

Special Education Hearing Officer Decision

I. Cover Page

- **Case Name** [Parent] vs. [District]
- **Docket or Case Number** 25.101 H
- **Date of Decision:** July 11, 2025
- **Hearing Officer's Name and Title:** Jacqueline Kelleher, MA, Ph.D.
- **Jurisdiction** Maine Department of Education

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II. Introduction / Procedural Background

The hearing was held and this decision issued pursuant to Title 20-A M.R.S. §7202 et seq., Title 20 U.S.C. § 1415 et seq, and accompanying regulations. The dates of the hearing were June 11, June 12, and June 18, 2025 over Zoom from 12:00-4:30 pm. Present for the entire proceeding were: parent of [] (“Student”/ “[]”), [] (“Parent”); and Addysen Feeley, Esq., counsel for the District (“[]”). The Parent represented himself during the Hearing proceedings. Over the course of the proceedings, the following witnesses testified under oath:

[], Case Manager

[], Special Education teacher/instructor

[], Social Worker/Counselor

[], Special Education Director

[], Parent

The complaint, filed by the Parent on 04/17/25, was seeking compensatory services in compensation for the significant deprivations of his special education program, even though he had graduated and his eligibility for special education expired beyond his graduation. The parents stated if, prior to graduation, the student was deprived of a FAPE, a school is responsible for providing compensatory education. The student’s graduation was in June 2024. A preconference hearing was set for 05/14/25 with a hearing date of 05/28/25. These dates did not work for the parties, and a Scheduling Conference was conferred on 05/08/25 to work through conflicts on the school’s end. There was an agreement to hold the hearing at a later date, with more than one date to hear testimony. While a resolution session was initially denied by the Parent, the parties agreed to meet, and a Resolution session was scheduled and held 05/14/25, with the parties unable to resolve the dispute. Prior to the hearing, the following Motions were made and responded to with objection and follow-up responses that went beyond the 24-28 hours the Hearing Officer typically grants [but allowed due to nature of content to be reviewed]:

- Motion to Dismiss made by the Respondent 05/14/25/Rejoinder 05/19/25
- Parent Requests Mediation 05/19/25/ [] representatives deny request
- Objection to Subpoena by Respondent to Petitioner’s Subpoena 05/22/25
- A Motion to Exclude evidence and witnesses in advance made by Petitioner 05/27/25
- An Objection/Motion to an Issue in the Prehearing Summary Letter regarding the Time Span by Petitioner 05/27/25
- Objection to Petitioner’s Submissions Dated 05/27/25 by the Respondent on 05/29/25
- Petitioner response to []’s 05/28/2025 response concerning the document subpoena on 05/31/25
- Motion to Continue/Delay [Hearing Proceedings] by Petitioner on 05/31/25
- Petitioner replies to the Respondent’s 05/29/25 Objection to Petitioner’s Submission of 05/27/25 submitted on 05/31/25

- Petitioner’s Motion to Reconsider Order Denying Petitioner’s Motion to Exclude Witnesses & Exhibits – 06/02/25
- []’s Objection to Petitioner’s Motion to Reconsider Order Denying Petitioner’s Motion to Exclude Witnesses & Exhibits – 06/03/25

“While staff of the State Educational Agency generally must resolve a State complaint within a 60-calendar-day timeline, *unless the timeline is properly extended*, an impartial due process hearing officer must hear a due process hearing request (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, *unless the hearing officer grants a specific extension of the timeline at your request or the SAU's request* (emphases added). 05-071 Chapter 101, Maine Unified Special Education Regulation

The prehearing conference was set for 05/15/25, and due to the number and nature of motions and a need for the petitioner to respond, the Hearing Officer requested a delay to review materials. The parties identified the days they were not available. On 05/21/25, a prehearing videoconference was convened, and a Conference Order was issued identifying the issues for hearing and setting deadlines for prehearing submissions.

Scheduling issues prevented the Hearing from commencing until June. Subsequently, the Hearings slated for 06/04, 06/05 and 06/06 were rescheduled to allow the petitioner more time to prepare and to accommodate schedules of school-based staff. The initial date of 06/04/25 was kept for a brief meeting to discuss the Hearing Officer’s responses to motions, clarify questions, and ensure the parties were ready for hearing. The Hearing dates were June 11, 12, 17, 18, 2025.

Five school days prior to the hearing, Parent Exhibits nearing 100 primarily titled by dates were disclosed, and School District exhibits were disclosed [Exhibit A through V; 00000-00198]. At the hearing there were objections to the following records and witnesses as admissible:

- Case ME 25.076C State Complaint – Overruled
- [], Witness – Overruled
- Evidence from [] post-graduation – Sustained
- Student – determined he would not be called
- Attorney [] – determined he would not be called
- [] documents post-graduation – sustained; allowed Parent to present contextual information

At the close of testimony on 06/18/25, the parties jointly agreed to allow the record to remain open for the submission of written closing briefs. Each party submitted a closing brief on or before the 06/25/25 deadline.

While the Hearing Officer was prepared to issue a determination on 07/03/25, she contacted the parties to inform them she would need access to the court recordings to cross check testimonies for accuracy and court recordings would not be available until a week later due to the holiday week. A Determination was issued on 07/11/25.

III. Issues Presented

The issues for the hearing as presented by the Parent pro se are:

Parent Allegations

1. Not adequately considering the concerns of or including the Parents in the IEP decision making process in violation of MUSER §VI.2 (H) and (I) and IX.3.C(1)(b).
2. Failure to consider existing evaluation data and the academic, developmental and functional needs of the Student in violation of MUSER §IX.3.C (1)(c).
3. Not ensuring that the Student's independent evaluations were done in a timely manner and considered by the IEP Team for possible changes in his program.
4. Refusing to develop a comprehensive Transition Plan.
5. Denying convening the IEP Team as reasonably requested.
6. Denying the Parent data and documentation of the Student's progress on goals or data collection on accommodations.
7. Refusing to improve IEP goals to include recommendations by the evaluators.
8. Relying on inappropriate measures of performance on IEP goals.
9. Refusing to provide parents with progress monitoring on IEP goals.
10. Not ensuring that the Student's educational placement is in the least restrictive environment or that a continuum of alternative placement is available to meet the Student's educational needs in violation of MUSER §X.2.B and MUSER §VI.2.
11. Not fully and adequately implementing the Student's IEP in violation of MUSER §IX.3.B(3).
12. During the 2020-2021, 2021-2022, and 2022-2023 school years, the School violated the IDEA by failing to develop or revise an appropriate IEP for the Student that was reasonably calculated to enable him to make progress considering his disabilities and circumstances, failing to:
 - a. Include strategies to address the Student's executive functioning disorder, ADHD, and other disabling conditions.
 - b. Consider existing and new evaluation data, and the academic, developmental, and functional needs of the Student, in his IEP.
 - c. Comply with requirements for crafting goals and objectives specific to the Student's learning disability; emotional disturbance; health impairment; ADHD, combined type; and disorders in executive functioning.
 - d. Include a comprehensive Positive Behavioral Support Plan, behavioral intervention services, and modifications designed to address the Student's behavior.
 - e. Include a behavioral specialist as a related consultation service in the Student's IEP.

f. Consider the concerns of the Parent in the IEP decision-making process.

13. The School violated the IDEA when it failed to timely complete the psychoeducational evaluation requested by the Parent who disagreed with the school's evaluation for the Student's triennial review having taken several months to arrange it so it was too late for the information to inform changes in the IEP for consideration of compensatory services, post-graduation, other than with this action.

Under the **Individuals with Disabilities Education Act (IDEA)**, there is a **two-year statute of limitations** for filing a due process complaint. This means that a parent or guardian must file a complaint **within two years of the date they knew or should have known** about the alleged violation of their child's rights under IDEA.

Since the due process complaint was filed in **April 2025**, the timeline generally allows the hearing officer to consider claims going back **no further than April 2023**. This two-year lookback period ensures that claims are based on reasonably recent issues, allowing for a fair opportunity to investigate and resolve disputes while preserving relevant evidence and memories.

- **"Knew or should have known" (KOSHK) date:** The two-year clock typically starts when the parent becomes aware (or reasonably should have become aware) of the alleged violation—not necessarily when the violation occurred. This could be, for example, the date a parent received an IEP they believed was inadequate or when a service was not delivered as required.
- **Exceptions:** The timeline may be extended under certain circumstances, such as:
 - The school district misrepresented that it had resolved the problem.
 - The district withheld information that it was legally required to provide, such as procedural safeguards.
- Unless an exception applies, the hearing officer will generally only consider events or violations that occurred on or after April 2023. In this case, the hearing officer allowed the Parent to present evidence and address witnesses as far back as February 2023 to accommodate a full semester given the student's age and a semester system. The hearing officer allowed for some references to the student's earlier years in high school for context as appropriate throughout the hearing.

