

**Complaint Investigation Report**  
**Parent v. Perry Public Schools**  
**Complaint 18.111C**  
**Complaint Investigator: Jeannette Sedgwick**  
**July 25, 2018**

The Department of Education received this complaint on June 8, 2018. In preparation for this Report, the complaint investigator reviewed all documents, information, and responses from the parties and interviewed the complainant on July 6, 2018 and the District's Director of Special Services on July 17, 2018. The complaint investigator requested further documentation about the Student's IEP meetings from the District on July 20, which was promptly received. The investigation examined allegations that have not been raised in the complainant's appeal of a previous due process hearing and allegations that have not been considered in a previous state complaint investigation or due process hearing.<sup>1</sup>

**FINDINGS OF FACT**

1. The Student is twelve years old and was in grade 6 during the 2017-2018 school year. The Student qualified for special education under Other Health Impairment (OHI) for much of the school year but on May 7, 2018 the District's proposed IEP stated that he qualified for special education with the disability of Specific Learning Disability.
2. The Student's IEPs in place during the 2016-2017 school year (dated March 30, 2017), amended in October 2017, called for special education instruction for 1 hour, 5x/week and speech and language services for 30 minutes, 2x/week.
3. The Student presents with an auditory processing deficit. The District received the report with this diagnosis in mid-January 2018. The evaluations regarding this diagnosis were discussed in team meetings in the spring of 2018, but a meeting in February 2018 was not held because of the unavailability of the evaluator.
4. The date of the Student's annual IEP meeting was to occur before March 29, 2018, the date the previous IEP expired.
5. IEP Team Meetings were scheduled to discuss evaluations and the annual review on February 9, March 21, March 28, March 30, May 7, and May 30, 2018. Because of difficulties scheduling the evaluators, the Team did not meet in February but did schedule two meetings before the time the annual IEP was due, on March 21 and March 28. In these meetings, the Team engaged in lengthy discussions about the evaluations and the Student's qualifying disability. The Team continued those discussions on May 7, May 30, June 1 and June 11, 2018.
6. The District issued a new IEP for the Student in May 2018 with OHI listed as the Student's qualifying disability. The Written Notice dated May 7, 2018 states, however,

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<sup>1</sup> MUSER XVI(1)(A)(1). July 24, 2017 is the end date of the issues already litigated and on appeal. See Parent v. Perry Public Schools, Consolidated Hearing 18.008 and 18.029 at 4, 15).

that the Student presents as a student with a specific learning disability and states all the factors that went into the decision to change his qualifying eligibility.

Other relevant facts will be included in the determinations below.

### **DETERMINATIONS**

The complainant alleges the following violations of law or regulation:

1. The Student's annual review should have occurred by March 21, 2018 but did not occur until March 30, 2018. MUSER VI(2)(J)(5). **NON-COMPLIANCE FOUND.**

IEPs must be reviewed annually and cannot be extended beyond one year.<sup>2</sup> In this case, the Annual Review should have occurred and a new IEP issued by March 29, 2018. The District established annual review dates prior to the annual date of the IEP, including February 9, March 21, and March 28. Scheduling difficulties concerning the availability of a non-District evaluator factored into the decision to "continue" the IEP annual meeting for the annual IEP review beyond the annual IEP review date.

Documentation shows that the District did not complete the IEP annual review within one year. Written notice states that the annual IEP meeting was "continued" because review of the evaluations took an especially long time, so long that the goals on the IEP were not discussed. Based on the documentation, it appears that the District continued to implement the Student's previous IEP and arranged for further meetings with the parent to discuss eligibility criteria and goals. Agreement by the Team to extend an annual review, however, (in this case, as noted in the Written Notice), does not relieve the District of its obligations pursuant to MUSER and IDEA to hold an annual review and write an IEP each year.<sup>3</sup>

The IEP dated May 5, 2018 was not proposed within the timeframe for the annual review; additionally, that proposed IEP does not appear to contain the information that occurred at the IEP Team meeting as reflected by the written notice (for example, the change in eligibility).

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<sup>2</sup> MUSER VI(2)(J)(5); Maine State Procedural Manual at 3 ("The date of the annual review MUST not exceed 364 days (but may be less than 364 days) from the date of the last annual IEP meeting"). <https://www.maine.gov/doe/specialed/forms/iepprocedmanual5214.pdf>.

