

**Complaint Investigation Report  
Parent v. Easton Public Schools  
Complaint 18.043C  
Complaint Investigator: Jeannette Sedgwick  
January 12, 2018**

The Department of Education received this complaint on November 14, 2017. In preparation for this Report, the complaint investigator reviewed all documents, information, and responses from the parties and interviewed the complainant, the Director of the special purpose private school where the Student is currently attending school, and the District's Director of Special Services. As the documentary record for this case was sparse, weight was given to the information obtained in interviews with the complaint investigator.

The complainant alleged violations of the Maine Unified Special Education Regulations (MUSER) that occurred one year prior to the date of filing. In accordance with law and regulation, information one year prior to the time of filing, from November 14, 2016, was considered in this investigation. MUSER XVI(4)(8).

**FACTUAL FINDINGS**

1. The Student is currently eight years old and receives special education and related services based on the disability of autism. Although the Student did not access language when he was younger, the Student now speaks with prompting and sometimes will initiate conversations with others on his own.
2. The Student attends The Opportunity Center (OTC), a special purpose private school that serves students with moderate to severe disabilities. The Student has been placed at this setting since September 2016 and is currently in the third grade.
3. The student's annual IEP meeting was held on March 3, 2017. IEP meetings were also held in May 2017, August 2017, and December 2017. The Student's tri-annual IEP Team meeting is due to be held in March 2018.

4. IEPs from March 2017-the present were included in the documentation from the District, but no IEPs from November 2017-March 2017 were included. The Student's IEP in place in March 2017 contained the following information related to functional behavior:

- Assessments results representative of the Student's functional performance include the following: The Goldman Fristoe-2 Test of Articulation, the Receptive One Word Picture Vocabulary Test (ROWPVT), the Bruinink's-Oseretsky Test of Motor Proficiency- 2 (BOT-2), the Beery VMI-6 all placed the student at 5 years, 6 months or below, which was approximately the age of the Student at the time of testing. His functional IQ fell in the average range.
- The IEP states there were mild to moderate concerns with the Student's social awareness, social cognition, social communication, and social motivation, and the Student was within normal limits for autistic mannerisms.
- In this IEP, the Student was noted to have an "unusual need" for touching people and objects, shows decreased awareness of pain and temperature, and requires an excessive amount of movement in order for his body to respond appropriately."
- The behavioral goals for functional performance on this IEP involved personal space of others: the student's goal was not to lay, sit on or touch staff without asking permission and trying to not invade the personal space of peers.
- Other goals in this IEP related to the Student's interactions with others included a communication goal and three occupational therapy goals, and behavioral goals. This IEP noted that the Student is mindful of other people's personal space about 50% of the time.
- The section of the IEP requiring an explanation of the student's educational setting states that the Student's "behavioral, cognitive and developmental delays require him to be in a highly structured, staff intensive program in order for him to be successful. [Student] is not able to be successful with his regular ed. peers at this time."

5. The Student has a behavioral intervention plan (BIP) at OTC that was created in 2016.

6. A functional behavioral assessment was completed in November and December 2016. In a report dated January 14, 2017, the evaluator, Paul Johnson, Jr. reported that the Student was engaging in aggressive behavior both at home and at school. The evaluator observed the Student in class at OTC, where there was no problematic behavior and also observed a video taken at school, when the Student attempted to hit and bite staff after staff requested participation in activities. The evaluator reported that the Student's aggression appeared to be maintained primarily by both negative reinforcement and positive

reinforcement. In this report, the evaluator noted that the Student prefers consistent scheduling of activities.