IV. Findings of Facts

1. Background [Due Process Hearing Requests/Response]. The Student graduated from [] in June of 2024 and resides with his Parent in [], Maine. He was the educational responsibility of [], which is a []. His last IEP indicated he was receiving special education with classifications of specific learning disability, emotional disability, other health impairment, and multiple disabilities. The Student or [] currently attends a post-secondary vocational school. The Parent's events and [] events were recorded on this timeline from the Hearing Request and District Response:

Month	Parent Perspective	Document	District Perspective	Document
Prior history	Since 5 th grade, [] has had an IEP related to	Hearing Request		

	<p>diagnoses of ADHD, GAD, Childhood Tic Disorder, learning disability, and disorder of executive functioning. Student attended [] District from K-8, receiving pull-out services and specialized instruction in grades 6-8. He received direct adult support. Parent chose to send Student to [] in [] for high school. Parent requested representatives to a transition IEP to ensure his plan would be in place when he arrived.</p>			
Prior History: 2020-2021	<p>Freshman year, [] had nothing in place, including teachers unaware child had an IEP. When Parent expressed concerns, he was told that [] would be getting services in mainstream setting by educational technicians or a resource room teacher. Student objected to having adult support in the classroom.</p>	Hearing Request	<p>During the time was [] was in school, 2020 to 2024, [] experienced staffing shortages. At “one point in time” there was only one special education teacher. Despite this, the student received services for his disabilities, including specialized instruction for reading. [] was encouraged to attend IEP meetings, some of which he did. Parent would provide [] staff with topics of discussion prior to IEP meetings, each of which was addressed at every meeting.</p>	[] Prehearing Brief
Prior History: 2021-2022	<p>Sophomore year no special education services were provided, including audiobooks to assist with reading assignments.</p>	Hearing Request		
Prior History: September 2022			<p>[]’s three-year evaluation was conducted on 09/27 and 09/29/22.</p>	[] Prehearing Brief
Prior History: October 2022	<p>According to Parent, School psychologist submitted a report and the results were unacceptable for “numerous reasons”. Parent requested independent evaluation. District did not act on request in a timely manner.</p>	Hearing Request	<p>Three-year evaluation report is finalized on 10/17/22.</p>	[] Prehearing Brief

Prior History November 2022			Three-year evaluation was sent to Parents on 11/28/22. The IEP Team met on an unspecified date to discuss these results and whether []'s goals needed to be updated. Following the meeting, Parent informed the Team via email that he did not agree with the results of the assessment and requested an independent evaluation. The reasons for this disagreement were not disclosed to []. Parent's request proposed a deadline of "the end of the year", to which [] complied.	[] Prehearing Brief
Prior History: December 2022			A new IEP is drafted. Records show that this was implemented immediately following the IEP meeting in which it was conceived.	[] Prehearing Brief
Within Agreed Upon Two Year Window: February 2023	IEPs were not convened for the most part within 14-month period, starting halfway through Junior year in February 2023 through his graduation in June 2024.	Hearing Request	On 2/13/23, [] informed Parent that she has sent out inquires for []'s evaluation by a third party.	[] Prehearing Brief
Within Agreed Upon Two Year Window: March 2023			On March 23, 2023, [] confirmed that she was still waiting for several organizations' responses to her requests for third party evaluation.	[] Prehearing Brief
Within Agreed Upon Two Year Window: April 2023			April 11, [] again confirmed that she had been making efforts to schedule the evaluation.	[] Prehearing Brief
Within Agreed Upon Two Year Window: May 2023			May 11, [] informs Parent that evaluation was finally scheduled to complete the independent evaluation. Parent consented to testing on May 23, 2023.	[] Prehearing Brief
Within Agreed Upon Two Year Window: June 2023	School acts upon the independent evaluations request from 10/2022.	Hearing Request	Student's independent psychological evaluation was conducted on June 12, 2023, and the accompanying report was drafted June 22. Testing was completed within 45 days of Parent's consent (5/23). Parent requested that an IEP meeting be scheduled for 6/25/23, but this was not possible due to summer break.	[] Prehearing Brief

Within Agreed Upon Two Year Window: September 2023			An IEP Meeting is held on September 28, 2023.	<input type="checkbox"/> Prehearing Brief
Within Agreed Upon Two Year Window: October 2023			An IEP Meeting is held on October 12, 2023.	<input type="checkbox"/> Prehearing Brief
Within Agreed Upon Two Year Window: January 2024			An IEP Meeting is held on January 17, 2024. During []'s annual IEP review, Parent requested that some assessments from 2022 be redone to help with Student's transition to college. [] responded in a timely manner. A new IEP is also drafted at this meeting.	<input type="checkbox"/> Prehearing Brief
Within Agreed Upon Two Year Window: February 2024			2/12/2024, Parent requests an update on evaluations. 2/13, [] informs Parent that previous evaluator is available, but would not be able to conduct evaluation until May. Parent consented to the evaluator and the timeline.	<input type="checkbox"/> Prehearing Brief
Within Agreed Upon Two Year Window: May 2024			Evaluation is conducted on May 7, 2024.	<input type="checkbox"/> Prehearing Brief
Within Agreed Upon Two Year Window: June 2024			[] graduated with standards. [] receives evaluation report on June 3, 2024. An IEP meeting is held on June 4 to review assessments, but [] had a family emergency and the meeting was cancelled, and there was no follow-up meeting scheduled before []'s graduation. [] instead sent Parents an email stating [] would pay evaluator to meet with them to review the report within IEP Team present.	<input type="checkbox"/> Prehearing Brief
May 2025			A Resolution Session was held on May 14, 2025 in which Parent expressed concerns over []'s performance in college. However, Parent has admitted to not taking full	<input type="checkbox"/> Prehearing Brief

			advantage of programming at college. Despite this, [] is passing his classes, the one exception being a welding elective which was not taken for credit. [] submitted its Prehearing Brief on May 28, 2025.	
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2. Measurable Goals/Service Grid: STUDENT'S 2023-2024 IEP

IEP, provided by [] for this due process hearing with a duration of 01/24/2024 – 01/23/2025, is Exhibit D000144 – 154.

Measurable Goal 1

By 1/2025, given specially designed instruction in morphology and words from his academic classes, [] will state and give the meaning of the affixes of the words with 85% accuracy as measured by informal assessments (words from his academic classes)

Measurable Goal 2

By 1/2025, given specially designed instruction in phonological awareness and phonological techniques as well as a words [sic] from his academic classes that follow and are exceptions to the basic phonic rules, [] will divide the words into syllables for accurate reading with 85% accuracy level as measured by informal assessments. (i.e. reading words from academic classes)

Measurable Goal 3

By 1/2025, given specially designed instruction, a graphic organizer, an editing checklist, and speech to text technology, as well as a writing assignment, [] will demonstrate the ability to elaborate on his writing during the rough draft portion of the writing process in 7 out of 10 opportunities as measured by writing samples (1st draft compared to final draft)

Measurable Goal 4

By 1/2025, given specially designed instruction, a graphic organizer, an editing checklist and a writing piece that he has drafted, [] will review and edit his writing piece to meet writing conventions (i.e. correct punctuation, subject/verb agreement) based on his writing expectations of the class with 80% accuracy as measured by writing samples

Measurable Goal 5

By 1/22/2025, given specially designed instruction, a check list developed by [] and assignments listed on Google Classroom, [] will successfully state what assignment is a priority, what he has to do to complete it and what steps he will independently take to accomplish the assignment in at least 7 out of 10 opportunities as measured by daily data collection of work work [sic] check ins during FLL.

Measurable Goal 6

By 1/2025, given direct social work services, a scenario when [] may require help from a teacher and a list of three way to self-advocate, [] will state which appropriate self-advocacy strategy that he would use to meet his needs in 8 out of 10 situations as measured by social work notes.

Measurable Goal 7

By 1/2025, given direct social work services, a scenario that represents a situation that [] may become anxious in and at least three positive coping strategies that assist in reducing anxiety for him, [] will state which strategies would assist him in lowering his feelings of anxiety and how he would use them in 9 out of 10 opportunities as measured by self reports and social work notes.

AT Services Grid

Special Education Services	Position Responsible	Location	Frequency	Duration Beginning and End Date
Specially Designed Instruction	Special Educator	Spec. Ed./Gen. Ed.	1 time per week for 170 minutes	1/24/2024 to 1/23/2025
Social Work Services	Social Worker	Spec. Ed.	1 time per week for 25 minutes	1/24/2024 to 1/23/2025

Results of evaluations from 2021, 2022 and 2023 are included in the IEP under academic and functional/developmental evaluations, strengths, and needs. The needs identified are to increase ability of morphology rules related to classroom vocabulary, increase ability to break down three syllable words that follow basic phonic rules or are exceptions to these rules, increase ability to elaborate on writing from rough draft to final draft, improve understanding of writing conventions, increase ability to ask for support when he needs it from teachers, increase number of coping strategies when feeling anxious, and increase the ability to organize his work independently. These needs are presented as the challenges preventing him from doing and completing grade level work at the same pace as peers. His Least Restrictive Environment is 89% with non-disabled peers with the explanation as due to moderate difficulties in the areas of reading, written expression and self-advocacy, [] requires support that is best offered in a pull-out setting.

IEP provided by [] for this due process hearing is dated 12/14/2022-12/04/2023 with a meeting date of 12/05/22. This IEP was in place before the timeframe of the due process hearing parameters (D000126-35). The Hearing Officer utilized it as part of the exhibits admitted into the record and as a comparison for []'s IEP senior year.

The first goal on AT's junior year IEP is identical to the first goal on []'s senior year IEP. Exhibit D000144 – 154 and Testimony of the Parent. “There have been three assessments, but the IEP has not really changed – similar goals.” Testimony of the Parent. The responsibility for goal writing was with the case manager and the Special Education Director. Testimony of the Special Education teacher.

The Special Education Director stated that sometimes recommendations from evaluation make it into the IEP and sometimes they do not. In looking at []'s junior year IEP and senior year IEP, she stated that the last IEP in place was for a half year, so the focus was on reading; the writing [goals] changed because [] was making progress. If a student meets a goal, [you] extend, discontinue, or drop the goal. Testimony of the Special Education Director.

[] has the right to have measurable goals informed by evaluations, but his goals over two years are identical. These four goals for a child with significant disabilities in reading/writing do not begin to address [his needs]. He's not fluent in basic reading. Testimony of the Parent.

It is unclear why minutes of service are listed as 1 time per week.

3. List of Accommodations/Modifications

Supplementary Aids, Services, Modifications, and/or Supports (MUSER IX.3.A.(1)(d) & (g))

A. Supplementary aids, modifications, accommodations, services, and/or supports for SAU personnel		Location	Frequency	Duration Beginning/End Date
Assessments/Testing/Grading - Allow and encourage speech to text - Provide a private setting for use of speech to text - Allow extended time by 50% - Provide audio books, supplemental audio and video materials - Allow motor breaks when needed - Option to test in small group/special ed setting - Allow use of text to speech/speech to text - Option to present individual/ in a small group - Check for on task when writing is expected - Support to brainstorm/outline verbally for written assignments - Provide template for brainstorm/outline - Provide example of written assignments that meet expectations - Reminders to use editing checklist	Classroom Assessment, District-wide Assessment, State Assessment	Spec. Ed./Gen. Ed. across all settings	As needed	01/24/2024 to 01/23/2025
General Assignments - Allow additional time when arranged with classroom teacher - Modify length of written assignments to match IEP goals - Break down large projects/ assignments into smaller tasks with individual deadlines	Classroom Instruction, Classroom Assessment	Gen. Ed. across all settings	As needed	01/24/2024 to 01/23/2025

<ul style="list-style-type: none"> - Provide models/ exemplars for written assignments - Allow motor breaks as needed - Allow use of speech to text for all written assignments - Access to audio of text - Provide graphic organizers for written assignments - Allow for verbal follow-up to written work when not assessing writing 				
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4. Prior Written Notices

There were only two prior written notices included in the evidence.

