

IMPARTIAL DUE PROCESS HEARING
Maine Department of Education
FILE NO. 26.118H

In the Matter of STUDENT ¹ , by and through Parent Petitioners, v. SCHOOL DISTRICT Respondent	Date: August 14, 2026 <u>Hearing Officer</u> Lisa S. Rusk, Esq.
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FINDINGS OF FACT AND DECISION

I. JURISDICTION

This due process hearing was held, and a decision in this matter is being rendered pursuant to the Individuals with Disabilities Education Act (hereinafter “IDEA”), 20 U.S.C. § 1400 *et seq.*, and its implementing regulations, 34 C.F.R. § 300 *et seq.*, and Chapter 101 of the Maine Unified Special Education Regulation (“MUSER”).

II. BACKGROUND

The Petitioner Parent filed a due process complaint (“DPC”) with the School District (hereinafter referred to as “the District”) on April 27, 2026. This hearing officer (“HO”) was appointed on or about April 28, 2026. A scheduling conference was held on May 4, 2026. A scheduling report and order was issued to the parties on May 5, 2026.

An amended DPC was filed on May 15, 2026. A second scheduling conference was held on May 29, 2026. A scheduling report and order was issued to the parties on May 29, 2026. The District filed a motion to dismiss, and a decision on the District’s motion to dismiss was issued on June 10, 2026, granting and denying it in part.

A Notice of Prehearing Conference was issued on June 15, 2026. A prehearing conference was held on June 16, 2026. A Prehearing Report and Order was issued on June 17, 2026, setting forth the issue for the hearing. The District filed a motion for clarity, and on June 23, 2026, a decision on the District’s motion for clarity was issued to the parties. A second prehearing

¹ Personally identifiable information is attached as Appendix A to this Order and must be removed prior to public distribution. See Letter to Schad (FPCO 12/23/04)

conference took place on June 29, 2026. A Prehearing Report and Order was issued on June 30, 2026.

The due process hearing was open to the public and commenced on July 10, 2026 and continued on July 17, and July 21, 2026. The Petitioner appeared *Pro Se*. Counsel for the District was present along with the District's Special Education Director, an additional attorney and summer intern from the District's law office.

The Parent presented three witnesses including herself, the Special Education Director and the School Psychologist. The HO upheld the District's objection that the Adapted Physical Education "APE" provider was not relevant to the issues or timeframe before the HO (T:147-48). The District presented the Special Education Director as its only witness. Parent Exhibit numbers 1-5, 16-19, 25-46, 86-89, 92, 107-109, 125-126, 128-134, 153-164, 172-203 were entered into evidence. District Exhibit numbers 1-406 and 411-578 were entered into evidence. The parties submitted written closing arguments on July 31, 2026. Transcripts from the first two days of hearing were received on August 10, 2026. The transcript from the last day of hearing was received on August 12, 2026.

III. ISSUE PRESENTED

The following issue for adjudication was certified by the HO:

Whether the District failed to provide the Student a free appropriate public education between May 30, 2025 and September 28, 2025 by developing IEPs that were not reasonably calculated to enable him to make meaningful progress in light of his unique needs when it:

- a. Failed to have required members at IEP team meetings;
- b. Failed to provide an AT Living and Learning Assessment;
- c. Failed to consider information provided by the Parents;
- d. Failed to discuss the Student's transition based goals in all areas;
- e. Failed to review recommendations made in school reports;
- f. Failed to provide and/or review classroom-based assessments;
- g. Failed to provide assistive technology services, social emotional services and a positive behavior intervention plan;
- h. Failed to consider psychological, direct behavioral or occupational therapy services;
- i. Failed to consider progress on IEP goals;
- j. Failed to review ESY services; and/or
- k. Failed to consider the least restrictive environment ("LRE").

Petitioner requests relief in the form of an order that requires the Respondent to provide an independent AT Living and AT Learning Assessment, the PRC Saltillo Nano AAC device and 33 weeks of summer programming at Camp STRIVE (T:7).

IV. FINDINGS OF FACT

1. The Student is 17 years old and classified with autism, an intellectual disability and multiple disability. The Student's classification is not an issue in this hearing (R-10)².
2. His strengths include physical activities such as basketball and participation in life skills, particularly the Tiger Treats program (T:475-76). The Student successfully went out into the community with his class (T:487).
3. He attended the District's High School in its life skills program during part of the 2024-25 school year during grade 10. He was homeschooled at the start of the school year through January 2025, following suicide attempts and an episode of wetting himself at camp (R-1,8; T:266)³. It was anticipated that he would need adult programming (T:477).
4. The IEP team held six IEP team meetings between February 27, 2025 and September 2, 2025, each about two to three hours in length (T:478; 611)⁴. The Parent is an active participant in IEP meetings, shares information in advance and asks questions and provides input during the meetings (T:481).
5. The Student was due for his triennial evaluation on March 20, 2025 and the team agreed on a psychological evaluation, (cognitive rating scales), a classroom observation, speech and language evaluation and an occupational therapy evaluation (R-2).
6. A Transition Assessment Summary was conducted previously on December 12, 2023. It mentioned the Student's use of AAC and made recommendations for functional use (P-17)⁵. It also mentions instances of aggression at home and at school (P-18). The report recommends data collection and behavioral teaching strategies (P-19; R-550-73).
7. The Student had an AAC device in middle school but was not using it. He was communicating verbally across environments at the middle school (T:477-78).
8. During high school his selective mutism came more into play, particularly toward the time he left the District (T:478).

² R: followed by a numeral refers to a page of the Respondent School District's evidence.

³ T: followed by a numeral refers to a page in the Transcript.

⁴ The Special Education Director is in her third year as director. She previously served as assistant director for seven years in the District. She holds State certifications in special education K-8, building administration and director certification and has been involved in IEP meetings for the Student since he was in seventh grade (T:456; 475).

⁵ P: followed by a numeral refers to a page of the Parent's evidence.

9. The Parent requested in February of 2025 that Mainecare “Section 65” services be provided to the Student while he was in attendance at the High School. She stated that his level of support, identified by the home-based team, is around psychosis, schizophrenia and distorted reality (R-8).
10. The IEP team met on February 27, 2025 for an annual review meeting and developed an IEP for his return to school during the 2024-25 school year. The Parent was troubled that her prior concerns, including concerns from prior years, were removed from the updated annual review IEP (R-10).
11. The Parent was also concerned that information on the IEP, including his strengths and gaps in performance had not been updated since the fifth grade (R-22-23).
12. The IEP included goals for functional math and written language skills, life skills (including with the use of AAC tools), pragmatic speech, occupational therapy, positive peer interactions in a physical environment, using his AAC device for social conversations with peers and adults, following a visual schedule and identifying his feelings to adults (R-24-29).
13. His supplementary IEP aids, services, modifications and supports included modeling social skills, breaking down directions, use of manipulatives, extended response time, ed tech support at all times except guidance or social work sessions, utilization and encouragement of AAC cards/device in all settings, provision of social emotional learning support throughout the day as incidents occur, utilization of picture schedule daily, modification of mainstream classroom expectations and assessments, provision of models of class work, private bathroom to change for PE and pass/fail option for all mainstream classes (R-30-31).
14. The IEP set forth numerous testing modifications and indicated that he would have alternate assessments for classroom instruction, classroom assessment and District-wide assessment. The IEP team determined that he met the qualifications for alternate assessments for State or district-wide assessments based upon his intellectual disability (R-31).
15. Alternate assessments are available in the 11th grade. Students who are alternately assessed do not take State assessments in 10th grade (T:419).
16. His special education and related services included specially designed instruction in transition/social skills, English, math, science, adapted physical education, speech/language services (direct and indirect), occupational therapy consultation, special education social work, and ed tech support (R-32).
17. On March 3, 2025, the Parent executed a consent for evaluation which included academic testing, psychological assessment, classroom observation, speech language testing and an

occupational therapy evaluation and rating scales (R-37-38).

