thoughts are easily triggered by “words” said by others. She also reported that the Student does not display empathy. When speaking with about aggression towards the dog, smiles and grins. Following the incident where touched another student, reported that is “still happy when thinks about it.”

⁶⁵ See account dated 9/29/22 on the incident log.

⁶⁶ The Student reported the incident to the Parent who reported it to the school. See account dated 10/8/22 on the incident log.

⁶⁷ The Psychologist stated that it is possible that due to this Student’s limited cognitive ability, might not be able to successfully access the CBT model of therapy for OCD symptoms. In that case, she said that the next course of treatment would be to work with the Parent on strategies to implement in the home environment.

⁶⁸ While acknowledging that her expertise does not include the IEP process, the Psychologist stated that she did not understand why the school would not consider Emotional Disability as a part of profile.

⁶⁹ This happened at home while watching the interaction of the characters in what was described as a benign cartoon.

The Psychologist acknowledged that she knows her role, and she is not an educator. She has attended at least two IEP meetings that she characterized as contentious. She opined that the Student needs a program that focuses intensely on life skills, and that the Student will not be able to live independently. She stated that she is not criticizing the school, and if the Student remained in the public school program, she is more than willing to work with them should they so choose to collaborate. She reiterated that she believes that the Student is a risk to others, and that it is very important that potential harm to others is understood.

VI. Determinations

1. The District denied the Student FAPE when it failed to conduct evaluations in a manner necessary to accurately measure the Student's academic and functional needs. **MUSER V 1 B (1)(2); 34 CFR 300.303; MUSER V 2 A B C; 34 CFR 300.304. NO VIOLATION FOUND.**

In April and May of 2021, as the Student was receiving home instruction, the outside evaluators completed the following: a psychological evaluation, an occupational therapy evaluation, and a speech and language evaluation. In January 2022, as the Student was preparing to return to public school the IEP team determined that the following evaluations would be completed: a Psychoeducational evaluation, an occupational therapy evaluation, and a speech and language evaluation. These school-based evaluators took great care not to duplicate any of the specific assessments completed less than a year prior to avoid compromising the validity and reliability of the current and previous results. In addition, the District honored the Parent's request for an adaptive physical education evaluation which was completed in the fall of 2022, once the Student was at the school full time.⁷⁰ On September 14, 2022, the Parent signed a copy of a consent for evaluation for the completion of a Functional Behavioral Assessment by a licensed BCBA who contracts with the District.

Taken together, as supported by the facts of this case, these evaluations yielded a robust picture of the Student's academic and functional needs. The facts of this case also affirm that like the outside evaluators, the school-based evaluators utilized their professional knowledge and clinical judgement within the scope of their licenses and credentials in

⁷⁰ See Adaptive Physical Education (APE) report completed by dated 11/1/22.

a Certified Adaptive PE teacher

choosing the appropriate assessments, following the set protocols for completion, and interpreting the results for the members of the IEP team. Although the Parent remains persistent her pursuit of including the addition of Emotional Disturbance in the Student's profile, the team determined that the Student met the eligibility criteria for Autism.⁷¹

These criteria also assert the following:

"Diagnostic impressions will be based upon an evaluation undertaken by a qualified professional who is qualified to make a diagnostic impression under the DSM codes for pervasive developmental disorders." MUSER VII 2 A (2)(b).⁷²

The professionals who completed the outside and in-school psychological evaluations concurred with respect to the Student's diagnoses of Autism and Intellectual Disability.⁷³

The IEP team also considered information about the Student's communication skills from two different Speech and Language Evaluations. Beyond these evaluations, while the Parent has made multiple requests for the completion of an Augmentative and Alternative Communication (AAC) Evaluation, the current Speech and Language Pathologist offered the clinical opinion within the scope of her license that the Student does not need this evaluation.⁷⁴ She also acknowledged that although it makes sense that the Student also has a diagnosis of Selective Mutism, the more time she spends in classroom and receiving direct speech therapy, the more she verbalizes, and interacts with peers, teacher and the staff.⁷⁵

In the current OT evaluation, information and recommendations were presented with respect to the Student's gross and fine motor abilities, and self-care skills. Subsequently, the IEP team determined that the Student required direct OT services to address skill deficits.⁷⁶

As referenced in the current Psychoeducational evaluation, and in section four of the IEP, a substantial amount of information about the Student's adaptive skills, and social emotional functioning was revealed through the multitude of behavioral checklists

⁷¹ See MUSER VII 2 A and 34 CFR 300.8(c)(1)(i-iii)

⁷² See Diagnostic Criteria (DSM-5) for 299.00 Autism Spectrum Disorder from the American Psychiatric Association. Diagnostic and statistical manual of mental disorders. 5th ed. Arlington, VA: American Psychiatric Association; 2013. as cited by the Centers for Disease Control and Prevention. www.cdc.gov

⁷³ See the most recent psychoeducational evaluation completed by _____, including information from the evaluation completed by Dr. _____ in the spring of 2021. See also letters from the Student's outside providers.