A written notice* was sent to Parent relating to a 12/05/2022 Team meeting that states the following:

1. Describe the action(s) regarding the referral, evaluation, identification, programming or placement proposed or refused by the SAU.

1. [] continues to qualify for special education services as a student with multiple disabilities
2. Direct social work services for 30 minutes weekly
3. Specially designed services for 170 minutes weekly
4. IEP will be updated to address new goals and transition planning.
5. Least restrictive environment will be 89%.

2. This written notice was submitted into evidence twice under Exhibit O.

A written notice was drafted and sent to Parent on 10/12/2023 relating to Team meetings on 9/28 and 10/23/2023 that states the following:

[]'s program will continue as written...The team determined that []'s program is appropriate as written on a review of his latest testing.

In the written notice for the 12/05/22 IEP meeting (D000137-139), the notice does not indicate when it was sent to the Parent. The purpose was for annual review (triennial), evaluation/reevaluation, and post-secondary goals and transition services. They did not address writing and reading skills because [] had recently had testing. They discussed math assessment scores and the findings from Dr. []'s evaluations. Teachers provided input noting progress. The team reviewed possible goals and adjusted what was chosen based on input from the team. The Parent asked that goals be more specific and reminded the team that [] should be expected to use speech to text. He agreed with the findings of the assessments given to []. He wants a robust IEP for [].

The written notice sent to the Parent on 11/08/23 was a combined notice for the 09/28 & 10/23/2023 IEP meetings to cover the evaluation/re-evaluation and post-secondary goals and transition services. The Team determined []'s program to be appropriate based on a review of his latest testing. The Guidance

Counselor said [] was on track for graduation, and the Social Worker was identifying apps for monitoring task initiation and work completion [] can take with him to college. Classroom staff had positive comments to share regarding [] and his progress. The team considered and rejected moving []'s senior seminar class due to the impact it would have on his direct special education services. Additional testing was requested at that time, but it was determined that it wasn't necessary since there were sufficient assessments informing the team as to []'s strengths and needs. The Parent made clear his perception that the outside evaluation was not comprehensive. The Parent requested that there be additional achievement testing. He spoke about wanting specific strategies built into []'s IEP goals around working memory. He wanted to see a draft of updated goals for []'s annual meeting and asked about senior seminar. He said he would like to see more tangible deliverables demonstrating AT's specially designed instruction come December's annual IEP meeting.

5. Transition Plan

Post-Secondary Transition Plan ([])

- A. Projected Date of Graduation/Program Completion: June of 2025 [sic]
- B. List of Transition Assessments Completed: [] had a discussion with his case manager. (2020, 2021) [] has discussed his plans with his social worker. (2022, 2023, 2024) [] participated in junior meetings with guidance and senior seminar.
- C. In the case of the child not attending the meeting, document efforts made (prior to the IEP meeting) to obtain the child's post-secondary preferences and interests: [] attended his annual review (2020, 2021) [] had a discussion with his case manager as well as [his social worker] (2022, 2023, 2024)
- D. Measurable Post-Secondary Goals (MUSER IX.3.(A)(1)(h)(i) Goals must be based on current age-appropriate transition assessments.
Education/Training Goal: After graduation, [] (child) will attend college or a training program that focuses on engines and diesel mechanics.
Employment Goal: After graduation, [] (child) will find a job related to working on/with engines.
Independent Living Skills Goals (when appropriate): After graduation, child's name, will independent living skill [sic].
- E. Planned Course of Study (MUSER IX.3.(A)(I)(h)(ii)):

[A list of []'s course work from grades 9 through 12 are provided.]

- F. Transition Services and Activities (MUSER IX.3(A)(I)(h)(ii): Describe the activities provided by the adults in the school and in the community, that will enable and promote the child's progress toward meeting annual and post-secondary goals. Include special education, general education, related services, services from other agencies, and services provided by families as appropriate for the child's needs. Transition services and activities should be specific and individualized.
Education/Instruction and Related Services:
Special education support 80 minutes weekly, Social Work Services 25 minutes weekly (Gr 9)
Special education support 200 minutes weekly, Social Work Services 25 minutes weekly (Gr 10)
Special education support 170 minutes weekly, Social Work Services 25 minutes weekly (Gr 11)
Special education support 170 minutes weekly, Social Work Services 25 minutes weekly (Gr 12)

Career/Employment and Other Post-Secondary Adult Living Objectives:

[] worked for [a restaurant] during the summer (Gr 9, Gr 10)

Grade 10: [] has met with [his social worker]. They have been discussing transitioning and [the social worker] is following a specific on-line program with him. [] is interested in the Marines as well as carpentry. This will continue into the 11th grade.

Flex Friday opportunities

Senior Seminar

Junior meetings with guidance

Community Experiences: Flex Friday projects each year, [] Community Days, Field Trips, Class community activities (i.e. Clean up Back Bay Day)

If Appropriate, Daily Living Skills and/or Functional Vocational Evaluation: n/a

- G. Agencies Responsible to Provide and/or Pay for Services (MUSER IX.3.E.(1)(2)) What agency linkages, if any, have been made? Written parental consent must be obtained to the IEP meeting invitation of any agency or organization that is likely to be responsible for providing or paying for transition services: n/a

The Social Worker worked with [] on goals pertaining to self-advocacy and transition planning. She and [] somewhat looked at grades but mostly worked on self-advocacy work. He made progress over his high school career. She took in his cognitive ability, maturity, and age when writing goals. She coordinated with the Vocational Rehab person – “[] did not want a job coach [he already had a job]... he didn’t need it, but you have to do it voluntarily... every student is different.” Testimony of the Social Worker. The Social Worker testified: “Transition planning – interests, explorations, researched pathways he would like to take...passion for diesel mechanics...Transition Planning [was] comprehensive as I always do it – looked thoroughly at all the things he was interested in.” With the transition plan, no other documents were made available - the Summary of Performance was not received by the time of applying for disability report [post-secondary disability support]. Testimony of the Parent.

The Parent testified about the transition plan and pointed out:

- Transition Planning – See MUSER/IDEA as authority (section 3, section 4A; pg. 19 + 37). Parent shows that the transition plan is lacking elements of MUSER requirements.
- Transition Assessment for post-secondary goals (annually) - (multiple data sources) – are absent from the plan and he does not recall the nature of assessments his son took to develop and revise this plan.
- [] IEP/Transition plan (Grade 12) - Eval Section G Needs is not appropriate
- Parent reminded us he was never provided data – No data for his burden of proof in this hearing and the transition plan is an example of lack of data that he has dealt with and was burdened by this in preparing for the hearing.
- Special Ed time – unclear on why that was a reduction in minutes without a written notice.
- [] did not attend the community experience listed in the document.
- His plan does not align with the expectations in MUSER.
- [] had no vocational rehabilitation.
- The Transition Plan did not inform coursework and had no specificity.
- Everyone gets into his current college – the college he attends accepts all students
- Was never part of the IEP team – Not sure how that works

- There were no goals, data, lists of tests, or assessments.
 - The transition plan does not meet IDEA requirements.
6. (D000002-14) The fall prior to the complaint's timeframe in question, [] had a psychological evaluation with Dr. [] with the report sent to Parent on 11/28/22 as part of the process of his triennial review. This evaluation consisted of Parent/Student interviews, a review of records, WISC-V, and BASC. The report references 2019 testing of language-based strengths and weaknesses conducted by Dr. [] where there are weaknesses in oral fluency, isolated word reading, orthographic processing/competence, specific input, and morphological processing. Testing indicated phonological errors, transpositions, and morphological errors with prefixes and suffixes, as well as spelling speed, spelling accuracy, and orthographic ability, which is a "consistent issue in the record." Dr. [] confirms many strengths in her testing, and also confirms ongoing difficulties with visual perception, reading fluency/efficiency, and writing. Behavioral assessments taken with other data are consistent with previous diagnoses of ADHD, executive functioning weaknesses, SLD, and generalized anxiety disorder. Dr. [] recommended continuing work with a counselor and medical provider. Her other recommendations were primarily related to accommodations and modifications, such as developing strategies to ask for help, reducing concerns over peers when asking for accommodations, getting extra time/shorter assignments, opportunities to demonstrate performance orally/support for orthographic processing and graphomotor issues, and access to speech-text software and audiobooks. Dr. [] addressed executive functioning issues and recommended working on study skills, planning strategies, and organizational tools.
 7. Recommendations for Dr. []'s evaluation were included in the IEP. Testimony from the Special Education Director.
 8. (D000016) In an email dated 01/17/23, the Parent disagrees with Dr. []'s findings in her psychological assessment and requests an independent evaluation to be completed by the end of the current academic school year (2022-2023) which is received and acknowledged by the Special Education Director. The Parent Cc's several members of the [] staff and [] on an email to an attorney on 03/23/23 stating it has been over 60 days since he requested an independent evaluation for [] and he has not had communication about this request (D0000017). Through this same email communication to the attorney, the Parent stated he was "formally requesting an IEP for [] by April vacation to address his transition plan [and] examine progress on his IEP goals and accommodations." (D0000018) In an email response, the Special Education Director says she has an organization to complete the assessment he requested as soon as possible. The Director reports that she is still trying to schedule an IEE for [] on 04/11/21 in an email. (D000031) The Director reports on 05/11/23 to the Parent about having a person [] to complete []'s evaluation on 06/12/23. (D000033).
 9. An outside evaluator was brought in at the Parent's request, "which does not happen often". The Parent did not agree with Dr. []'s evaluation and requested an IEE Testimony of the Special Education Director.
 10. (D0000020) In an email dated 02/12/23, the parent writes to the [] staff and [] appreciating feedback on []'s progress and making sure []'s IEP and accommodations are in place during FLL (Focus Learning Lab) where he receives his support. He states the IEP team agreed "to FLL placement so that his homework is limited at home, but also so FLL can work on his IEP goals

which include organizational skills, so he does not fall behind in his classes.” He also asked that teachers expect him to use speech-to-text IEP accommodations such as Dragon Dictate. He asked for the status on the IEE. There is a follow up request on the status of the IEE by the parent on 04/10/23 in [] Exhibit 1 2023.04.10.