18. The School Psychologist evaluated the Student on March 6, 2025, administered the WISC-V, the BASC-3 and reviewed records. All of the Student's Index Scores on the WISC-V were in the extremely low range with a full-scale IQ score of 51. The School Psychologist completed the BASC-3 with the Student's Parent and Special Education Teacher (R-41-48).
19. The Psychological Evaluation indicates that the Student: "faces several behavioral and emotional concerns. According to his mother, he experiences intrusive thoughts and distorted perceptions of others, which significantly impact his interpersonal functioning, leading to a lack of peer relationships. His teacher shares concerns based on reports from home about his mental health but notes that these behaviors are not currently observed in the school setting. However, [the Student] does struggle with expressing himself, particularly when it comes to meeting his basic needs. These challenges suggest difficulties with emotional regulation and communication, which may affect his social interactions and overall well-being." (R-45)
20. He recommended interventions for autism and moderate intellectual disability, including social skills training, peer mentorship programs, a positive behavior support plan and the exploration of the use of an assistive technology device, such as text-to-speech software (R-47-48).
21. The Education Evaluation included the administration of the WIAT-IV. The Student's scores were in the extremely low range except for oral reading fluency which was average (R-50).
22. The Speech & Language Evaluation consisted of formal and informal assessments. The Student's awareness of basic social routines and the ability to judge their appropriateness was in the average range on the Clinical Assessment of Pragmatics (CAPs). The rest of his scores were in the poor or deficient range. The evaluator opined that the Student exhibits a moderate to severe disorder in the area of social-emotional/pragmatic language. The evaluator recommended services and goals. There was no mention of an AAC device or goals (R-53-61).
23. The inclusion specialist conducted a classroom observation while the Student was in band. The observer attempted two more observations but the Student was unavailable. She recommended he receive adult support during regular education classes (R-62-64).
24. The Occupational Therapy Evaluation listed formal and informal assessments. The Student was observed to have consistent bilateral coordination, deficient visual-motor integration skills and mastery of 24% of classroom mechanics tasks. The evaluator recommended OT consultation, expectations for written work and continued access to life skills programming (R-69-73).

25. The Student's reevaluation meeting was scheduled for April 1, 2025 (R-66).
26. Participating in the IEP team meeting were the Parents, representative, School Psychologist, APE provider, Speech/Language Pathologist, Special Education Teacher, social studies regular education teacher, Principal, Social Worker, Occupational Therapist, Special Education Director and non-attorney District advocate from the District's law firm (R-81-82).
27. The Special Education Director reviewed the norms they had previously established with an IEP facilitator.⁶ The Parent stated she wanted the IEP to focus on behavioral health, assistive technology support and specific behavioral intervention strategies. The evaluators reviewed their reports (R-82-86).
28. The District completed an Emotional Disturbance Evaluation Report on April 1, 2025 and found that the Student did not qualify for special services with the disability of emotional disturbance. The Parent did not agree (R-74,81).
29. The IEP team determined that the Student "experiences such adverse effect from his Autism and Intellectual Disability that he continues to require special education and accommodations to benefit from his educational program", but the Parent did not agree. (R-79, 86).
30. The School Psychologist stated that they were not seeing a lot of disorganized thinking typically associated with the Student's mental health diagnosis and that his behaviors were more closely related to his Autism. His other diagnoses did not appear to be impacting him at school (R-86). The District was not seeing the same behaviors at school as the Parent was seeing at home until the very end of his time in the District (T:488; R:553;591-92).
31. The Parent was concerned that there was no clear plan for the Student's assistive technology (R:87).
32. According to the written notice from the April 1, 2025 IEP team meeting, the IEP team agreed to add an AAC goal, amend Speech/Language services to reflect AAC 30 minutes per week, provide an AAC device capable of speech generation, provide the Parent with a consent for an AAC evaluation and provide an AAC device with speech generating technology in the interim (R-81).
33. The Parent stated she heard positive feedback regarding his transition back to school and did not think he should be removed from school at this time because he is doing well and had never been in day treatment or received behavioral health support (R-85).
34. The District provided the Student an iPad in April or May 2025 (T:324; 478).

⁶ IEP team meeting norms were developed by multiple facilitators in multiple earlier facilitated meetings (T:481-83).

35. The written notice does not reflect any discussion of AT Living and Learning Assessments.
36. A parental consent for an AAC evaluation was signed by the Parent on April 2, 2025. Again, there is no mention of AT Living and Learning Assessments (R-122-23).
37. On April 18, 2025, the Parent and the Special Education Director agreed without an IEP team meeting that all historical parental concerns would remain in the parent concern section of the IEP (R-146-47). It was standard practice for the Parent to email her concerns prior to a meeting, and the District to place those concerns in the IEP (T:310).
38. The intake form with the AAC evaluator Pine Tree Society listed an AAC Evaluation, AT Evaluation for Learning and AT Evaluation for Living (P-1-5). The Special Education office handwrote on the form that the AT Evaluations were not approved or consented to (R-184; T:511-13;520).
39. The record contains samples of the Student's functional communication with a device between January and July 2025 (P-32-46).
40. On May 7, 2025, the Student's psychiatrist wrote a letter advising of the following diagnoses: Autism Spectrum Disorder associated with irritability and aggression, Obsessive Compulsive Disorder, Anxiety disorder unspecified with Selective Mutism symptoms, Intellectual Disability and Unspecified Schizophrenia and Other Psychotic Disorder. She opined that his diagnoses should be considered in development of his IEP. She also recommended Section 65 behavioral services or an equivalent service for safety concerns in the classroom and in the community (P-25).
41. An IEP team meeting was held on May 13, 2025 to reevaluate, review post-secondary goals and for IEP amendments (R-190). The Parent read the psychiatrist's letter to the IEP team at the May 13, 2025 and again on the June 10, 2025 IEP team meeting, and the full letter is included in the written notice (R-246-47).
42. According to the written notice, the IEP team agreed to accept the consent for an FBA. Pending the FBA, the social worker would continue to work with the Student around his selective mutism and consult with staff around the use of his communication device. The team also accepted the transition plan as amended, continued participation in alternate assessments and designated ESY services of 72 hours total, including 60 hours of specially designed instruction, social work services, utilization of the AAC, speech and APE (R-191).
43. The notice indicated that the speech language pathologist stated that the dedicated AAC device has increased his self-advocacy skills, reduced pressure and made him less anxious about his communication. He was communicating with peers, acting as a leader in his group and making great progress initiating conversations. The APE provider indicated that her new focus is on tracking communication with peers and adults. The special education

teacher indicated that a variety of data showed that he was using his AAC device (iPad) and progressing well toward meeting his goals. Major gains were noted since his AAC device had been in place as stated by the APE provider, special education teacher, social worker and regular education teacher (R-192-93).