7. In March 2017 and throughout the spring of 2017, the IEP Team met to discuss the functional behavioral assessment from Paul Johnson. At that meeting, the complainant expressed concern with the student's placement because the Student did not have an opportunity to interact with his typical peers in the Easton School system. The Team discussed several options for the Student to have interactions with his non-disabled peers, including time with the town's recreational center programs.
8. In March and throughout the spring, the District and the complainant corresponded about the complainant's wish for the Student to have more interaction with his peers in the community. In an email on March 9, 2017, the complainant requested third grade schedules at the public school. In these communications, the complainant shared her understanding that the Student needs to spend time in the typical classroom setting.
9. In June, 2017, the IEP Team met to discuss a neuropsychological evaluation of the Student. At that meeting, the team agreed that the Student would have short morning visits to the grade 3 classroom at the Easton Elementary School once a week, on Fridays. This plan required removal of the Student from his educational programming at OTC in order to attend a class at the public school, accompanied by a 1:1 aide. The complainant expressed concern that the Student should be surrounded by typically-developing peers so that the Student could model appropriate classroom behaviors.
10. In late August 2017, the team met again to discuss, among other things, the Student visiting the public school to allow him to get used to these surroundings. The team also agreed that a BCBA would meet with staff quarterly to review the Student's behavior plan. The team decided that no educational goal for the Student's visits in the general education classroom were necessary.
11. In late October 2017, the team met to discuss program/placement changes. Written notice and the recordings from this meeting show that the Student was engaged in classes at OTC which had larger classroom sizes than before and that he was engaging more during social groups with peers. He was performing well academically and socially at OTC. His parents reported that they were pleased with the Student's progress.

12. The complainant stated that she believes the Student's placement at OTC would be temporary and that Student would transition into the public school setting as soon as next year, with the ultimate goal of the Student being fully mainstreamed with his non-disabled peers.
13. According to the complainant, Student has made great strides in communication at OTC and now will initiate some conversations without prompting. The complainant believes that the behavioral supports embedded at OTC, such as the point system and other incentives, have benefitted the Student. The Student feels safe at his special purpose private school, according to the complainant, although the complainant expressed concern that the Student would not always feel safe in real life, as an adult.
14. Regarding behavior with others, the complainant stated that the Student still has major deficits in his social interactions. The Student still experiences "meltdowns" at school, and his teachers at OTC can recognize and understand what triggers the maladaptive behaviors. The complainant also stated that in the past three months or so, the Student is managing his calming skills better and has only had one or two incident reports. The complainant also expressed concern that the Student had learned some behaviors from his peers at OTC and stated that in the general education classroom he would have more appropriate models of behavior.
15. The complainant stated that the Friday morning visits to the public school have occurred 3-4 times since the Team decision to include them in the Student's IEP. The complainant would like to have make-up sessions for days school was closed on Fridays. The complainant believed some of the visits were "bumpy" and at one point, "confusing," but noted that Student was becoming more used to going to the public school with each visit.
16. The director of OTC, who also teaches the Student's History class, described the academic programming at OTC to involve behavioral and functional programming within each student's day. All students work on attending to class expectations and instruction for longer periods of time, including not yelling, keeping hands and feet to self, and participating in classroom activities. The teachers use a variety of methods to redirect students to this common goal. Other aspects of the programming include a levels program with points that create earning possibilities, which starts afresh with each new class.

17. The director of OTC related that the Student currently engages in task-specific refusal through a variety of avoidance mechanisms. When presented a task, the Student routinely engages in behaviors such as yelling “no,” ripping paper, screaming or screeching. This behavior escalates very quickly to the point where the Student will hit the Educational Technician and try to crawl under the desks. The director stated that even with redirection, the Student’s behavior can interfere with his ability to access his education.
18. The director of OTC stated that aside from the visits to the public school with the Student’s 1:1 from OTC, the Student’s educational programming and services have been continuous and without interruption since November 2016.
19. In an interview with the complaint investigator, the special education director of the public school stated that the change of routine and environment during the visits has been highly disruptive to the Student. The Special Education Director also understands the visits to the public school were put into place on a temporary measure, not a permanent placement. She stated that the Student, while at the public school for the Friday morning visits, is accompanied by a 1:1 and is not able to sit in the general education classroom, which has 24 students, because it provides far too much stimulation. Because of this, the Student’s visit involves attends a reading/language arts class with two other students in a separate classroom. Because the Student spends much, if not all, of the time during these visits outside of the general education classroom, Student’s participation in public school general education classroom is limited.
20. The special education director stated that at some IEP meetings, the Team has discussed the Student’s need for a toileting goal but that the complainant had not wished that to appear on the Student’s IEP. The Director also stated that opportunities for interaction with non-disabled peers, such as at town recreational activities, have been discussed at Team meetings. The functional and social needs of the Student have been addressed in all of the Student’s IEPs through the behavior goal.
21. According to the special education director, a BCBA currently consults with OTC staff each quarter to advise about any changes that need to be made to the Student’s behavior plan. At the IEP meeting in August 2017, the director stated that the school psychologist, who is a BCBA, offered to monitor some school integration but that the parents declined.