11. In [] Exhibit 1 2023.04.10, email correspondence from the Parent to teachers show the Parent requesting an IEP meeting before the end of April to address FLL services and seek more specific accommodations, as well as to get updates on IEP goals, review summative assessments that “you [[]] promised to collect for me, evidence of executive functioning skills, transition planning on the IEP, and accurate reports on where he stands on assignments”.
12. Exhibit D000021 is an email from []’s English teacher that describes different ways parents and students can monitor classroom progress, including weekly updates in PowerSchool and Google Classroom. [] also provided Weekly Update sheets for his courses from 11/14/22 through 04/28/23 that are not consistently completed by staff as indicated by blank rows; teachers report progress for those entered and there is one occurrence from FLL staff that [] is using speech to text daily (D000023-29). The FLL teacher takes responsibility on 04/11/23 for not updating the sheets as he was sending data sheets to []’s school counselor and offered to provide them the next day for the semester. He goes on to make positive remarks about [] and notices [] can have a difficult time accepting assistance, so he’ll be more diligent with the work [] is completing. (D000031)
13. FLL is the location where [] received his specially designed instruction and received a grade and .5 credit for being on time and for completion of work determined by the student and teacher. “FLLs are graded on Habits of Work since the FLL doesn’t address standards through grading, and they are to assist students in getting standards from other classes.” (D000022) The FLL is over 200 minutes of specially designed instruction, four times a week for 55 minutes with a special educator. Testimony of the Case Manager. The FLL is a class in which students receive a grade, which impacts graduation, which “can help or hurt”, and it “wasn’t a surprise [] was earning all 4’s.” Testimony of the Case Manager. FLL is also described as a guided study hall with special education direct instruction and the Social Worker “does her best to do her services 30 minutes a week” and Fridays are not scheduled for specially designed instruction [Flex Fridays]. He got help with coursework. Testimony of the Social Worker. If [] did not have specially designed instruction on Fridays, and then another session with the Social Worker, this leaves three days of 55 minutes to work on the IEP goals, for example “affixes”. Testimony of the Parent. The Special Education Director testified that specially designed instruction occurred in FLL, which is staffed by special educators, and it was during this time [] worked on goals.
14. FLL – is a limited resource room [where []] he should have been working on goals – social work, behavioral, academic, [] had a limited number of goals as informed by evaluations. Specially designed instruction did not occur and there is no data to prove this. Testimony of the Parent.
15. Staff testified that there was a reluctance of [] to use voice-to-text, an accommodation. One of his teachers noted this when describing where [] is behind in class, also noting that [] has Audible versions of all the books. In [] Exhibit 1 2023.04.10, EP recalls that audio books were offered, but [] was resistant. “We can’t force students [to use accommodations] – we can encourage, but at the high school level, it is the student’s decision.” EP also stated that [] had access to audio versions of the text. Testimony of the Case Manager. Due to his cognitive ability

and being a high school aged student, “[] had agency to make decisions at [].” Testimony of the Case Manager.

16. There are weekly grades in PowerSchool as evidenced by the Progress Report for [] during his junior year in [] Exhibit 1 2023.04.24 and [] Exhibit 2 2023.06.12.
17. The Parent presented a work sample for [] from junior year which was a blank Flex Friday process journal. [] Exhibit 1 2023.05.01. There is a data collection sheet in the exhibits that has either the teacher or [] rate if [] verbally shared information or asked a question and then circle graphs of data for the semester (January – May 2023), which reflects that [] spoke the most in FLL and the least in Pre-Calc. [] Exhibit 1 2023.05.23. The Special Education Director testified that the Flex Friday journal is to do notes on a project – the assignment involves writing, but the students use it in a variety of ways such as pictures, speech to text, documents, and others have someone else do [the writing] for them. It is unclear if this was brought to the attention of the case manager and special education teacher.
18. The Parent emails teachers that he is pleased [] seems to be "okay" for his standards after checking the PowerSchool system. He says [], needs support from FLL and accommodations from teachers to help with timely work completion. [] Exhibit 1 2023.06.10.
19. [] completed an independent evaluation of [] in June 2023 which consisted of Woodcock-Johnson, behavior ratings, Conners, anxiety scale, observations, Parent interviews, and file reviews (D000035-53). [] presented with average to high average intellectual functioning. There are clinically elevated levels in working memory and (potentially) planning/organizing task demands. There were greater clinical levels of impairment for executive functioning skills reported for the home setting compared to the school setting, which was also indicated on behavioral functioning compared to same age peers. On the BASC-3, one teacher rated AT as having clinically significant level of withdrawal and borderline clinical concerns regarding anxious behavior, learning problems, social skills, study skills, and leadership. The examiner reports that [] does continue to exhibit anxious behavior and that his reported performance anxiety will specifically impact his participation in class. He demonstrates concerns with executive functioning across settings, particularly in the area of cognitive regulation, which includes initiating tasks, working memory, and planning/organizing during problem solving and task monitoring across settings. “He is not exhibiting behaviors consistent with ADHD in the school setting, nor is [] reporting a significant level of ADHD symptoms [likely due to medication management].” She recommends sharing the results with those providing medication/counseling and the pediatrician, as well as the family pursuing counseling regarding matters specific to the home setting. As for school, the recommendations, in addition to continuing work with the counselor, are largely in the areas of accommodations and modifications: daily home-school communications system, highly structured routine, daily schedule, alternative method for class presentations, extra time, small group, copies of notes/outline, graphic organizers, timelines for deadlines, and learning mnemonics. The school notified the Parent it had received this report with an email on 06/23/23 and the Parent requested an IEP meeting by 07/25/23 to review the report. Further, the Parent requested the school contract with a provider to assist with writing IEP goals based on the report’s findings, and that the team review []’s LRE, improve accommodations, and review the Transition Plan. (000056) On 06/30/23, the Special Education Director stated staff were unavailable in the summer for an IEP meeting and that Parent consent for the evaluation was “received by us on May 23, 2023 and

fewer than 45 school days have elapsed since receipt of this written permission.” (D000059)
There are email exchanges seeking to find a date for the first week of September, which is the beginning of []’s senior year. An email correspondence in [] Exhibit 2 2023.09.00 – 2023.09.14 shows the meeting was cancelled and rescheduled to 09/28/23 on account of a case manager’s illness.

20. While the father requested an IEP meeting over the summer, the Special Education Director stated that there was no staff over the summer, and she could not get a full team together at that time. There were 45 school days to complete the assessment and meet. Summer days [when school is not in session] are paused and do not count toward the 45 school days. Testimony of the Special Education Director.
21. We are not required to implement all of the evaluation recommendations. The evaluation supported the IEP as written [Sept/Oct 2023]. The school would not do what falls out of the school’s scope (i.e. calling a pediatrician). The process is to review the assessment, ask questions of the parents, teachers, and students – if evaluator is there, they present – and then there is a program review, and the IEP is developed. The practice is to make sure everyone is heard. When there are disagreements, they work together to find common ground and work together as a team. They ask for everyone’s input, but the Special Education Director makes the final decision, which is all in the prior written notices. Testimony of the Special Education Director.
22. The school had concerns about his IEP, but [] was making progress. Testimony of the Special Education Director.
23. The Social Worker sets up a weekly communication log for staff educating [] on 09/21/23 and sends an email to them with the update log attached and stating it is important for []’s team to know how he is progressing in each class. [] Exhibit 2 2023.09.21.
24. The Social Worker sets up goals with [] for social work and explains in an email what they are and how these skills in oral communication and task initiation will help [] after graduation. [] Exhibit 2 2023.10.11.
25. The special education teacher who provided specially designed instruction in FLL to [] during the Fall 2023 semester consulted with []’s case manager and the Director of Special Education on how to implement the IEP early in the semester. She did not attend the IEP meetings on 9/28/23 and 10/23/23. She worked with [] on speech to text and getting in the habit of using it. She encouraged him to use a separate room to do his work. He would do a check-in, speech to text (five minutes), planning, prioritizing – she has a background in writing and stated AT’s writing became more complex with tools [Google Suite/Grammer Lines] and increased confidence – by the end of their time, AT “went from block writing to multiple paragraphs”. It’s important to apply Common Core Standards with special education students; [] does Common Core and [] standards, which are lot lower and consist of [utilizing] multiple modalities [for learning/performance].
26. The special education teacher recalls struggling with [] on reading goals as [] had a hard time with her when she brought up these goals in FLL. The work was embedded in the writing. At 200 minutes weekly, the time was always allotted with the goal daily and assessed formatively. She found the goals to be adequate, but she had to “sneak in” how she evaluated. She created a document, prompts, steps to writing, graphic organizers, [timelines] for drafts due, revision steps, and other tools [aligned with needs and accommodations]. She kept data and measured his performance by writing samples and shared the progress in the weekly report, which she kept in

folders. [Data in these] folders were deleted after reports; data files were deleted after the school year, unless there was a student who was continuing the next year on her caseload. She also did self-assessments as a student engagement tool, but this was not for IEP progress or the education record. She provided []. Data was given to the case manager, but she never saw the [progress] report. Testimony of the Special Education Teacher.