44. The Special Education Teacher stated that some girls have come forward about the Student's negative texts and that they are working with him in class on how to make better choices (R-193).
45. Behavioral intervention strategies in the IEP such as pre teaching and modeling were discussed, but the Parent requested specific skills. The team agreed to have an FBA conducted. The FBA could begin in the summer and continue into the school year (R-194-195).
46. The Special Education Teacher and Social Worker met regularly and developed and adjusted a behavior intervention plan (T:487-88;608). The Parent did not believe this was done (T:279).
47. The Special Education Teacher discussed ESY. At the time of the meeting, the location was unclear, but it would be about 3 hours per day 3 to 4 days per week. It would be a continuation of community, vocational, job skills, social skills and independence building activities (R-195). The Parent asked questions regarding ESY but received what she believed to be vague answers (T:340-41). Subsequent to this meeting it was determined that the District's ESY services would be delivered at an elementary school. Grades 7-12 would be grouped in the cafeteria (T:630).
48. The Parent disagreed with the Student's ESY placement in a K-2 building with K-12 students, including younger children. The Special Education Teacher, however, went out in the community with him regularly and did not have any concerns about him being around younger children (T:574).
49. On May 14, 2026, the parties entered into an agreement including his IEP ESY services and services at PSL/STRIVE. The STRIVE services were not part of his IEP (R-199; T:619-20).
50. On May 20, 2025, Maine Behavioral Healthcare developed a Crisis Acute Safety Plan upon discharge from the emergency department (P-26). The Parent provided it by fax and email to the High School (Parent Testimony).
51. On May 21, 2025, the Student's psychiatrist recommended constant supervision due to his thoughts of harm to himself and others and recommended that he see the school counselor regularly (P-27). His IEP recommended ed tech support at all times except guidance and social work sessions and social work services five times per week for 15 minutes (R-230-31).

- 52.** The AAC Evaluation took place on May 22, 2025. The evaluator noted that the Student was currently using a school iPad with the Predictable app. The evaluator interviewed the Student's Special Education Teacher and Parent, reviewed his most recent IEP and evaluations and observed him at lunch. The AAC Evaluator observed him utilize his iPad and iPhone and noted he had the skills to utilize a device smaller than the iPad. After the evaluation, the Parent immediately provided an iPhone and downloaded the Predicable app (R-241-43; T:329).
- 53.** On May 28, 2025, the Parent wrote to the Special Education Teacher regarding the critical need for an FBA and behavioral intervention plan with trained personnel (P-28).
- 54.** On May 29, 2025, the Principal called and emailed the Parent regarding threatening messages to another Student and advised that the Student would be suspended (P-29-30). The Student did not return to school.
- 55.** On May 29, 2025, the Parent responded to the Principal voicing her frustrations that her concerns regarding the Student's mental health have not been taken seriously over the last few years (P-31).
- 56.** An amended IEP dated June 2, 2025 was generated. It included the concerns of the Parent sent via email, as well as parental concerns raised in prior meetings (R-200-05).
- 57.** The IEP states that the Student exhibits behaviors that impede his learning or that of others requiring positive behavioral interventions and supports and other strategies to address the behavior (MUSER IX.3.C.(2)(a)) (R-205).
- 58.** The IEP contains goals for functional math skills, functional writing (including the use of his AAC device), life skills (including using his AAC device), initiation of conversations, self-advocacy, identification of feelings in others, use of his AAC device, functional life skills requiring fine motor skills, increase of positive peer activities in a physical activity environment, responding to peers and adults in social conversations verbally or with his AAC device, following a visual schedule, identifying an adult and expressing his needs or wants with social worker services (R-222-30).
- 59.** Under supplementary aids, services, modifications and supports, he was to receive modeling and practicing appropriate social skills, directions broken down, use of manipulatives, Ed tech support at all times except guidance or social work sessions, utilization and encouragement of AAC cards/device, social emotional learning support throughout day as incidents occur, picture schedule, modification of mainstream classes expectations and assessments, models of expected work, private bathroom to change for PE and pass/fail option for all mainstream classes (R-230-31).
- 60.** His services remained the same except the designation of speech language services was modified to reflect both push in services and direct instruction in how to use the AAC device (R-232).

61. The IEP contained a post-secondary transition plan with goals, a planned course of study and transition services and activities (R-234-36).
62. On June 3, 2025, the Special Education Director wrote to the team advising that two due process complaints were filed, staff members were meeting with the family regarding a safety plan and that she was looking to schedule an IEP team meeting next week (P-88). On June 10, 2026, she wrote that the expedited due process request was dismissed (P-89).
63. On June 3, 2025, the Parents were advised in writing of a suspension from school for 10 school days until June 12, 2025, for sending threatening messages to another student (R-238).
64. The High School created a safety plan on June 3, 2025 (R-240).
65. The AAC Evaluator recommended in her report dated June 5, 2025, but received on July 16, 2025, that the following be acquired: an iPhone utilizing guided access so that it remains a designated communication device, Predictable app for iOS and a lanyard/case (R-244).
66. Written notice was provided for an IEP team meeting on June 10, 2025 to review post-secondary goals and transition services, IEP amendments and program review per Parent request (R-245). It was a continuation of the May 13, 2025 meeting.
67. The following individuals were present at the June 10, 2025 IEP team meeting: the Parent, AAC evaluator, the Principal, the Special Education Teacher, the Social Worker, a non-attorney advocate from the District's law firm, a general education teacher, an APE provider and an individual from Family Services (Testimony of Special Education Director).
68. The IEP team discussed the use of an AAC device (T:293-95). The IEP team agreed to modify all goals to reflect progress could be achieved through verbal or AAC as recommended by the AAC Evaluator (see R-278-86). The parental concerns section was also updated, including the letter from Dr. (R-246,248).
69. The IEP team discussed behavioral concerns (T:605). The Special Education Director indicated that the FBA would be conducted by the District's Board Certified Behavior Analyst ("BCBA") (R-247).
70. The Special Education Teacher indicated that the Student recently made progress in advocating for himself and was using his AAC device more consistently. The team considered but declined the Parent's request to add Behavioral Health Professional ("BHP") services to the IEP, because the Student's supports and services were appropriate for his school-based needs (R-248-249).