<sup>3</sup> MUSER VI(20)(I). ("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"). The Department's guidance on this issue is to hold the annual meeting prior to the annual due date and propose an a new IEP within the regulatory timeframe of one year.

2. The Student did not receive services on his IEP between the dates of July 27, 2017 to the present. MUSER IX(3)(B)(3). **NON-COMPLIANCE FOUND; CORRECTIVE ACTION ACCEPTED.**

The Student's IEP in place from July 2017- June 2018 specifies that the Student would receive 1 hour/week of specialized instruction. This instruction was to occur outside of the general education classroom. The District and the complainant agree that specialized instruction to the Student did not occur from August 30 2017, the beginning of the 2017-2018 school year, until January 13, 2018.<sup>4</sup> Documentation shows that the Student missed approximately 73 hours of instruction during these months.

From January 13, 2018 until the end of the 2017-2018 school year, the District ensured that the Student's special education teacher instructed the Student as specified in the Student's IEP. The District and the complainant discussed the type of instruction many times in the spring of 2018. The Student did not miss instruction from the time the Special Education Director learned of the error in January 2018, to the end of the school year.

The District has offered compensatory services to the parent to compensate for the approximately 73 hours of missed instruction. The District offered 1:1 instructional tutoring to the Student for half of the instructional hours missed in a 1:1 setting with a tutor who has been approved by the complainant. Because 1:1 services are more intense than instruction in a group setting, and because the Student's educational skills as reflected in recent evaluations demonstrate the need for those services,<sup>5</sup> the Department accepts the District's offered corrective action plan, with the additional requirements detailed below.<sup>6</sup>

3. The IEP Team did not consider the concerns of the parents in developing the IEP during IEP meetings in March 28, April 26, May 7, and May 30, 2018. MUSER VI(2)(I)(3). **COMPLIANCE FOUND.**

The complainant stated that the agendas for each team meeting were too short and did not allow the complainant to return to topics that had been discussed at earlier meetings. The complainant also stated that the topic of eligibility was not reviewed as it should have been, given that the eligibility form was signed at different times and that he wished to talk about that

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<sup>4</sup> Regarding the allegation about missed services during the months of July and August 2017, the Student was not enrolled in ESY services. Instruction was to begin on August 30, 2017 at the beginning of the 2017-2018 school year.

<sup>5</sup> An evaluation conducted in August 2017 stated that the Student has impairments related to rapid naming and coding/encoding tasks consistent with a specific learning disorder, with impairment in written expression. This evaluation, as does other testing such as the WISC-V in which the Student was in the "low average" range, speaks to the Student's lower-than-average processing speeds.

<sup>6</sup> *M.S.A.D. No. 35 v. Mr. and Mrs. R.*, 321 F. 3d 9, 18 (1<sup>st</sup> Cir. 2003); *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010).

issue during meetings in the spring. The complainant also stated that the parents were not allowed to speak about items that were not on the District's agenda.

The IEP Team meetings on the four dates in the spring of 2018 each lasted approximately two hours. At these meetings, District staff stated the purpose of the meeting and moved the conversation through the IEP sections in order to continue to establish the new IEP.

Regulations point to the importance of considering parent input during IEP meetings. There is a balance to be maintained, however, in ensuring that IEP team completes the work of establishing the IEP or IEP Amendment to fit the Student's individual needs. In this case, where the Team met for over 8 hours in a four-month time, the District considered the complainant's concerns. Written notice from all of these meetings demonstrates the complainant's extensive participation in the IEP process and the District's consideration of parent concerns.

#### CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

1. By **September 15, 2018**, the District must review the requirements of MUSER VI(2)(J)(5) (annual meeting date) and relevant parts of the Department's Procedures Manual with all District special education staff who are responsible for meetings and writing IEPs. The District must submit the names and titles of the staff receiving that information and a copy of the information distributed to the Department.
2. The District has offered 73 hours of specialized instruction to the Student. This instruction must be provided by a licensed special education teacher. **By September 15, 2018**, the District must provide to the Department the schedule for tutoring that is consistent with the Student's needs as stated in the Student's IEP.