27. The teacher provided [] with speech to text tools and saw him make progress with the tools and in areas of writing. Nothing impeded his ability to be successful. His age, maturity, and cognitive ability were exhibiting his ability to operate independently. Testimony of the Special Education Teacher.
28. The Checklist utilized in FLL was the organizational tool in the IEP. Testimony of the Special Education Director.
29. There do not appear to be formal progress reports for IEP goals disseminated. There is a copy of the IEP that expired 12/04/23 with handwritten abbreviations next to Progress alongside the goals without a guide to interpret the meaning:
 - a. Goal 1: 06/8/2023 = N and 12/4/2023 = PM
 - b. Goal 2: 06/8/2023 = N and 12/4/2023 = M
 - c. Goal 3: 06/8/2023 = PM and 12/4/2023 = PM
 - d. Goal 4: 06/8/2023 = PM and 12/4/2023 = M
 - e. Goal 5: 06/8/2023 = N and 12/4/2023 = PM
 - f. Goal 6: 06/8/2023 = PM and 12/4/2023 = PM
 - g. Goal 7: 06/8/2023 = PM and 12/4/2023 = PM
 - h. Goal 8: 06/8/2023 = DNM and 12/4/2023 = DNM
30. Progress reports on class performance consisting of course grades or PASS continue through senior year. [] Exhibit 2 2023.12.18.
31. [] would not have benefitted from a Positive Behavior Support Plan. EP has familiarity with Behavior Intervention Plans and PBISP has only been used by him for students with severe disabilities [affecting behavior]. Not all students with IEP's need a BIP or an FBA. While the Parent wanted a BIP, the IEP team considered this and did not think a BIP was needed. The Team wanted a less rigid approach and created a checklist strategy. Testimony of the Case Manager. [] did not have a behavior plan – not all students have a BIP because their behaviors do not trigger. There's a standard by which a student needs an FBA/BIP. The IEP Team considered a BIP but decided it was not necessary, and [] took a less rigid approach. Testimony of the Social Worker. A BIP would not be age-appropriate for [] to have a “full on plan” – it does not benefit high school students unless they have severe behaviors. He was incentivized by encouragement and natural consequences. Testimony of the Special Education Teacher.
32. Avoidance of [] was a behavior, “we can't force him to do it” was told by []. Behavior plan is for that – there should have been an FBA – but [] all thinks [behavior plan] for disruptive behavior. The Parent wanted a plan to address the behavior – [] respond to rewards. Testimony of the Parent.
33. If the IEP Team has discussions and cannot come to an agreement, “it is [the Special Education Director's] call”. Testimony of the Social Worker.
34. Positive updates on AT's progress on skills from the Social Worker, including applying for EMCC and [] (in which he was accepted). [] Exhibit 2 2024.01.16.

35. On 02/13/24, the Special Education Director emailed the Parent to state [] can do the testing, but not until the first week of May [2024] if this is okay with the Parent, otherwise she will find another evaluator. On the same day, the Parent consented to that. (D000061)
36. Home school communications with updates between the social worker and the Parent continue into senior year. [] Exhibit 2 2024.03.24.
37. Exhibit D000063-81 is the educational evaluation conducted by [] on 05/07/24. Evaluations administered included the FAR, Symbol Imagery Test, WRMAT-III, TOWRE-2, KTEA-3, and the FAW. In the Phonological Index of the FAR, scores were presented next to scores which were obtained by the same examiner in 2019. He had average performance but scored significantly below average with isolated word reading fluency and oral reading fluency, indicating that he does not benefit from reading words embedded in a particular context allowing him to anticipate more easily. He scored at the 1st or 2nd percentile in RAN, verbal fluency, visual perception, and irregular word reading, which had the suggested explanation of []'s surface dyslexia compounded by ADHD (fluency) and overall weaknesses in orthographic processing. Morphological processing was at the 21st percentile while subtests from the comprehension indices showed silent reading comprehension at the 42nd percentile and silent reading rate at the 4th percentile. Other reading results indicate AT is performing within the average range at the 25th percentile in acquisition of reading skills with sight-word recognition and phonics development in the 27th percentile, results which were lower than the previous evaluation. Word reading efficiency was in the 10th percentile. His scores had also lowered in his graphomotor index which was at the 4th percentile compared to the 16th percentile in 2022. His dyslexic index was at the 2nd percentile and the executive index was in the 23rd percentile, also a drop from a couple of years earlier. His written expression was at the 21st percentile. Dr. []'s recommendations included: utilizing reading support technology programs, time and a half for extra time on assessments, motor breaks, and oral testing. Her recommendations for graphomotor weaknesses were geared toward post-secondary education and for [] to access voice-to-text, keyboarding feedback programs, and copies of notes or recording lectures. She also suggested working with a specialist on pre-writing activities, graphic organizers, executive coaching in written expression, and editing. She recommended a comprehensive assistive technology evaluation through an assistive technology team. "2nd percentile is low...4th percentile is low...that's a low score (written expression)." Testimony of the Case Manager. Oral reading does not make it into a high school student's IEP. Isolated word reading is done in the context of high school reading. This is one subtest in one test. There needs to be multiple measures to make it into the IEP. When students struggle with reading or spelling, [we examine] what differences they have in class and what accommodations do they need – it might not be a goal; it might be an accommodation or modification. Spelling would go under written expression. [It's] transitioning the student to be prepared for the real world and focus in on what they need and sometimes it is an accommodation versus a goal. The extent to which it is a goal or an accommodation is what has the most impact on his education. Testimony of the Special Education Director. The Parent testified there were 43 responses that would have been appropriate [for an IEP]. Testimony of the Parent.
38. Email correspondence indicates there was a delay in meeting with [] in May when the Special Education Director was out for an emergency – [] had to book other IEP meetings and then was not available until June 2024. [] Exhibit 2 2024.05.19.

39. An email from the Special Education Director dated 06/18/24 apologizes for not being able to hold an IEP meeting to discuss the evaluation report from []. She offers to have the parents meet with [] to discuss the results and have VP bill the school for her time. AT had graduated from [] at this point. (000083)
40. The Parent submitted [] Exhibit 2 2024.06.30 which is a blank Summary of Performance document for []'s transition. There is an email from the Parent to the IEP Team stating that [] is out of compliance for not having this document for []. [] Exhibit 2 2024.06.25.
41. [Regarding the [] evaluation] the Parent had no problem with the delay in her eval – he anticipated there wouldn't be a delay but there's always one IEP meeting to go over the report. Has attended numerous summer IEPs so why weren't there meetings over the summer? It was denied. Summer should not have delayed, and the meeting scheduled after graduation. It denied [] compensatory ed that could have been provided with that new knowledge from the evaluation from []. Testimony of the Parent.
42. Once the student graduates, the IEP ends. [] would pay for [] to meet with the parents concerning the evaluation, but graduation had already occurred. Testimony of the Special Education Director.
43. Exhibit 000094-121 is the Complaints Investigation report conducted by Maine State Department of Education completed and sent to the parties on 04/02/25 called Case 25.076C. The complaint contained several of the allegations which were submitted by the Parent as part of Case 101.H. Through interviews and file reviews, the independent complaints investigator made the following determinations:
- a. Not properly developing or revising the Student's IEP thereby depriving the Student of a Free Appropriate Public Education (FAPE) in violation of MUSER VI.2.J.(4) and (5) and MUSER IX.3,C and D.; **COMPLIANCE FOUND; NO DENIAL OF FAPE**
 - b. Whether or not the District denied the Student FAPE by not fully and adequately implementing the Student's IEP in violation of MUSER IX.3.B(3); **COMPLIANCE FOUND; NO DENIAL OF FAPE**
 - c. Not considering existing evaluation data and the academic, developmental and functional needs of the Student in violation of MUSER IX.3.C (1)(c); **COMPLIANCE FOUND; NO DENIAL OF FAPE**
 - d. Not considering the concerns of the parents in the IEP decision making process in violation of MUSER IX.3.C(1)(b) and MUSER VI,2(I). **COMPLIANCE FOUND; NO DENIAL OF FAPE**
 - e. (Ancillary issue 1) Whether or not the Student's independent psychological evaluation, completed by Lisa Millwood, M.Ed. on June 22, 2023, was initiated and completed in accordance with the requirements of MUSER V.6; **COMPLIANCE FOUND; NO DENIAL OF FAPE**
 - f. (Ancillary issue 2) Whether or not the District provided the Parents with the Student's educational records including progress reports following their request in violation of MUSER XIV; **NON COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND**
 - g. (Ancillary issue 3) Whether or not the District provided the Parents with written notice at least 7 days prior to the date the district proposed to initiate or to change the identification, evaluation, or educational placement or a free appropriate public education

(FAPE) for the student pursuant to 34 CFR 300.503. **NON COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND**

- h. Not conducting a functional behavioral assessment or developing a behavioral intervention plan in violation of MUSER XVII.1.F; **COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND**
 - i. Not considering the use of positive behavioral interventions and supports in violation of MUSER IX.3.C(2)(a) **COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND**
 - j. Not annually updating the Student's post-secondary transition plan and not providing a summary of the Student's performance in violation of MUSER VI.2.C.(3)(b) and (g). **COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND**
44. IEP progress monitoring for Grade 11 (D00172 – 174)/IEP progress monitoring for Grade 12. There are no scores on progress notes. It has not been “properly explained to [the Parent] what progress means”. Testimony of the Parent. In progress monitoring, [we] use materials student is using in mainstream classroom, but [we] do not keep student work as not required by MUSER. Progress reports are “what we are required to maintain – not the material that back up scores on progress reports.” IEP progress reports are sent out twice a year. Testimony of the Special Education Director. Progress reports were presented but the extent to which evaluated was a written narrative and a [] was progressing. No docs presented during the testimony and the exhibit docs were inadequate. The Parent objects that the documents were not presented. They don't exist because the data was not kept because SDI was not provided. Testimony of the Parent.
45. Flex Friday – [] enjoyed hands on project but this is 20% of the year and impacted the instructional time with special education and specially designed instruction. Testimony of the Parent. Never asked if [] could opt out of Flex Friday although it was brought up at a meeting. “it would be like going out of a senior privilege”. Testimony of the Parent.
46. Grades show [] exceeds standards every week, but this is not accurate that special education is graded for general education and transcript purposes. His multiple disabilities prevent him from exceeding standards. Other courses like Genocide he had no idea what was going on and he could not read it or access it. Audiobooks have helped but were not used consistently. He got a 1 in Creative Writing where he was held accountable – he got a 2 and 3 eventually with a general education teacher that AT admired. Formal modifications were never presented in the general education setting. Specially designed instruction – the Director made reference to how it was done in general ed but there is no evidence of that. There should be documentation but there is an absence of evidence. Testimony of the Parent.
47. The Special Education Director testified that the Social Worker and the Case Manager were going to develop a checklist and a plan, not a behavior plan, because there were no incentives. It was set up to make him more responsible for work completion. She is not responsible for overseeing the plan, she oversees the special education program and trusts her staff to implement it.
48. The records are with the case manager. The checklists are not required to be kept as a record. Records that are required to be kept are IEPs, prior written notices, assessments – the checklist is for data collection. This is similar to a writing sample which they do not keep. Testimony of the Special Education Director.
49. Weekly Updates are a home-communication tool and data are notes from instructors. Testimony of Special Education Director.