71. The School District does not utilize BHPs, but instead uses Ed Techs I, II and III. In addition, they employed a social worker, special educator and a speech-language pathologist to meet the Student's needs (T:607).
72. The Parent testified that discussions do not take place at IEP team meetings, rather she presents information and the District responds (T:267).
73. Following the IEP team meeting, the parties entered into a resolution session in response to the DPC. A written notice was issued whereby the District documented that it offered an additional one hour per week of social work services and the addition of a goal regarding intrusive thoughts. The District discussed with the Parent the provision of an additional staff member to the Student during ESY. The District declined to add a BHP to the IEP, and a resolution was not reached (R-251-53).
74. The District tracked progress along goals quarterly on April 4, 2025 and June 13, 2025 (R-526-49). A binder of the Student's work, including data collection was sent home by the Special Education Teacher at the end of the school year (T:599).
75. Between June 11, 2025 and June 27, 2025 District staff were in email contact with the Project STRIVE summer camp in an apparent effort to coordinate those items agreed to in the May 14, 2025 agreement between the parties, however, the Student's attendance at Project STRIVE was very limited (R-416-22; see also R-199). The Parent believes some of these are "fake emails".
76. The summer camp started on June 16, 2025. He did not return on the second day. (Testimony of Parent).
77. On June 16, 2025, the District's BCBA emailed the Parent and indicated that he had met with the Special Education Teacher the previous week to conduct an initial behavior interview. The teacher also filled out a behavioral questionnaire. His next steps were to review file materials, conduct observations and meet with the Parent (R-429).
78. On June 17, 2025, the Student was discharged from Section 28/RCS services as he was determined to need more intensive services. They recommended one-to-one support in the school setting and a Behavior Intervention Plan. This document was provided to the Special Education Director and BCBA by the Parent (R-432-435).
79. The Parent provided the program discharge summary to the District on June 19, 2025, which stated that a further lack of support in the Student's life would affect his future ability to receive services (P-107-09).
80. He attended camp on June 18, 2025, and the camp was closed on June 19, 2025. He was struggling and unable to attend on June 20, 2025. On June 22, 2025, the Parent advised that the Student was in the hospital and would not be in camp that week. The camp advised that

the Student was a pleasure to be around and was sorry to hear that (P-200-03).

- 81.** The Student was in crisis all summer. The Parent testified that he was deteriorating because the school was not providing services (T:305-06).
- 82.** On June 23, 2025, the Student was admitted to _____ Hospital () with his Parent for reported suicidal and homicidal ideation. During his stay his medications were adjusted which resulted in a positive response. No clear indications of psychosis were noted during his hospital stay, and he continued to deny thoughts of suicidal or homicidal ideation. This was reported to Dr. _____ (R-305). His primary diagnosis was autism spectrum disorder with secondary diagnoses of obsessive-compulsive disorder and unspecified psychosis (R-314); (see also P-175-99).
- 83.** The Discharge Summary stated that at the time of discharge there was no indication that the Student presented, due to mental illness, with an imminent and substantial risk of harm to themselves or others. At that time, he denied suicidal/homicidal ideation and did not demonstrate any agitation/aggression/self-injurious behaviors or evidence of psychosis. Due to his history of developmental disability and comorbid mental health disorders, ongoing outpatient follow-up would be required (R-315).
- 84.** As for the academic setting, the Discharge Summary recommended notifying school of his frustration with particular peers to mitigate risks, monitoring transition to school and checking for any dangerous items, and supervised interactions with identified peers (R-320).
- 85.** On July 15, 2025, the Special Education Director emailed the team that one of the Parent's due process complaints had been dismissed with prejudice (P-125). The Parent questioned why the team was not sent information regarding the Student's status (Parent Testimony).
- 86.** On July 23, 2025, the Parent emailed a request that future IEP team meetings be facilitated (P-126). The Special Education Director refused, and a facilitator was not provided since both parties needed to agree (Parent Testimony). The District had engaged numerous facilitators with the Parent in the past (Special Education Director Testimony).
- 87.** On July 30, 2025, the Student underwent a Biopsychosocial Assessment. It was determined that his behaviors were currently too dangerous for services to be provided in the home and community. There was an immediate risk to the Student, his family members and community members. A recommendation was made for specialized care in a residential facility to be provided as immediately as possible (P-153-164).
- 88.** The Parent and the Special Education Director had a telephone call on August 4, 2025 documented in a written notice. The Parent indicated that she did not think the Student was capable of going back to school given his past presentation, current presentation and threatening behavior. The Special Education Director indicated that the District continued to offer ESY programming and could provide 2:1 support. The Parent indicated that five

residential applications for placement were made. The Parent wanted to have an IEP meeting to discuss placement at a special purpose private school (“SPPS”). They agreed an IEP meeting to discuss programming was the necessary next step (R-333-36).

89. On August 11, 2025, the Parent was sent an advance written notice for a program review at parent request. It stated that post-secondary goals and transition services would be discussed (P-128). The Parent stated that transition goals were not discussed at this meeting (Parent Testimony).
90. On August 19, 2025, the District received a psychological evaluation from . The report recommended safety-related measures, individual treatment and parental involvement and support. Particular to the academic setting, recommended safety planning as referenced above (R-346-350).
91. A written notice was issued for the August 21, 2025 IEP team meeting to consider placement in an SPPS (R-351). Present at the meeting was the Special Education Director, the Parent, the Social Worker, the Special Education Teacher, a regular education teacher and a representative from Family Services (Testimony of Special Education Director and R-352-53). The Parent testified that no deep discussions regarding reports or recommendations took place (T:300).
92. The team agreed placement at an SPPS was necessary at this time due to increased safety needs. His home-based team was pursuing residential placement approved by Children’s Residential Care Facility Services (R-354).
93. A written notice was generated for a September 2, 2025 IEP team meeting for reevaluation, post-secondary and transition services and amendments to the IEP. Present were the Special Education Director, the Parent, the Social Worker, the Special Education Teacher, a general education teacher, the Speech-Language Pathologist/AAC evaluator, and Principal. The Occupational Therapist was unable to attend the meeting (R-356-59).
94. The team agreed to recommend a new FBA when the Student returned to programming with peers (T:314-15; R-355). The team accepted the AAC Evaluation. The team agreed to add updated psychological information to section 4a of the IEP. The recommendation for placement was an SPPS. During the pendency of the search, it was recommended that he receive one hour of school each day to include specially designed instruction in vocational areas with related services layered in small pieces to help him reacclimate to a school setting and not overwhelm him (T:646-47). The Parent asked what this meant and stated that “if I was a teacher and I was given that , I’d be like, okay so what am I supposed to do or what’s happening.” (T:314). The Parent is not a teacher.
95. The team did not agree with the Parent to add direct OT services at this time but to revisit the issue at a future meeting with the OT present (R-355-56).
96. The AAC Evaluator was present and reviewed her evaluation. She emphasized it was

important for his AAC device to be separate from his phone. The Parent had already provided a separate phone for the Student. She indicated that the AT Living and Learning assessments had not been completed but could be completed once he returned to programming, and the team agreed (R-358; T:360).