⁷⁴ As reported by the Speech and Language Pathologist during the interview on 11/16/22.

⁷⁵ Ibid.

⁷⁶ See Prior Written Notice dated 3/23/22 and IEP dated 3/23/22.

completed by the Parent in both the outside evaluations and the school-based evaluations. All in all, upon review of this information and the including the collective input provided by the IEP team members, there was substantial evidence to determine that the Student presented with Multiple Disabilities due to characteristics of Autism and Intellectual Disabilities as the primary concurrent disabilities.

Since the Student is back to school full time, if the IEP team were to reconsider the completion of an FBA, they may have an opportunity to review the function of the Student's behaviors, and implement the proposed collaboration between the outside Psychologist and the Teacher to write a goal to be added to the amended IEP.⁷⁷ Then, based upon the analysis and input from a trained and certified BCBA, the results may serve to further assist the IEP team in considering future determinations in support of the Student.

In light of the evidence presented, the District met the regulatory standards for Evaluations and Reevaluations for children 3-20 (**MUSER V 1 B (1)(2); 34 CFR 300.303**), and Evaluation Procedures (**MUSER V 2 A B C**). Compliance was found.

2. After January 11, 2022, the District denied the Student FAPE when it did not afford the Parent an opportunity for meaningful participation and input in the IEP decision-making process in consideration of a review or revision of the IEP to appropriately meet the Student's needs. **MUSER II (13); 34 CFR 300.1; MUSER VI 2 H I; MUSER IX 3 D; 34 CFR 300.324 (b). NO VIOLATION FOUND.**

In this case, a preponderance of evidence was presented to demonstrate that the Parent was afforded an opportunity for meaningful participation and input in the IEP decision-making process. Between January 19, 2022 and the day the present complaint request was filed (September 26, 2022), the Parent and District staff engaged in over 130 email exchanges, mostly initiated by the Parent.⁷⁸ Over 80% of the time, the staff responded to the Parent either the same day or the next day. On some days, the Parent would send

⁷⁷ See determinations on the prior written notice dated 9/13/2022.

⁷⁸ See email exchanges from 1/19/22 through 9/25/22. These emails included a multitude of requests by the Parent including the addition of Maine Care services to the IEP, the addition of Emotional Disturbance to the Student's IEP as a Disability category, and adaptive allied arts classes. Although most of the emails were sent during the day Monday through Friday, some were sent during the evening hours, and others on Saturday and Sunday.

multiple emails before the staff responded. At one point, the Director and Teacher offered alternative ways to communicate. To this investigator, the majority of the exchanges appeared to have either positive or neutral tone. Toward the end of this timeframe, the email exchanges started to increase in the level of intensity. Since the date of the filing, in the months of October and into early November, a multitude of additional email exchanges continued on a daily basis. As of this writing, the email exchanges continue to occur almost every day.

Along with this ongoing communication, the IEP team met three times between January 19, and September 26, 2022 with both the Parent and District agreeing to have an IEP facilitator present. In addition, one prior written notice was generated without a meeting:⁷⁹

- March 23, 2022 for the review of evaluations;
- April 14, 2022 for a program review;
- August 29, 2022 for consent for evaluation to address the Student’s adaptive needs (Adaptive Physical Education Evaluation).
- September 13, 2022 per parent request.

According to MUSER VI 2 I:

“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 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.

The IEP Team should work toward consensus, but the SAU has ultimate responsibility to ensure that a child is appropriately evaluated; 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 educational placement. It is

⁷⁹ It was also reported that the IEP meetings held were at least three hours a piece.

not appropriate to make evaluation, eligibility, IEP or placement decisions based upon a majority “vote.” If the team cannot reach consensus, the SAU must provide the parents with prior written notice of the school’s proposals or refusals, or both, regarding their child’s educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing or a State complaint investigation.

Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step, without resorting to a due process hearing. However a mediation or other informal procedure may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under these rules.

In consideration of the Parent’s concerns, the District has made every effort to hold multiple IEP meetings, consider a multitude of requests presented by the Parent, before during and after the IEP meetings, complete evaluations as requested by the Parent, and include in the IEP the information submitted by outside providers. Working towards consensus does not mean that a School Administrative Unit (SAU) is obligated to yield to each and every parent request or proposal.⁸⁰

Finally, upon providing the Parent with prior written notice of the school’s proposals or refusals following the September 13, 2022 IEP meeting, the Parent rejected these proposals and requested another IEP meeting.⁸¹ The Teacher offered the dates of October 4 or 6, 2022, and the Parent agreed to those dates.⁸² Before the meeting could be scheduled, the Parent exercised her right to seek resolution by filing a request for a State complaint investigation. In doing so, the invocation of “Stay Put”⁸³ was triggered, and therefore the Student had to remain in the current educational placement, or the last agreed upon IEP which was implemented on 4/25/2022.⁸⁴ In hindsight, the proposal for revisions to the IEP made by the SAU on September 13, 2022 were reasonably calculated to build upon and add existing supports to address in particular, the Student’s significant functional needs.⁸⁵

The District continued to try to resolve the issues with the Parent, with frequent communication about the Student’s behavior, and by scheduling the annual review meeting on November 7, 2022. The District was compliant.

⁸⁰ See *Garden Grove Unified School District California State Educational Agency* (2015).

⁸¹ See email exchange between the Special Education Teacher and the Parent dated 9/23/22.

⁸² Ibid.

⁸³ See 34 CFR 300.518 cited in MUSER, p. 239.

⁸⁴ See email exchanges between the Director and the Parent dated 9/26/22. See also the revised prior written notice dated 9/28/22.

⁸⁵ See prior written notice dated 9/13/22.

VII. Conclusion

There is no doubt that the Student at the center of this case presents with very severe and profound disabilities. No one disputes this fact. It makes sense that [redacted] has wrapped around [redacted] a network of professionals working to support [redacted] and [redacted] family outside of the educational environment. Likewise, the evidence in this case also shows that [redacted] has a Parent who has worked tirelessly to obtain what she believes are the best support systems and services available for to meet [redacted] complex needs.

Just like the network of support in the Student's community, the evidence in this case also shows that the District has a network of professionals wrapped around [redacted] as well in educational environment. The level of responsiveness by the District to the multitude of emails and requests sent by the Parent, along with the follow through in the form of the completion of additional evaluations, the convening of multiple IEP meetings, the amendments of the IEP, and the consideration of the input and evaluations of the outside providers is strongly and clearly supported by the evidence in this case. When communications began to strain, the District agreed to the Parent requests for an IEP facilitator to be present at multiple meetings to assist the team in remaining focused upon the needs of the Student. Districts can set reasonable restrictions on parent communications with school staff so long as the parents still have an opportunity to voice concerns about their children's special education programs. This means districts must ensure that parents have a meaningful opportunity to participate in IEP meetings and a way to contact teachers as needed.⁸⁶ Throughout this case, the evidence shows that the Parent had sufficient opportunities to voice her concerns, and the District took actionable steps in response to several of the Parent's requests.

Throughout this case, the District has upheld the law by utilizing the IEP process as the vehicle for decision-making regarding the Student's programming.⁸⁷ They have met their FAPE obligation by standing ready to program for the Student in the least restrictive environment. Through the appropriate channel of the IEP process, the District continues to try and find common ground with the Parent so that an IEP that is reasonable calculated to ensure that the

⁸⁶ See *Forest Grove School District Plaintiff, v. Student, Defendant* (2018). See also *Broward County (FL) School District Office for Civil Rights, Southern Division, Atlanta (Florida)* (2018).

⁸⁷ MUSER VI 2 I.

Student will make progress in light of circumstances will remain in place.⁸⁸ Given the wealth of information shared by the Parent, the outside providers and the District it is certainly plausible that this IEP team can continue to work towards consensus to develop and implement a program that meets the Student's academic and functional needs.

In light of the evidence the District was found to be compliant on both allegations. No corrective action is necessary.

Leigh Lardieri, Ph. D.
Complaint Investigator

⁸⁸ See *Andrew F. v Douglas Co Schools* (2017).