22. The special education director believes the Student to be performing well at OTC. The director has ongoing and frequent communication with OTC personnel. The director also stated that OTC and public school staff work closely together and that the IEPs this past year have been amended after full team discussion. The goals regarding skills for integrating into new settings appear within the Student's Behavior Goal.

23. The District developed an IEP in November 2017 which is currently in place. The IEP was written with staff at OTC and Easton Public Schools. The behavioral goal is as follows:

- "Given encouragement, incentive and the opportunity, [Student] will complete his work without incident and communicate his wants/needs in an appropriate manner at least 80% of opportunities as measured by teacher observation and/or anecdotal data sheets." Objectives include completing work without incident, communicating wants and needs with the use of cards, and demonstrating understanding and awareness of personal space with adults and peers."

Other goals and objectives related to functional performance of the Student on this IEP include the following:

- Student will improve communication skills including articulation as well as receptive and expressive language, will participate in conversations with peers, play cooperatively, ask questions of peers, respond to requests from peers, and use his eyes to become a social thinker; will identify expected and unexpected social behaviors, how these are perceived by others; and identify different emotions/expressions and explain why a person may be exhibiting that emotion;
- Student will attend 10-15 minutes of direct instruction, demonstrating active listening skills and participation;
- Student will participate in required activities while maintaining appropriate behavioral expectation (take turns, safe hands, safe mouth, calm body) with his typically developing peers;
- Student will demonstrate understanding and awareness of personal space with adults and peers in all situations.

24. The complainant disagrees with these functional goals primarily because the complainant believes the goals have integrated behavior with academics. The complainant also disputes the current IEP because of the omission of more functional goals for his transition from OTC to the public school setting.

## **DETERMINATIONS**

1. *The complainant alleges that the District has not included functional goals on the Student's IEP so that the Student can be educated in the least restrictive educational placement and that the Student is not being educated with children who are not disabled to the maximum extent appropriate. MUSER VI(2)(I)(3); MUSER X(2)(B).*

### **COMPLIANCE FOUND**

#### **Determination**

The Student, an eight year old with autism, receives educational programming at a special purpose private school (OTC). The parent brought this complaint in order to resolve a dispute about functional goals on the Student's IEP believed relevant to Student's eventual return to general education classrooms at the public school. Underlying this dispute is the question of appropriate supports for the student, who has in the past not been able to access his education in the general education classroom because of behaviors related to his disability. Also underlying this dispute is a difference of understanding of what being educated with non-disabled peers "to the maximum extent appropriate" means for this particular child at his current level of educational performance.<sup>1</sup>

Districts must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."<sup>2</sup> These circumstances are unique to each child's abilities and include a child's ability to interact with the work around him.<sup>3</sup> In creating the IEP, Districts must include the child's current performance and set out measurable academic and functional goals.<sup>4</sup>

A student's IEP must also be appropriate to the individual needs of the student and must be "reasonably calculated to enable the child to achieve passing marks."<sup>5</sup> The IEP may include

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<sup>1</sup> 34 CFR 300.114(a).

<sup>2</sup> *Endrew F. v. Douglas Cty. Sch. Dist.* 137 S. Ct. 988, 1001 (2017).

<sup>3</sup> Functional performance is defined as as a child's demonstrated "skills and behaviors in cognition, communication, motor, adaptive, social/emotional and sensory areas." MUSER (II)(14).

<sup>4</sup> *Endrew F.*, 137 S. Ct., at 994 (citing 20 U. S. C. §§1414(d)(1)(A)(i)(I)–(III)).

<sup>5</sup> *Id.* at 994; *Davis v. District of Columbia*, 244 F. Supp. 3d 27, 39 (2017) (citing *Bd. of Educ. v. Rowley*, 458 U.S. 176, 204 (1982)).

behavioral supports depending on the child's needs.<sup>6</sup> Additionally, federal and state law and regulation require that students are taught in the least restrictive environment, in a forum with children who are not handicapped, "to the maximum extent appropriate."<sup>7</sup> Appropriateness varies according to each child, and because "the desirability of mainstreaming must be weighed in concert with the Act's mandate for educational improvement," the IEP Team must decide annually which goals are appropriate for the child's educational needs, including in which placement the education should occur.<sup>8</sup> Ultimately, the requirements to provide "educational benefit and least restrictive environment operate in tandem to create a continuum of educational possibilities."<sup>9</sup>