97. The AT Living and Learning Assessments were supposed to be completed during the summer, but he did not attend ESY programming and attended Project STRIVE for only a couple of days (T:358).

98. An IEP was generated from the September 2, 2025 meeting (R-361-403).

99. Packets were sent by the District to two SPPSs on September 5, 2025 and an additional packet was anticipated to be sent (R-474).

100. The District expressed a willingness to start the one hour tutoring sooner if the Parent wanted to waive the written notice timeline. The District also offered virtual tutoring (R-475-76). The Parent requested additional specific information regarding the programming (R-479).

101. On September 15, 2025, the Parent wrote to the Special Education Director requesting more specifics regarding the program pending special placement. The Special Education Director reiterated that the IEP team agreed that the Student would receive one hour per day of specially designed instruction in vocational areas with related services layered in smaller pieces to help the Student acclimate to the school setting. The services providers would be in contact and consult with the special education teacher during this time. The instruction would be at the Central Office from about 12:00 to 1:00 each day by either an Education Technician II under supervision of the Special Education Teacher or with the Special Education Teacher. The remaining evaluative components from Pine Tree could occur during this time as agreed (P-130-31).

102. The Parent requested more clarification on September 15 and 16, 2026. The Special Education Director indicated the District was prepared to commence instruction on September 17, 2026. The instruction would be aligned with his goals and accommodations. As requested by the Parent in the September 2, 2025 meeting, the initial focus would be on relationship-building, approached through a vocational skills lens. Transportation information was provided (P-131-32).

103. The Parent continued to object to the lack of more specific information regarding programming and advised the Special Education Director to not send a bus without their consent (P-133-34).

104. On September 22, 2025, the District issued a Stand Ready notice to the Parents documenting its offer to provide one hour of tutoring each day pending the search for an out of district placement, as the Parent had declined such services in person or remotely.

The AT Living and Learning assessments would be provided when the Student returned to programming (R-404-05).

105. On that date the District also advised the Parent that one of the SPPSs wanted to observe the Student (R-485-86).
106. On September 26, 2025, the Parent emailed the Special Education Director that the Student could not attend the tutoring due to the District's failure to provide specificity regarding the delivery of the program and the lack of input of the OT, APE provider and school psychologist (R-487; P-172-73).
107. On September 30, 2025, the Parent advised the Special Education Director that she had enrolled the Student in the school district where he would now be residing (R-48; T:364).
108. The Student continued to deteriorate and was placed in a group home located in a different school district in October of 2025 (T:363). He currently attends an SPPS (T:367).
109. His current IEP team has not discussed AT Living and Learning Assessments. His current school district has been focusing on his behaviors, and he could not benefit from the AT Assessments right now (T:362-63).
110. The Special Education Director has not been made aware of claims of falsification of records of correspondence. The District utilizes Acuity for special education recordkeeping. Reports can appear different depending on when they are printed. For example, an IEP report or progress report may indicate the student's then current grade (T:463-65).

V. CONCLUSIONS OF LAW AND DECISION

The IDEA guarantees children with disabilities a FAPE. (20 U.S.C. § 1400(d)(1)(A)). IDEA's procedural requirements are designed to ensure that the process "will be informed not only by the expertise of school officials, but also by the input of the child's parents or guardians." *Id.* (citing Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1, 580 U.S. 386, 399 (2017)).

"[T]he centerpiece of the [IDEA's] education delivery system for disabled children" is the Individualized Education Program ("IEP"). Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1, 137 S. Ct. 988, 994 (2017) (quoting Honig v. Doe, 484 U.S. 305, 311 (1988)). The child's "IEP team" develops the IEP, which is "a written statement for each child with a disability" that must, among other requirements, detail the child's academic achievement and functional performance, provide measurable annual goals for the child, describe how the child's progress towards those goals will be measured, and describe what services the child will receive. 20 U.S.C. § 1414(d)(1)(A). The "IEP team" that develops the IEP must include at least the child's parents,

their regular education teacher, special education teacher and a representative of the local education agency. *Id.* § 1414(d)(1)(B). The IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” Endrew F. v. Douglas Cnty. Sch. Dist., 580 U.S. 386, 399 (2017). The Endrew F. standard requires examining the IEP’s goals, services, and supports, and considering the child’s unique needs, to determine whether it is substantively adequate to confer educational benefits. *Id.*; see also Johnson v. Boston Pub. Schs., 906 F.3d 182 (1st Cir. 2018).

When determining whether an IEP offers FAPE, a hearing officer must review the IEP team’s decisions not in hindsight, but in terms of what was reasonable “at the time” the IEP was developed. Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992 (1st Cir. 1990). The IEP is “a snapshot, not a retrospective.” Lessard v. Wilton-Lyndeborough Coop. Sch. Dist., 518 F.3d 18,29 (1st Cir 2008). It is necessarily based only on the information available to the team at the time of the meeting, Roland M., 910 F.2d at 992. The test is not whether the IEP would “achieve perfect academic results” or whether it is “better or worse” than a proposed alternative. Further, the IEP is to be judged as a unitary whole, and not piecemeal. *Id.* The statute ensures an ‘appropriate’ education “not one that provides everything that might be thought desirable by loving parents” Walczak v. Florida Union Free School District, 142 F3rd 119, 132 (2nd Cir. 1998).

An IEP must also ensure that the child is educated “in the ‘[l]east restrictive environment’ appropriate for” that child. C.D. ex rel. M.D. v. Natick Pub. Sch. Dist., 924 F.3d 621, 625 (1st Cir. 2019)(quoting 20 U.S.C. § 1412(a)(5)). The “least restrictive environment” (“LRE”) requirement “embod[ies] a ‘preference’ for ‘mainstreaming’ students with disabilities in ‘the regular classrooms of a public school system.’” *Id.* (quoting Bd. of Educ. v. Rowley, 458 U.S. 176, 20203 (1982)). The IEP team, in designing an IEP to ensure that the child receives a FAPE, must “choos[e] a placement” in which the child will receive educational instruction “that strikes an appropriate balance between the restrictiveness of the placement and educational progress.” *Id.* at 631. The court “weighs this preference for mainstreaming ‘in concert with the’ FAPE mandate.” *Id.* (quoting Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992-93 (1st Cir. 1990)).

Pursuant to the United States Supreme Court’s decision in Schaffer v. Weast, 546 U.S. 49 (2005), the Parent, as the party initiating the hearing, bears the burden of proof. See D.B. v. Esposito, 675 F.3d 26, 35 (1st Cir. 2012). The Parent alleges both procedural and substantive violations resulting in a denial of FAPE. A finding of a denial of FAPE based upon a procedural violation may only be made if the procedural inadequacies (i) impeded the child’s right to a FAPE; (ii) significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child or (iii) caused a deprivation of educational benefit (34 CFR 300.513). The Parent has the burden of proof and burden of production in this case.