50. [] graduated from [] on time and with standards. Testimony of the Case Manager and the Special Education Director. [] continued on to college at [], which were expectations, and he did go. Testimony of the Special Education Director.
51. The specially designed instruction has not met the minutiae of the goals – the goals have not changed too much, just tweaked from year to year. [] should not have to have repeated goals for senior year. Testimony of the Parent
52. Parent testified that [] showed [on paper] the abilities of a 3 and a 4 student – with his profile of multiple disabilities, the IDEA is in place to protect him and his unique needs of Executive functioning/processing, ADGD, generalized anxiety disorder. He only went on to have some success at [] because of supports put in place that [] did not provide to him or skills he did not learn – he did not transfer any skills to help with post-secondary. Lack of services denied [] FAPE. [] should not have graduated because he lacks skills and knowledge required by the standards – he was “passed through the system”. Testimony of the Parent.
53. EX - 2023.04.25 - Videotape Excerpts from Recorded IEP Meeting:
- a. The Special Education Director starts with confidentiality disclaimer, introductions, and asks Parent for list of concerns to be address in the meeting right up top.
 - b. Concerns from Parent:
 - i. independent evaluations, needs some comfort that doing evaluations remotely by an national firm will have same results as an in-person evaluation
 - ii. FLL
 - iii. Communication tools, weekly update
 - iv. []’s writing
 - v. []’s grades, PowerSchool
 - vi. Accommodations
 - vii. whether IEP will be revised from December meeting with recommendations from []’s doctor ([]’s executive functioning skills, organizational skills)
 - viii. transition planning, role guidance was playing in that section of IEP
 - ix. SAT accommodations
 - x. attendance marks (absent 13 times in one class, Google Classroom and PowerSchool)
 - c. The Special Education Director says that []’s grades had been updated as of the morning of the meeting in PowerSchool. She addresses evaluation concerns, reached out to companies about doing a psychoeducational evaluation – no one available. Addressed remote vs in-person concern, companies work with psychologists that are certified within the state of the student. “hands are tied” in relation to getting evaluations done in reasonable timeframe.
 - d. Parent requests reaching out to state department, oceanside. Parent brings up “45-day rule”, spec. Ed. Director says “we don’t have a 45-day rule until you sign permission for the assessment, and you have not signed permission for the assessment yet because I don’t know where we’re getting the assessment from”
 - e. Parent and special ed director discussed expediting timeline for evaluation, rather than have it done “by May”, have to begin IEP discussions in the summer time

- f. Spec ed director addressed []'s grades on PowerSchool, Parent worked with student over vacation to make up missing work – didn't feel good about having a one in one of his courses
- g. Parent brings up piloting a behavior plan to help with executive functioning. Doesn't want relationship between social worker and [] to be “impacted by academic expectations... FLL needs to step it up and play more of a role” to make sure he's organized
- h. Parent requests to share his screen to discuss speech to text. Presents a project that [] did back in March. [] “refuses to use” speech to text software, underachieving. Feels proud of final product but is struggling to push himself.
- i. Special ed teacher discusses FLL and speech to text, reports on []'s performance in class. While [] does initially resist speech to text, he has gotten better about using it as of this meeting.
- j. Parent asks special ed teacher how [] feels about the IEP team determining [] use a positive behavioral support plan focused on executive functioning skills. Teacher responds it would be great, and he offers support for or working with [] on creating a checklist that he can use. [] has an understandable desire to be independent, but he does refuse help.
- k. Social worker adds – [] is VERY resistant to asking for help, which sets him behind on work, increases anxiety, etc. - accountability piece is missing
- l. Special ed director recommends social worker and special ed teacher meet to develop behavioral plan AND possible checklist during FLL
- m. Parent expresses frustration at lack of speech to text during sophomore year, asks for “data component” to positive behavioral support plan, happy to participate
- n. Special ed director says she can recommend including data within the communication tools, or lack thereof, going forward. Addressed the guidance counselor to discuss transition plans, college and vocational options
- o. Counselor discusses holding an assembly for juniors as well as having one on one sessions with [] tomorrow and follow up through end of the year and a senior seminar in the fall next year – planning for after graduation. Parent asks that these things be documented in []'s IEP
- p. SATs – [] talked with Parent, stressed because he only got 5 minutes between sessions. Other kids got to go to lunch and he couldn't because of extended time. Special ed director says this is accurate, asks counselor to clarify. Extended time is on a schedule set by SAT, which can run into lunchtime – two hours with very few little breaks. There are extra breaks, but it can be brutal for kids.
- q. Attendance – asks if parent has contacted front office about this (he hadn't). Social worker confirms [] is missing 13 days just in pre-calc, “which is odd”. Counselor tries to explain discrepancy, 13 is for the full year but shows as happening during the current semester
- r. “Flex Friday” - wants to use free time to have [] be held accountable and focus on electronic poster project. “As long as the expectation is there, he's willing to please”.
- s. Special Ed director ends the meeting and mentions not addressing accommodations and []'s doctor's report. She apologizes for not sending out a document with []'s progress

on goals, mentions being short-staffed. Can reschedule a follow-up meeting to address these missed topics. Parent is receptive to these team meetings and looking at goals and progress and specialized instruction in late May or June.

V. Applicable Law/Legal Analysis

At the heart of this Due Process complaint when you combine the Parent's allegations is the extent to which the IEP was properly developed and implemented during []'s junior and senior year at []. It's important to examine the components of the IEP in question and compare them to standards of the IDEA, MUSER, and case law.

Transition Plan

- IDEA requires measurable postsecondary goals related to training, education, employment, and, where appropriate, independent living skills.
- Transition services must be updated annually and based on age-appropriate assessments.
- Failure to comply with transition planning requirements can lead to findings of denial of FAPE and compensatory education awards.
- Procedural violations (such as not involving the student in planning) can also constitute a denial of rights.

In *Dracut School Committee v. Bureau of Special Education Appeals (BSEA)*, 737 F. Supp. 2d 35 (D. Mass. 2010), the issue was whether the school district failed to provide an appropriate transition plan. The court found that the district violated IDEA by failing to develop a proper transition plan and awarded compensatory education. The IEP lacked measurable postsecondary goals and coordinated services. The decision reinforced the requirement for detailed, individualized transition planning. In *D.B. v. Esposito*, 675 F.3d 26 (1st Cir. 2012), there were claims of failure to provide appropriate transition services and procedural violations. The court acknowledged that failure to include appropriate transition services can amount to a denial of FAPE (Free Appropriate Public Education), which clarified the role of transition services in the provision of FAPE. In the *Dep't of Education, State of Hawaii v. Leo W.*, 226 F. Supp. 2d 1131 (D. Haw. 2002), the issue was inadequate transition planning for a student nearing graduation. The court ruled in favor of the student, finding the lack of a proper transition plan to be a denial of FAPE. This demonstrated that courts take transition failures seriously when determining compliance with IDEA. Though not exclusively about transition planning, this case highlighted the importance of procedural compliance with IDEA, which includes the requirement for timely and individualized transition services when appropriate. *Amanda J. v. Clark County School District*, 267 F.3d 877 (9th Cir. 2001) In *Klein Independent School District v. Hovem*, 690 F.3d 390 (5th Cir. 2012), the case considered whether a student was provided with FAPE, including appropriate postsecondary planning. The court found that although the student made academic progress, transition services were insufficient. Schools must look beyond academics to include post-school goals and services in the IEP.

In these cases, there were substantive violations. In [] vs [], there were testimonies attesting to appropriate transition plan and services which were also corroborated in the complaints investigation. The

student graduated with standards and pursued post-secondary studies; however, the transition plan made available to the hearing officer did not have a list of transition assessments outside of discussions, and did not have documentation of efforts of pursuing preferences and interests and no other outside agencies were considered. Discussion can be a form of formative assessment if it helps inform decisions, judgement, and communication. Staff were able to speak to AT's post-secondary preferences and interests. It was not a particularly robust IEP and did not have all of the elements of MUSER; however it met *de minimus* and is not a denial of FAPE.

IEP Parent Involvement

IDEA requires **meaningful parental participation** in every phase of the IEP process. **Predetermination** (e.g., deciding placements or services without input) is a procedural violation. Failing to consider **parent-provided evaluations or concerns** can result in a denial of FAPE. A **procedural violation** alone can warrant relief (e.g., tuition reimbursement, compensatory education) **if it impedes the child's right to FAPE or significantly impedes parental participation**. IDEA mandates that parents be meaningfully involved in the development of their child's Individualized Education Program (IEP). Courts have consistently ruled that procedural violations, such as excluding parents from IEP meetings or disregarding their input, can result in a denial of a Free Appropriate Public Education (FAPE).

In *Doug C. v. Hawaii Dept. of Education*, 720 F.3d 1038 (9th Cir. 2013), the issue was whether holding an IEP meeting without the parent violated IDEA. The Ninth Circuit ruled that holding an IEP meeting without the parent, despite knowing the parent's availability, was a procedural violation that denied FAPE. A school cannot prioritize procedural deadlines over meaningful parental participation. The court emphasized that parent participation is a central tenet of IDEA. In *Amanda J. v. Clark County School District*, 267 F.3d 877 (9th Cir. 2001) the issue was Withholding critical information from parents during IEP development. The court ruling found that failing to share a psychologist's report with parents denied them the opportunity to participate in IEP formulation, which violated IDEA. Thereby, withholding important evaluative information prevents informed parental participation, and this is a serious procedural violation. In *Deal v. Hamilton County Board of Education*, 392 F.3d 840 (6th Cir. 2004), the issue is whether the district predetermined the IEP and disregarded the parents' input. The court found that the district predetermined services and failed to genuinely consider parental input. Predetermination of services without parental input violates the spirit and letter of IDEA. The IEP process must be a collaborative effort. In *Knable v. Bexley City School District*, 238 F.3d 755 (6th Cir. 2001), the issue is whether the school district adequately considered parent concerns. The court concluded the district's IEP process was procedurally deficient due to lack of parental involvement and inadequate consideration of parent concerns. The ruling emphasized the importance of partnership between parents and schools in crafting educational programs. In *J.G. v. Briarcliff Manor Union Free School District*, 682 F. Supp. 2d 387 (S.D.N.Y. 2010) The issue was the school's failure to consider parent-provided evaluation and concerns. The court's ruling was the district's refusal to meaningfully engage with the parent's private evaluation and proposed goals was deemed a procedural violation. Parents' outside evaluations and input must be considered, not dismissed.