Here, the complainant asserts that the goals for the Student should be written to provide for the Student's ultimate inclusion in a general education curriculum. This approach is premature based on current team discussions and the Student's needs as demonstrated by the goals on this IEPs.<sup>10</sup> From November 2016 to the present, the Student's programming at OTC has involved a variety of functional and behavioral supports as part of its curriculum. The Student has individually received other behavioral and functional supports in this small-class setting. Currently, the Student is benefitting from a current IEP with functional goals that address the Student's academic and social needs. The functional and behavioral goals on his current and previous IEP, as detailed above, include cognition, communication, motor, adaptive, social/emotional and sensory areas as required by regulation. The Student's social needs include social skills such as appropriate touching of others and reading of others' emotions, skills

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<sup>6</sup> *Davis*, 244 F. Supp. at 41.

<sup>7</sup> *C.D. v. Natick Pub. Sch. Dist. And Bureau of Special Ed. Appeals*, 70 IDELR 120 (2017); 34 CFR 300.114(a).

<sup>8</sup> *Roland M. v. Concord Sch. Comm.*, 910 F.2d 983, 993 (1990); *see D.C. v. Natick*, 70 IDELR 120.

<sup>9</sup> *Roland M.*, 910 F.2d at 993; *Amann v. Stow Sch. System*, 982 F.2d 644, 650 (1992).

<sup>10</sup> The investigator did not receive the Student's IEPs for the dates of November 2016 – March 2017 and therefore information about the appropriateness of the functional goals in place for approximately 11 weeks, from November 2016 – March 2017, was obtained through interviews and recordings of the IEP team meetings. This material shows that discussion of including functional goals for a transition to public school began in the 2016 school year, and there were at least two evaluations regarding the Student's behaviors during this time period.



important to all social interactions. The Student routinely engages in behaviors disruptive to his own education.

The Team has committed to an unusual arrangement where the Student is removed from educational programming at a special purpose private school, where the Student experiences success, in order to attend one class of educational programming in the public schools. This type of integration took place as a trial basis, but without consensus of the ultimate purpose of that integration. At the special purpose private school, the Student is learning the functional skills needed with appropriate supports, which are needed according to testing results and the FBA completed in late 2016. The functional and behavioral goals are such that the Student will benefit in any setting, home or school. For instance, the Student's "meltdowns" triggered by requests to participate or by frustrations in communicating, have decreased in the Student's current placement.

It is possible that the Student will benefit from an educational placement other than a special purpose private school. The complainant is correct that the Student will need time to transition to any new setting. However, the Student's team, including the complainant, has discussed the transition back to public schools for the 2018-2019 school year, as a foregone conclusion. A least restrictive environment for this young Student may not necessarily be the public school setting.<sup>11</sup> A placement decision, which "is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options" must be "based on the child's IEP."<sup>12</sup>

In other words, determinations about educational settings, including least restrictive environment, should occur after the Student's needs are discussed and those needs are reflected in the IEP. When determining the least restrictive environment, the Team must consider "any potential harmful effect on the child or on the quality of services that he or she needs." The decision about the Student's placement, including a return to public schools, will be made by the Student's team and will be based on evaluation data, current educational performance, and

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<sup>11</sup> *Brandywine Heights Area Sch. Dist. v. B.M.*, 248 F. Supp. 3d 618, 625 (2017) (discussing benefits of instruction of autistic support classroom for kindergarten student); *Rome Sch. Comm.*, 247 F.3d at 33 (2001) (stating District's need to generate annual IEP to meet needs of student with behavioral difficulties); *Amann*, 982 F.2d at 651 (1992) (IEP appropriate balance between goals of mainstreaming and educational benefit).

<sup>12</sup> 34 CFR 300.116(a)(1); 34 CFR 300.116(a)(2)(b)(2).

achievement of established goals. The Student is due for a tri-annual IEP meeting in March, 2018.

There are no violations of law or regulation regarding functional goals for the Student. In the IEPs in place from March 2017 until November 2017, appropriate functional goals that will assist the Student in any setting, including a general education setting, are detailed and appropriate to the Student's needs. The Student is currently working on the functional and behavioral needs of understanding personal space, appropriate touching of others, emotional recognition of self and others, and utilizing options for communication, all reasonable goals for an eight year old student with autism. At the next IEP Team meeting, after ascertaining the needs of the Student, the Team will discuss educational placement.