The scope of this case for my determination involves the District’s actions over a very limited time period: May 30, 2025 through September 28, 2025. During that timeframe the Student’s mental status significantly deteriorated and there were a number of IEP team meetings to address worsening circumstances. The relationship between the Parent and the District has been strained, and the Parent has alleged numerous failures by the District during that time period

resulting in the denial of a FAPE to the Student.

A. REQUIRED MEMBERS AT IEP TEAM MEETINGS

Pursuant to federal and State law and regulations, the IEP team is required to have the following members: (1) the child's parents; (2) no less than one regular education teacher for the child which should include career and technical or adult education teachers, if appropriate (if the child is, or may be participating in the regular education environment); (3) no less than one special education teacher or, where appropriate, not less than one special education provider (licensed or certified special education provider); a representative of the school administrative unit who (a) is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities; (b) is knowledgeable about the general education curriculum; (c) is knowledgeable about the availability of resources of the local educational agency and has written authorization to obligate the unit; (5) at the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related service personnel at appropriate; (6) an individual who can interpret instructional implication of evaluations results, who may be another member of the team; (7) the child, when applicable; and (8) a caseworker for a child who is a ward of the state. (MUSER VI.2.B; 20 USC 1414(d)(1)(B) and 34 CFR 300.321(a)). The IEP meeting "serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions" (MUSER VI.2.I).

The Student's annual review meeting took place on February 27, 2025. A reevaluation meeting was held on April 1, 2025 and was continued on May 13, 2025, where evaluators presented their evaluations. There are three IEP team meetings that took place during the relevant timeframe: June 10, 2025; August 21, 2025 and September 2, 2025.

The Special Education Director testified that the following individuals were present along with her at the June 10, 2025 IEP team meeting: the Parent, Speech-Language Pathologist/AAC evaluator, the Principal, the Special Education Teacher, the Social Worker, a non-attorney advocate from the District's law firm, a general education teacher, an APE provider and an individual from Family Services (Testimony of Special Education Director).

At the August 21, 2025 IEP team meeting the following individuals were present: the Special Education Director, the Parent, the Social Worker, the Special Education Teacher, a regular education teacher and a representative from Family Services (Testimony of Special Education Director and R-352-53).

At the September 2, 2025 IEP team meeting the following individuals were present: the Special Education Director, the Parent, the Social Worker, the Special Education Teacher, a general education teacher, the Speech-Language Pathologist/AAC evaluator and the Principal. The Occupational Therapist was unable to attend the meeting (R-356-59).

Not every related service provider or evaluator is required to attend every meeting. The Special Education Director testified un rebutted to the presence of the legally required members at each of

the meetings. The Special Education Director testified that she did not recall the Parent requesting the inclusion of any other staff members during the IEP team meetings in question (T:642). Although the Parent may have desired additional individuals at the June and Summer meetings, she has failed to demonstrate that the legally required members were not in attendance.

B. PROVISION OF AT LIVING AND LEARNING ASSESSMENTS

The record reflects that there was no signed consent from the Parent for AT Living and Learning Assessments. The IEP team discussed and agreed to an AAC Evaluation at the April 1, 2025 reevaluation meeting. A consent for the AAC evaluation was signed by the Parent on April 2, 2025 (R-122). The intake form listed the AAC evaluation, and without consent or authorization, the AT Living and Learning Assessments. The Special Education office subsequently modified the intake form to remove the unauthorized AT Living and Learning Assessments (R-184).

The Special Education Director testified that she subsequently agreed on her own, after consulting legal counsel, to have the District provide the AT Living and Learning Assessments (T:514). However, a new consent for evaluation was never signed (T:514). On September 2, 2025, the IEP acknowledged that “two components of the Pine Tree evaluation remain outstanding and the team noted that this was because [the Student] was unavailable for assessment this summer” (R-358). There was agreement that the assessments would be done when the Student returned to programming. He did not return to programming in the District. The IEP team in his current school district has not discussed AT Living and Learning Assessments. His current school district has been focusing on his behaviors, and he could not benefit from the AT Assessments at this time (T:362-63).

A state agency client who is placed by the state agency in a residential placement shall be considered a resident of the school administrative unit where the residential placement is located (MUSER IV.4.E.(1)). The Parent should address additional assessments with the current district when appropriate for the Student. There was no denial of FAPE by the District, because the Student was unavailable.

C. CONSIDERATION OF INFORMATION PROVIDED BY PARENTS

There is no question that the Parent is a steadfast advocate for the Student and active participant at IEP team meetings (T256-57). She has promptly provided to the District any private reports, letters from professionals or discharge summaries in her possession. In fact, an email protocol was set up by the District because of the Parent’s long email history (T:258). She asks questions and voices her concerns at every IEP team meeting. The IEP from the June 10, 2025 IEP team meeting lists the then most recent concerns of the Parent, as well as her concerns dating back to February 27, 2024. In addition to District testing, it lists Parent provided information, including the full text of a letter written by the private psychiatrist in May of 2025 (R-256, 271-72). Despite her active involvement, the Parent has long been frustrated by the District’s responses to her requests.

The notice from the June 10, 2025 IEP team meeting indicates that the Parent was an active participant at the meeting and read the private psychiatrist's May 2025 letter in its entirety. Goals were modified to reflect the use of AAC, and the parental concerns section of the IEP was updated. The IEP team disagreed with the Parent regarding adding Mainecare BHP services and determined they had appropriate staff to meet his needs (R-248-49).

The IEP drafted after the August and September meetings contains updated concerns from the Parent (R-361-62). The written notice from the August 21, 2025 meeting reflects that the Parent was an active participant. The hospital discharge summary provided by the Parent was reviewed. The recommendation for residential services was reviewed. The recommendations from a recent psychological evaluation were reviewed (R-353). The team discussed and recommended placement in an SPPS.

At the September 2, 2025 IEP team meeting, the Special Education Director stated that the IEP team had reconvened in order to allow IEP team members time to review the Student's recent evaluations and give thoughtful input (R-357). The AAC evaluator reviewed her AAC evaluation. The Student's temporary program during a search for a new placement was reviewed in an effort to try to ease him back into a school setting following his difficult summer (R-358).

It is clear that the IEP team considered the information provided by the Parent and adjusted programming as the Student's needs became more defined. While the Parent may not have agreed with all of the team's determinations, that is not a reflection as to whether or not the information was considered. The IEP team is required to work toward consensus, but the District has the ultimate responsibility to ensure the child receives a FAPE (MUSER VI.2.I). The IEP team was not obligated to accept all of the recommendations of the Parent or the outside evaluators/experts. "The mere fact that a separately hired expert has recommended different programming does nothing to change this, as deference is paid to the District, not a third party." See also M.H. v. New York City Dept. of Educ., 10 CIV. 1042 (RJH), 2011 WL 609880 (S.D.N.Y. Feb. 16, 2011); see also McCallion v. Mamaroneck UFSD, 10 CV 6207 (VB), 2013 WL 237846, at *10 (S.D.N.Y. Jan. 22, 2013), G.W., 2013 WL 1286154, at *19 ("The Court is not at liberty to favor Dr. Scalzo's opinion, a privately hired expert, over the deference that should appropriately be accorded to the District in matters of educational policy.") and E.C. v. Bd. of Educ. of City Sch. Dist. of New Rochelle, 11 CIV 9429 (ER), 2013 WL 1091321, at *25 (S.D.N.Y. Mar. 15, 2013); Watson v. Kingston City Sch. Dist., 325 F. Supp. 2d at 145, (N.D.N.Y. 2004)(see also Rowley, 458 U.S. at 207 and C.D. v. Natick Pub. Sch. Dist., 924 F.3d 621, 630 (1st Cir. 2019)).