Through testimony and evidence such as the recorded IEP meeting in [] vs [], the Parent was listened to as a member and the school implemented activities such as the multiple evaluations to

accommodate the Parent's requests. Additional meetings were held and emails exchanged to cover many of the topics raised by the Parent. There were no substantive violations, although there was lack of prior written notices. The Parent was a strong advocate for his son, and [] provided meaningful opportunities for engagement, although not as often as the Parent wanted or as soon as felt necessary. Still, the *de minimus* in this area. An interesting issue which emerged was [] not calling IEP meetings due to summer months and staff not being in session, and I remind us that OSEP does not pause the IDEA and programming during breaks. With that said, as I apply the standards from the aforementioned cases, I do not see how there was a denial of FAPE during the 2022-2023 and 2024-2025 school years.

IEP Implementation

Under IDEA, once an IEP is developed, the school district is legally obligated to fully implement it. Failure to do so—whether by not providing services, not following specified accommodations, or not delivering instruction as outlined—can amount to a denial of a Free Appropriate Public Education (FAPE).

- Material failure to implement the IEP = denial of FAPE.
- Schools are required to deliver all components of the IEP: academic services, accommodations, related services (e.g., OT, PT, speech), and behavioral supports.
- Minor or technical violations may not violate IDEA unless they impede the student's progress or significantly affect the educational benefit.

In [] vs [], the Parent asserts numerous violations which can be aligned with the extent to which the IEP was violated.

In *Van Duyn v. Baker School District* 5J, 502 F.3d 811 (9th Cir. 2007), the issue was Failure to provide math instruction as required in the IEP. The court held that a "material failure to implement the IEP" constitutes a denial of FAPE. In this case, the school failed to provide the math instruction for a significant amount of time. This case Clarified that not every deviation from an IEP is a violation, but material or substantial deviations are. In *L.J. v. School Board of Broward County*, 927 F.3d 1203 (11th Cir. 2019), The district failed to provide behavioral supports specified in the IEP. The court found that failure to implement behavioral strategies and supports was a material breach and led to emotional and academic harm. This reinforced that schools must implement both academic and behavioral elements of an IEP. In *Houston Independent School District v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000), the issue was that the District failed to implement parts of the IEP. The court found that significant non-implementation of the IEP supported the conclusion that the student had been denied FAPE. The court emphasized that consistency and fidelity in implementation are essential. In *Doe v. East Lyme Board of Education*, 790 F.3d 440 (2d Cir. 2015), the issue was the district failed to implement key parts of the IEP, especially around extended school year (ESY) services. The court ruled the school denied FAPE and ordered compensatory education since omitting critical services like ESY or speech therapy can lead to legal liability and remedies.

In reviewing the evidence submitted for [] vs [] and analyzing the testimony of credible witnesses, I had to weigh the extent to which this was a material violation. A material failure to implement an IEP refers to a substantial or significant failure, not just a minor or technical

deviation. Courts have ruled that not every deviation from an IEP is a denial of FAPE—only those that are "material." The standard often comes from the case *Houston Independent School District v. Bobby R.* (5th Cir. 2000), which held that a material failure occurs when the services provided are not "substantially" what was called for in the IEP. The key question is: Did the failure impede the child's ability to benefit educationally from their IEP? For example, the school fails to provide a student with speech therapy services listed in the IEP for several months. Another is a student's behavioral intervention plan is completely ignored. Or perhaps a teacher is not aware of or does not implement key accommodations in the IEP

While in [] vs. [] there are occasions when aspects of the IEP were not consistently implemented in part, the overall picture shows an IEP that did not impede the child's ability to receive FAPE in the LRE. In looking at was their failure to implement the IEP, we consider the successive dimensions of FAPE: procedural, substantive, and implementation. In the case of [], the significant provisions of []'s IEP was followed, and as far as the evidence was made available, he received some educational benefit. There does not seem to be a substantial shortfall on the part of [] regarding IEP implementation, with the exceptions described elsewhere in this analysis. [] did graduate with standards and was able to read and utilize accommodations to access general education while at [], which is weighted over the indicators from evaluations that indicate deficits in skills related to reading. The evaluation assessments are part of a whole picture and the whole picture, and the hearing officer must consider the "minor" threshold of *Van Duyn* and the substantial or significant qualifier of *Bobby R.*, that "courts must consider implementation failures both quantitatively and qualitatively to determine how much was withheld and how important the withheld services were in view of the IEP as a whole". *Wilson v. District of Columbia*, 770F.Supp. 2d 270, 275 (D.D.C. 2011). I cannot tie a lack of progress to a specific implementation failure.

IEP Data Collection

Under 34 C.F.R. § 300.320(a)(3), an IEP must include a description of:

- How the child's progress toward meeting goals will be measured; and
- When periodic reports on the progress the child is making will be provided to the parents.

If the lack of data sharing impedes the Parent's ability to participate in IEP development or results in a loss of educational benefit, it may constitute a denial of FAPE. In *Amanda J. v. Clark County School District*, 267 F.3d 877 (9th Cir. 2001), the issue was Failure to disclose a psychological evaluation to the parents. The court's ruling found a procedural violation of IDEA because the district withheld evaluative data that could have influenced the IEP. Schools must provide parents with all relevant evaluation and progress data in order to allow meaningful participation. In *L.O. v. New York City Department of Education*, 822 F.3d 95 (2d Cir. 2016), the issue was the school failed to provide sufficient progress data and documentation on services. The court ruled that the lack of documentation and data prevented meaningful parental participation and contributed to a denial of FAPE. Progress reporting and transparency in implementation are essential; data is not optional. In *Doug C. v. Hawaii Department of Education*, 720 F.3d 1038 (9th Cir. 2013), the issue was that Procedural violations, including limited communication and lack of sharing relevant records. The court emphasized the importance of parental participation and held that procedural violations, such as withholding data or failing to reschedule

meetings, can deny FAPE. This reinforces that access to student data is tied to meaningful IEP involvement. In *Genn v. New Haven Board of Education*, 219 F. Supp. 2d 296 (D. Conn. 2002), the issue is that the School failed to provide regular progress reports and withheld information about IEP goal achievement. The court found this to be a procedural violation because parents were not provided with sufficient information to evaluate progress. Schools must track and report progress, not just write goals. In *M.M. v. Lafayette School District*, 767 F.3d 842 (9th Cir. 2014), the issue is that the District failed to provide a copy of assessment protocols and scores used in evaluations. The court found this limited the parents' ability to participate in the IEP and was ruled a procedural violation of IDEA. Access to raw data, scores, and progress metrics is necessary for parental participation and legal compliance

In [] Vs [], there are data provided as part of the evaluations that were conducted. There were home-school communications with weekly ratings and narratives, which at times were not completed. There was just one example of a handwritten progress report on IEP goals for the February 2023 – June 2024 timeframe. There is testimony and an IEP recording that supports that the Parent requested access to data and was not satisfied what was provided. I think that some data were provided, but there are some minor issues here violated by []. However, I do not find this denied [] FAPE and consider these issues procedural and must be corrected.

Ed Benefit Argument Considered in [] Vs. []

Legal Standard from These Cases:

Courts have generally agreed on this threshold:

A material failure to implement the IEP—one that substantially affects the student's ability to receive educational benefit—is required for a finding of denial of FAPE. Minor or technical violations do not suffice.

This standard is widely used across circuits and comes directly from *Van Duyn* and other rulings.

To successfully challenge a district's IEP non-implementation, the student must show:

- A material failure to implement key parts of the IEP, and
- That the failure significantly deprived the student of meaningful educational benefit.

Cases against the Student/Parent emphasize that:

- Minor or technical lapses do not violate IDEA,
- Academic or functional progress undermines claims of FAPE denial,
- Courts consider the totality of services provided, not perfection.

Van Duyn v. Baker School District 5J, 502 F.3d 811 (9th Cir. 2007)

- The district failed to implement one part of the student's IEP (math instruction) with fidelity. A minor or technical failure to implement an IEP does not violate IDEA unless it is material. “A

material failure occurs when there is more than a minor discrepancy between the services a school provides and the services required by the IEP.” Not every deviation from an IEP constitutes a denial of FAPE. The failure must be material and impact educational benefit.

Houston Independent School District v. Bobby R., 200 F.3d 341 (5th Cir. 2000)

- The Parent alleged that not all IEP services were delivered. The court emphasized that the IEP implementation should be judged by whether the student made progress, not whether there was perfect compliance. “IDEA does not require a perfect education, only an appropriate one.” Educational progress, even in the face of some service lapses, may show that FAPE was provided.

C.G. v. Five Town Community School District, 513 F.3d 279 (1st Cir. 2008)

- Parent alleged multiple implementation failures. Court found the district made good faith efforts, and the student made academic progress, so there was no denial of FAPE. Courts will consider progress and intent, and a lack of perfect service delivery may not be actionable if the student still benefits educationally.

Neosho R-V School District v. Clark, 315 F.3d 1022 (8th Cir. 2003)

- Student’s IEP was not fully implemented due to staffing and scheduling issues. Despite these issues, the student received significant educational benefits. If a student receives meaningful educational benefit overall, implementation errors may not rise to a FAPE violation.

Draper v. Atlanta Independent School System, 480 F. Supp. 2d 1331 (N.D. Ga. 2007), aff’d in part

- The school district failed to implement services, but the court also examined timing and responsiveness. While some services were not implemented as designed, the court found that the failure was not sufficiently material to deny FAPE during specific timeframes.

VI. Discussion

Before applying the facts to the legal standard and whether the parties met their burden of proof in presenting their evidence and witnesses, I wish to write in plain language.