I find that the Parent failed to meet her burden of proof to demonstrate that the IEP team did not consider information she provided to it during May 30, 2025 through September 28, 2025.

D. DISCUSSION OF TRANSITION BASED GOALS IN ALL AREAS

The IEP team was required to adopt a transition plan during the Student's 9th grade school year, or the year in which he turned 16, whichever comes first. A transition assessment summary was prepared in December of 2023 (P-16). Transition goals are to be related to training, education,

employment, and where appropriate independent living skills (MUSER Section IX.3.A(1)(h)). The June and September meeting notices reference post-secondary goals and transition services (R-245; R-355).

It cannot be disputed that the Student was in crisis during the Summer of 2025. The IEP team meetings were two to three hours in length. The IEP transition goals include an education/training goal, an employment goal, including continued access to Vocational Rehabilitation Services (VR) and an independent living goal (R-400-01). While there does not appear to be a revision in his transition goals or services during this timeframe, his transition plan was updated to note a Certificate of Completion pathway, if possible. (R-402; T:310-11). The IEP team had just met on May 13, 2025 and reviewed his transition plan and made updates (R-194). The Parent testified that there was no discussion on how the Student was to meet his transition goals (Testimony of Parent). It is the transition services that set forth the services “needed to assist the child in reaching those goals” (MUSER Section IX.3.A(1)(h)(ii)). The IEP lists a planned course of study related to his goals and transition services and responsible agencies (R-401-03).

A transition plan was in place and reviewed just prior to the timeframe in question. There is no evidence in the record that the goals were not appropriate to meet the Student’s needs at that time. I find that the District’s failure to review the transition-based goals in all areas during May 30, 2025 through September 28, 2025, while the Student was experiencing a mental health crisis, was not a denial of FAPE.

E. REVIEW OF RECOMMENDATIONS MADE IN SCHOOL REPORTS

The Student’s reevaluation took place on April 1, 2025. The Student’s recent occupational therapy evaluation was reviewed by the occupational therapist. The Parent asked questions about the evaluation, and the evaluator replied (R-82-84). The school psychologist reviewed the recent psychological evaluation. The psychologist discussed his report and recommendations (R-84-85). The speech-language pathologist reviewed the recent speech language evaluation and made recommendations (R-85-86). The Special Education Director reviewed the recent observation report (R-86).

The IEP team reconvened on May 13, 2025 and then met again on June 10, 2025. The Building’s Safety Plan was reviewed given the recent incident (R-247). The AAC evaluator made recommendations that were reviewed and adopted by the team (R-248).

At the August 21, 2025 IEP team meeting, there were no new school reports to review, but the IEP team reviewed the hospital discharge summary and recommendations from a psychological report (R-352-53).

The AAC evaluation was reviewed by the evaluator, and her recommendations were discussed (R-358). The recommendations of the school psychologist from his Spring evaluation along with recommendations from the psychological evaluation from the hospital, information from the

discharge summary, information from the risk assessment information from Clarvida were also added to the IEP (R-356).

There is no requirement under the IDEA or MUSER that an IEP team adopt every recommendation in school-based reports. It is clear that the Parent was not satisfied with the IEP team's failure to adopt select recommendations in school-based reports, but she has not met the burden of proof that this was a denial of FAPE between May 30, 2025 and September 28, 2025.

F. PROVISION AND REVIEW OF CLASSROOM-BASED ASSESSMENTS

The Special Education Director testified that the Special Education Teacher kept the Student's classroom assessments in a binder and that the binder was provided to the Parent at the end of the school year (T:599). The Student's annual review and reevaluation had already occurred in February and April 2025, respectively, and the Special Education Teacher spoke to his progress. The Student did not attend District programming between May 30, 2025 and September 28, 2025 and there was consequently no classroom-based assessments during that time period.

I do not find the District denied the Student a FAPE by not reviewing classroom-based assessments during May 30, 2025 through September 28, 2025.

G. PROVISION OF ASSISTIVE TECHNOLOGY SERVICES, SOCIAL EMOTIONAL SERVICES AND A POSITIVE BEHAVIOR INTERVENTION PLAN

The IEP team must consider whether the Student needs assistive technology devices and services (MUSER IX.3.C(2)(e)) If a team determines an AT device or service is necessary and specifies the device in an IEP, the school district is responsible for providing it at no cost to the parent (MUSER XI). Assistive technology and AAC was a repeated topic of conversation for the IEP team. In June of 2025, the Special Education Teacher indicated that the Student recently made progress in advocating for himself and was using his AAC device more consistently. (R-248-49). The IEP team agreed to modify all goals to reflect progress could be achieved through verbal or AAC as recommended by the AAC Evaluator (see R-278-86).

At the September IEP team meeting, the AAC Evaluator was present and reviewed her evaluation. She emphasized it was important for his AAC device to be separate from his phone. The Parent had already provided a separate phone for the Student. She indicated that the AT Living and Learning assessments had not been completed but could be completed once he returned to programming, and the team agreed (R-358).

With regard to social emotional services, the June 10, 2025 IEP recommended a goal for the Student to discuss his needs, wants and feelings that arise and how he can ensure that these needs be met (R-229). In order to meet the goal, the IEP recommended social work services five times per week for 15 minutes. There is also a goal to reduce verbal prompting and guided interactions and to respond verbally or with his AAC device for social interactions (R-228). His speech goals

also address communicating his feelings and needs (R:225). The IEP recommends modeling and practicing appropriate social skills. He has Ed tech support at all times, except during guidance or social work sessions. He is to be provided SEL support throughout his day as incidents occur (R-229-30).

MUSER defines an FBA at Section II.14. Positive Reinforcement Interventions and Supports are defined as: “the use of positive techniques designed to assist a child to acquire educationally and socially appropriate behaviors and to reduce patterns of dangerous, destructive, disruptive or defiant behaviors. Positive reinforcement strategies and interventions may be determined by the IEP Team and may be based upon the results of functional behavior assessments as defined in definition 12 above” (MUSER Section 11.27).

At the IEP team meeting on May 13, 2025, the IEP team agreed to accept the consent for an FBA. Pending the FBA, the social worker would continue to work with the Student around his selective mutism and consult with staff around the use of his communication device and provide strategies for staff members (R-191,194). Behavioral intervention strategies in the IEP such as pre teaching and modeling were discussed, but the Parent requested specific skills. The team agreed to have an FBA conducted. The FBA could begin in the summer and continue into the school year (R-194-195).