At this Hearing Officer’s core is her 25 years in special education as an educator, administrator, professor, evaluator, and policymaker. She’s taught hundreds of teacher/administrator preparation and in-service courses, ranging from Special Education and the Law to IEP Development and Assessment. She fully knows the inner workings of schools and school communities. Further, she brings the parent perspective as a parent of four now adult children with disabilities and disorders, including identical twins with autism and ADHD (and one with bipolar disorder). So while she is practiced in the federal and state rules and regulations, she brings experiential knowledge from the sides of both parties that guides her discussion, legal analysis and determinations. Yet, a determination needs to be rendered.

At the root of this case, we have a parent who has seen how his adult child has struggled since graduating from [] and demonstrates improved performance in post-secondary education when there are certain supports and accommodations in place. The Parent maintains that []’s skills were not addressed while a [] student and that AT was passed through the system, and that the Parent’s persistent request for data

and evidence of progress was not consistently provided. Further, [] was denied his right to a free, appropriate public education because he did not have an appropriate program aligned with his needs as a high school student. The Parent seems to have been aware of this concern for the four years [] attended [].

[] maintains that it provided [] with appropriate services with considerable input from [], the Parent, and evaluators which led to a successful completion of high school at standards and on time; further, a caring and dedicated staff ensured []'s IEP's were reasonably calculated to provide meaningful educational benefit, and there is no concern over his ability to participate in higher education, gain skills to live independently, and obtain employment.

The hearing officer concluded that the charter school's actions were reasonable and that it mostly provided FAPE in accordance with IDEA requirements; however, the officer found issues with some requirements which will need to be corrected in a timely way.

1. Not adequately considering the concerns of or including the Parents in the IEP decision making process in violation of MUSER §VI.2 (H) and (I) and IX.3.C(1)(b).

[] adequately considered the concerns of the Parents in the IEP decision making process. This allegation falls under IEP Parent Involvement in Legal Analysis section.

2. Failure to consider existing evaluation data and the academic, developmental and functional needs of the Student in violation of MUSER §IX.3.C (1)(c).

Not proven. This allegation falls under IEP Data Collection in Legal Analysis section.

3. Not ensuring that the Student's independent evaluations were done in a timely manner and considered by the IEP Team for possible changes in his program.

I side with [] on this. There were attempts made and Parent was looped in. There was Parent agreement. This allegation falls under IEP Implementation in Legal Analysis section.

4. Refusing to develop a comprehensive Transition Plan.

The Transition Plan was not comprehensive. This was not an adequate transition plan. Where are the transition goals? There must be one transition service for each post-secondary goal. Where is the Summary of Performance? There are violations here. This allegation falls under Transition in Legal Analysis section.

5. Denying convening the IEP Team as reasonably requested.

I did not see proof of this. This allegation falls under IEP implementation in Legal Analysis section.

6. Denying the Parent data and documentation of the Student's progress on goals or data collection on accommodations.

I side with the Parent on this. I saw inconsistent evidence. This allegation falls under IEP Data Collection in Legal Analysis section.

7. Refusing to improve IEP goals to include recommendations by the evaluators.

This was not proven. I am not sure he was ever getting specially designed, direct instruction in his areas of need as articulated in his IEP. Recommendations are to be considered, but it's not a requirement to have IEP goals when recommendations are made. This allegation falls under IEP Implementation in Legal Analysis section.

8. Relying on inappropriate measures of performance on IEP goals.

The measures may have been appropriate but this all falls under FAPE. This allegation falls under IEP Implementation in Legal Analysis section.

9. Refusing to provide parents with progress monitoring on IEP goals.

There is no evidence this refusal happened. But I was not provided with progress monitoring data and tools when I asked for it. This allegation falls under IEP Parent Involvement and IEP Data Collection in Legal Analysis section.

10. Not ensuring that the Student's educational placement is in the least restrictive environment or that a continuum of alternative placement is available to meet the Student's educational needs in violation of MUSER §X.2.B and MUSER §VI.2.

There is no evidence of a violation. This allegation falls under IEP Implementation in Legal Analysis section.

11. Not fully and adequately implementing the Student's IEP in violation of MUSER §IX.3.B(3).

I disagree with the Parent. This allegation falls under IEP Implementation in Legal Analysis section.

12. During the ~~2020-2021~~, ~~2021-2022~~, and 2022-2023 school years, the School violated the IDEA by failing to develop or revise an appropriate IEP for the Student that was reasonably calculated to enable him to make progress considering his disabilities and circumstances, failing to:

- a. Include strategies to address the Student's executive functioning disorder, ADHD, and other disabling conditions. **See the accommodations and testimony**
- b. Consider existing and new evaluation data, and the academic, developmental, and functional needs of the Student, in his IEP. **It was considered.**
- c. Comply with requirements for crafting goals and objectives specific to the Student's learning disability; emotional disturbance; health impairment; ADHD, combined type; and disorders in executive functioning. **There are no requirements for crafting goals, but what does MUSER say about needs? Some were in there but did he get SDI on them was a question. SDI happened, but was it appropriate. Was he getting SDI in decoding and encoding and developing skills, in addition to accessing accommodations and assistive technology.**
- d. Include a comprehensive Positive Behavioral Support Plan, behavioral intervention services, and modifications designed to address the Student's behavior. **Not applicable – MUSER IX.3.C (2)(a)**

- e. Include a behavioral specialist as a related consult service in the Student's IEP. **Was not a factor in the design nor during IEP decision making – IDEA does not mandate a behavior plan**
- f. Consider the concerns of the Parent in the IEP decision-making process. **Parent concerns were considered such as in the recorded IEP meeting.**

The focus was on February 2023 – June 2024. I believe the question is *actually not properly developing or revising the Student's IEP thereby depriving the Student of a Free Appropriate Public Education (FAPE)* in violation of MUSER VI.2.J.(4) and (5) and MUSER IX,3,C and D. **This allegation falls under IEP Implementation in Legal Analysis section.**

- 13. The School violated the IDEA when it failed to timely complete the psychoeducational evaluation requested by the Parent who disagreed with the school's evaluation for the Student's triennial review having taken several months to arrange it so it was too late for the information to inform changes in the IEP for consideration of compensatory services, post-graduation, other than with this action.

The Parent agreed to the terms of the evaluation. There is no evidence of a violation. This allegation falls under IEP Parent Involvement in Legal Analysis section.

VII. Conclusions of Law

Parent Allegations

- 1. Not adequately considering the concerns of or including the Parents in the IEP decision making process in violation of MUSER §VI.2 (H) and (I) and IX.3.C(1)(b). **COMPLIANCE FOUND; NO DENIAL OF FAPE**
- 2. Failure to consider existing evaluation data and the academic, developmental and functional needs of the Student in violation of MUSER §IX.3.C (1)(c). **COMPLIANCE FOUND; NO DENIAL OF FAPE**
- 3. Not ensuring that the Student's independent evaluations were done in a timely manner and considered by the IEP Team for possible changes in his program. **COMPLIANCE FOUND; NO DENIAL OF FAPE**
- 4. Refusing to develop a comprehensive Transition Plan. **NON COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND**
- 5. Denying convening the IEP Team as reasonably requested.
- 6. Denying the Parent data and documentation of the Student's progress on goals or data collection on accommodations. **NON COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND**

7. Refusing to improve IEP goals to include recommendations by the evaluators. **NON COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND**
8. Relying on inappropriate measures of performance on IEP goals. **NON COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND**
9. Refusing to provide parents with progress monitoring on IEP goals. **NON COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND**
10. Not ensuring that the Student's educational placement is in the least restrictive environment or that a continuum of alternative placement is available to meet the Student's educational needs in violation of MUSER §X.2.B and MUSER §VI.2. **COMPLIANCE FOUND; NO DENIAL OF FAPE**
11. Not fully and adequately implementing the Student's IEP in violation of MUSER §IX.3.B(3). **COMPLIANCE FOUND; NO DENIAL OF FAPE**
12. During the ~~2020-2021~~, ~~2021-2022~~, and 2022-2023 school years, the School violated the IDEA by failing to develop or revise an appropriate IEP for the Student that was reasonably calculated to enable him to make progress considering his disabilities and circumstances, failing to:
 - b. Include strategies to address the Student's executive functioning disorder, ADHD, and other disabling conditions.
 - c. Consider existing and new evaluation data, and the academic, developmental, and functional needs of the Student, in his IEP.
 - d. Comply with requirements for crafting goals and objectives specific to the Student's learning disability; emotional disturbance; health impairment; ADHD, combined type; and disorders in executive functioning.
 - e. Include a comprehensive Positive Behavioral Support Plan, behavioral intervention services, and modifications designed to address the Student's behavior.
 - f. Include a behavioral specialist as a related consult service in the Student's IEP.
 - g. Consider the concerns of the Parent in the IEP decision-making process.

COMPLIANCE FOUND; NO DENIAL OF FAPE

14. The School violated the IDEA when it failed to timely complete the psychoeducational evaluation requested by the Parent who disagreed with the school's evaluation for the Student's triennial review having taken several months to arrange it so it was too late for the information to inform changes in the IEP for consideration of compensatory services, post-graduation, other than with this action. **COMPLIANCE FOUND; NO DENIAL OF FAPE**

VIII. Order / Relief

- [] **training and procedural correction** for determining appropriate transition plans, maintaining data systems, maintaining progress reporting, ensuring accommodations, recording/issuing prior written notice, documenting procedures, and all staff understanding the disabilities such as specific learning disabilities in its school community to be completed prior to December 1, 2025. [] shall also review all transition plans for its transition-aged youth and revise to meet MUSER requirements, submit transition plans for review to the Maine Department of Education and hold IEP meetings on transitions with all transition-aged students prior to January 15, 2026.
- [] must conduct a review of special education policies, practices, and procedures. [] will revise, as appropriate, and train staff. [] will submit a copy of its updated documents and evidence of attendance or attestation statements from staff verifying their receipt of training by January 15, 2026.
- **Appeal Rights Notice**

This decision is a final administrative determination. Either party may appeal this decision by filing a civil action in state or federal court within 90 days of the date of this decision, pursuant to 34 C.F.R. § 300.516. It is so ORDERED.

Respectfully submitted,

Jacqueline Kelleher

Dr. Jacqueline P. Kelleher, MA, Ph.D.

Impartial Hearing Officer

07/11/2025