The Special Education Teacher and Social Worker met regularly and developed and adjusted a behavior intervention plan (“BIP”) (T:487-88;608). The Parent did not believe this was done (T:279). Although the Parent did not receive a copy of the BIP, I have no reason to find that the testimony of the Special Education Director was not credible.

At the June 10, 2025 IEP team meeting, the Special Education Director indicated that the FBA would be conducted by the District’s Board Certified Behavior Analyst (BCBA) (R-247). On June 16, 2025, the District’s BCBA emailed the Parent and indicated that he had met with the Special Education Teacher the previous week to conduct an initial behavior interview. The teacher also filled out a behavioral questionnaire. His next steps were to review file materials, conduct observations and meet with the Parent (R-429). The Student was hospitalized later that month.

On September 2, 2025, the IEP team recommended per Parent request to cancel the FBA and conduct a new FBA when the Student returned to programming with peers (R-356).

I find that the Parent has failed to meet her burden that the District denied the Student a FAPE between May 30, 2025 and September 28, 2025 in relation to AT services, social/emotional services and a positive BIP.

H. CONSIDERATION OF PSYCHOLOGICAL, DIRECT BEHAVIORAL OR OCCUPATIONAL THERAPY SERVICES

The IEP team determined that the Student would receive counseling services from the school’s social worker. The Parent wanted additional behavioral health support services during

the school day. The School District does not utilize BHPs, but instead uses Ed Techs I, II and III. In addition, they employed a social worker, special educator and a speech-language pathologist to meet the Student's needs (T:607).

The District's occupational therapist evaluated the Student in the Spring of 2025 and recommended OT consultant services (R-73). The Parent asked to revisit the recommendation and consider direct services at the September 2, 2025 meeting, but the OT was unavailable at that meeting prior to the start of the school year (R-357). There is no evidence that the District's failure to recommend and provide direct OT during this time period was a denial of FAPE.

I. CONSIDERATION OF PROGRESS ON IEP GOALS

The IEP team is required to meet at least annually to review the Student's progress on IEP goals (MUSER IX.3.D(1)(a)). The IEP team reviewed the Student's goals at the annual review meeting on February 27, 2025 (R-2). His progress was discussed at the May 13, 2025 IEP team meeting (R-192-93). There is no statutory or regulatory requirement that the IEP team review progress on IEP goals continually throughout the year. While the Parent called into question the accuracy of the progress reports/monitoring, she failed to meet her burden of proof that the District denied FAPE by not considering progress on IEP goals or that there were any irregularities in the IEP progress reports during May 30, 2025 to September 28, 2025 rising to the level of a denial of a FAPE.

J. REVIEW OF ESY SERVICES

ESY services were first discussed on May 13, 2025. Although the school did not know the precise location of the services, they discussed the parameters of the program. Seventy-two hours of programming was recommended. The Special Education Director indicated that the FBA could begin with observations by the BCBA during the ESY program (R-195, 232-33). The Ed tech support would continue during the ESY program (R-230). ESY would be about 3 hours per day 3 to 4 days per week. It would be a continuation of community, vocational, job skills, social skills and independent building activities (R-195). The Parent asked questions regarding ESY but received what she believed to be vague answers (T:340-41). Subsequent to this meeting it was determined that the District's ESY services would be delivered at an elementary school. Grades 7-12 would be grouped in the cafeteria (T:630).

On May 14, 2025, the parties entered into an agreement to resolve a hearing request (DOE No. 25.103). In addition to the IEP team recommended ESY services, the District agreed to contract with PSL/STRIVE summer camp to provide services in the afternoon only for 11 week between June and August 2025 and 2026. The agreement stated that the District would provide transportation to PSL/STRIVE and pre-teaching in the areas of bath-rooming and communication so that he could attend. The District also agreed to provide weekly check-ins and consult with

PSL/STRIVE staff regarding his selective mutism and AAC device. Observations for the FBA would also occur during PSL/STRIVE (R-199).

The Parent objected to that lack of additional adult support at PSL/STRIVE as part of his ESY program, but PLS/STRIVE was never recommended as a school-sanctioned ESY program. The District agreed to fund the camp, provide transportation and some consultation with camp staff as part of a resolution agreement, but it was never recommended as part of a FAPE by an IEP team.

The Parent raised her concern regarding the Student attending ESY where young students may be in the same space (R-249). She disagreed with the Student's ESY placement in a K-2 building with K-12 students, including younger children. The Special Education Director went out in the community with him regularly and did not have any concerns about him being around younger children (T:574).

I find that the IEP team reviewed ESY service and did not deny the Student a FAPE with regard to its offering of service or their location.

K. CONSIDERATION OF LEAST RESTRICTIVE ENVIRONMENT

An IEP must also ensure that the child is educated "in the '[l]east restrictive environment' appropriate for" that child. C.D. ex rel. M.D. v. Natick Pub. Sch. Dist., 924 F.3d 621, 625 (1st Cir. 2019)(quoting 20 U.S.C. § 1412(a)(5)). The "least restrictive environment" ("LRE") requirement "embod[ies] a 'preference' for 'mainstreaming' students with disabilities in 'the regular classrooms of a public school system.'" *Id.* (quoting Bd. of Educ. v. Rowley, 458 U.S. 176, 20203 (1982)). The IEP team, in designing an IEP to ensure that the child receives a FAPE, must "choos[e] a placement" in which the child will receive educational instruction "that strikes an appropriate balance between the restrictiveness of the placement and educational progress." *Id.* at 631. This preference for mainstreaming is weighed "in concert with the FAPE mandate." *Id.* (quoting Roland M. v. Concord Sch. Comm., 910 F.2d 983, 992-93 (1st Cir. 1990); Falmouth Sch. Dept. v. Mr. and Mrs. Doe, 44 F.4th 23 (1st Cir. 2022)).

At the August 21, 2025 IEP meeting, the team agreed placement at an SPPS was necessary at that time due to increased safety needs. His home-based team was pursuing residential placement approved by Children's Residential Care Facility Services (R-354). The Student is currently in an SPPS. Based upon his escalating social/emotional and behavioral needs, an SPPS was the LRE for the Student during the relevant timeframe

The record does not set forth a basis for finding that the LRE was not considered by the IEP team.

ORDER

Based upon the findings of fact and conclusions of law herein, it is determined that the Parent failed to meet her burden of proof that the District denied the Student a FAPE during May 30, 2025 through September 28, 2025.

NOTICE OF APPEAL RIGHTS

Any party aggrieved by this decision has the right to appeal by filing a Petition for Review in Maine Superior Court or Federal District Court within 90 days of receipt of the decision.

Dated: August 14, 2026

Lisa S. Rusk

Lisa S. Rusk, Esq.
Hearing Officer

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APPENDIX A

Student:

Parent:

High School:

Special Education Director:

Special Education Teacher:

School Psychologist:

Occupational Therapist:

Speech-Language Pathologist:

AAC Evaluator:

APE Provider:

Social Worker:

Principal: