

Complaint Investigation Report

Jones v. York CDS

February 12, 2021

Complaint # 21.037CS

Complaint Investigator: Julia N. Pothén, Esq.

Date of Appointment: December 16, 2020

I. Identifying Information

Complainant: Benjamin Jones, Esq., Disability Rights Maine
160 Capitol Street, Suite 4
Augusta, ME 04330

Respondent: Child Development Services – York County (“CDS-York”)
Roberta Lucas, Acting Director of CDS
23 State House Station
Augusta, Maine 04333

Lisa-Kay Folk, Site Director of CDS-York

Students: (“Student 1”)

DOB:

(“Student 2”)

DOB:

(“Student 3”)

DOB:

Other unnamed students who qualify for special education services provided by CDS-York and are potentially impacted by CDS-York’s policies, practices, or procedures.

II. Summary of Complaint Investigation Activities

On December 15, 2020, the Maine Department of Education received a Systemic Complaint Request against CDS-York from the Complainant. Therefore, the current investigation covers the period of December 15, 2019 to present. See MUSER XVI(4)(B)(3). The complaint investigator was appointed on December 16, 2020.

Systemic complaints are those that allege that a school district or Intermediate Education Unit (“IEU”) has a policy, practice, or procedure that has resulted in a violation of the Maine Unified Special Education Regulations (“MUSER”) that is, or has the potential to be, applicable to a group of students, named or unnamed. After the receipt of the Complainant’s systemic complaint, a Draft Allegations Letter was sent to the parties by the complaint investigator on December 30, 2020, detailing three alleged systemic violations of the MUSER. The complaint investigator held a telephonic Complaint Investigation Meeting on December 30, 2020.

The Complainant specifically identified three students (Student 1, Student 2, and Student 3) during the process of this complaint investigation, but the complaint also alleged that numerous unnamed students who qualify for special education services provided by CDS-York, and many of whom are similarly situated with Student 1, Student 2, and Student 3, were also negatively impacted by CDS-York’s practices, policies, and/or procedures.

The complaint investigator received and reviewed 762 pages of documents from CDS-York. These documents included Individualized Education Plans (“IEPs”) and other relevant documentation, such as Written Notices, Evaluations, and email communications for the individually named and unnamed students. Additionally, these documents included CDS-York’s response to the allegations, along with details about the CDS’ practices, policies, and procedures. The investigator also received and reviewed 59 pages of additional documents from the complainant.

Interviews were conducted between January 27, 2021 and February 8, 2021. The complaint investigator interviewed the parents of all three named students, the Acting Director of Maine CDS, the Site Director of CDS-York, the CDS-York Program Manager, two CDS-York Case Managers, a CDS-York IEP Administrator, the Director of York County Community Action Corporation (York County Head Start), the Director & the Disabilities Coordinator of the Opportunity Alliance County (Cumberland County Head Start), the former Acting Director of the Morrison Center, Student 1’s Occupational Therapist, and Student 1’s Community Case Manager.¹ The complaint investigator reviewed all documents provided, considered all information collected through interviews, and evaluated all written responses provided by the parties.

III. Preliminary Statement

This systemic complaint involves three named students who currently receive special education services as administered by CDS-York. The named students are all years old. Two of the three named students do not currently attend preschool programs

¹As per the standards of practice for conducting complaint investigations, the complaint investigator used her discretion with regards to witnesses interviewed; therefore, not all of the witnesses identified by the parties were interviewed as part of this investigation.

or receive any specially designed instruction because their previous schools have closed. Those two students are currently on waitlists for new programs. The third named student currently attends a preschool program but is only receiving 75% of Specially Designed Instruction (“SDI”) due to capacity limitations at current placement. The systemic complaint also references alleged educational harm to various other unnamed students who are currently going without needed special education services in CDS-York’s catchment area because they are on waitlists for preschool programming or related services.

Beyond the named and unnamed students, this systemic complaint alleges that CDS-York is utilizing policies, practices, or procedures that violate the MUSER and have the potential to cause educational harm to children aged 3 to 6 years whose special education services are provided by CDS-York. This complaint investigation has only examined the policies, practices, and procedures at CDS-York; therefore, the determinations in this report do not reflect on the CDS’ practices in other counties throughout the State of Maine.

IV. Allegations

This systemic complainant alleges the following three violations:

- A. CDS-York does not provide all students with a free and appropriate public education (“FAPE”). MUSER II(13); MUSER IX(3)(B); MUSER IV(4)(A); MUSER IX(3)(B); 34 CFR 300.17; 34 CFR 300.323(a).
- B. CDS-York artificially limits the placement options for students, thereby not providing students with an education in the least restrictive environment (“LRE”). MUSER X(2)(B); 34 CFR 300.114(a)(2)(i-ii).
- C. CDS-York has not ensured that students have access to a continuum of alternative placements to meet their needs, including Headstart, Kindergarten, Reverse Mainstream, public preschool, and group child care. MUSER X(2)(B); MUSER X(2)(C); 34 CFR 300.115.

V. Factual Findings

Student 1

1. Student 1 is four years old, and qualifies for special education based on diagnosis of Autism Spectrum Disorder (“ASD”). See Student 1’s IEP, dated October 29, 2020. Child Development Services in York County

(“CDS-York”) is responsible for delivering Student 1’s special education services under Part B of the IDEA.²

2. Student 1’s most recent Individualized Education Program (“IEP”), dated October 29, 2020, provides for Specially Designed Instruction 5 x 3 hours per week. Student 1 also requires 3 x 30 minutes per week of Speech and Language Services, 6 x 30 minutes per quarter of Assistive Technology Services, 2 x 45 minutes per week of Occupational Therapy, and 1 x 30 minutes per month of Occupational Therapy consultation. Student 1 also receives transportation services. Student 1’s IEP requires 1:1 adult support for all services. Id.
3. On or around January 8, 2020, CDS began fully implementing Student 1’s IEP as written at a Morrison Center program located within MSAD 6’s Edna Libby Elementary School. The Student began receiving OT and Speech and Language services around this time as well. See Student 1’s Service Log, provided by CDS-York; Interview with Student 1’s parents on January 28, 2021.
4. On March 15, 2020, Governor Mills proclaimed a state of civil emergency in Maine due to the COVID-19 pandemic, and on March 31, 2020, the Governor issued a “stay at home order,” prohibiting in-person, classroom instruction at K-12 schools through May 1, 2020. See “An Order Regarding Further Restrictions on Public Contact and Movement, Schools, Vehicle Travel, and retail Business Operations,” (“Public and private K-12 schools statewide have terminated in-classroom instruction in accordance with my recommendation of March 15, 2020. It is hereby Ordered that all such schools shall remain closed for classroom or other in-person instruction until at least May 1, 2020 unless otherwise ordered.”).
5. As a result of the COVID-19 pandemic and in response to the Governor’s orders, Student 1’s preschool program closed for in-person services on March 16, 2020. The Student received no services at all between March 16, 2020 and April 15, 2020. See Student 1’s Service Log, provided by CDS-York; Interview with Student 1’s parents on January 28, 2021.
6. Beginning on May 11, 2020, Student 1 was offered a limited amount of remote instruction (approximately 30 minutes per day of group circle time on ZOOM). Id. However, the remote instruction offered was not specially designed for Student 1, was not appropriate to meet needs as identified by IEP, and was inaccessible to Student 1. See Complaint Investigation Report #21.036C, dated February 12, 2021.

² Student 1’s parents have filed a separate, individual due process complaint against CDS-York, and more details about the provision of Student 1’s special education services can be found in individual complaint investigation report. See Complaint Investigation Report #21.036C, dated February 12, 2021.

7. Despite multiple requests from Student 1's parents, no other options for remote or in-person instruction have been identified by CDS-York. As such, Student 1 has received zero hours of Specially Designed Instruction since last day of preschool on March 13, 2020.³ Id.
8. Despite the challenges with effectively implementing the Student's remote services, the IEP Team was not reconvened until the Student's annual review on October 29, 2021. See Written Notice for IEP Team Annual Meeting on October 29, 2020.
9. During Student 1's October 29, 2020 IEP Team Meeting, Student 1's parents, Occupational Therapist, and Community Case Manager suggested that Student 1 may be ready for a less restrictive environment. The Written Notice states, "Parents and [Case Manager] questioned if [Student 1] would get back into a program sooner if [redacted] was listed under a 2:1 or 3:1 ratio. It was discussed that, without current information available as to how [Student 1] is functioning in a classroom setting, and [redacted] was still requiring full adult support for many goals, that change in ratio to a less restrictive environment should be determined once [Student 1] has had the benefit of attending a program again and the school recommend[s] that [Student 1] does no longer require 1:1 support." Id.
10. At present, Student 1 has not been placed into a program, [redacted] is not being offered SDI in any form, and no further steps have been taken to determine whether Student 1 still requires 1:1 adult support in the classroom. The Student is receiving home-based Occupational Therapy services and Speech and Language services in accordance with [redacted] IEP. See Complaint Investigation Report #21.036C, dated February 12, 2021.

Student 2

11. Student 2 is four years old, and [redacted] qualifies for special education services based on [redacted] diagnoses of Autism Spectrum Disorder ("ASD"), cerebral palsy, and sensory processing & non-verbal disorder. See Student 2's State Complaint Investigation Form, dated January 19, 2021; Interview with Student 2's parent on February 8, 2021. CDS-York is responsible for delivering Student 2's special education services under Part B of the IDEA.⁴
12. Student 2's most recent IEP, dated October 2, 2020, provides for 5 x 6 hours per week of Specially Designed Instruction. Student 1 also requires 4 x 30

³ Student 1 has received varying amounts of Speech and Language services and Occupational Therapy services between March 30, 2020 and the present. Student 1 currently is receiving Speech and Language services and Occupational Therapy services in accordance with [redacted] IEP.

⁴ Student 2's parent has filed a separate, individual due process complaint against CDS-York, and more details about the provision of Student 2's special education services can be found in [redacted] individual complaint investigation report, which is scheduled for publication by March 26, 2021. See Complaint Investigation Report #21.043C.

minutes per week of Speech and Language Services, 3 x 30 minutes per week of Occupational Therapy, 3 x 30 minutes per week of Physical Therapy, and 2 x 30 minutes per week of Counseling services, as well as 12 x 1 hour annually of BCBA consultation and transportation services. Student 2's IEP requires 1:1 adult support for all services. See Interview with Student 2's parent on February 8, 2021; Letter from Complainant on December 28, 2020; Written Notice for Student 2's IEP Team Meeting on January 14, 2021.

13. Prior to the COVID-19 pandemic, during the start of the 2020-2021 school year, Student 2 attended the Morrison Center in Wells, Maine, receiving some portion of the special education services required by IEP.⁵ See Interview with Student 2's parent on February 8, 2021.
14. Shortly following the issuance of the Governor's "stay at home order" on March 31, 2020, the Morrison Center in Wells, Maine closed for in-person classroom services. Id.
15. Student 2 was originally offered some ZOOM sessions to participate in daily "circle time" and remote music class. However, the remote instruction offered was not specially designed for Student 2, was not appropriate to meet needs as identified by IEP, and was inaccessible to Student 2. Student 2's parent informed CDS-York that would not continue to utilize the remote services that were being offered because they were not meeting Student 2's needs. Id.
16. While the Morrison Center in Wells, Maine was closed for in-person learning, Student 2 also did not receive any related services remotely, such as PT, OT, Counseling, or Speech & Language services. Student 2's parents enrolled their daughter in a private daycare setting for a number of months, and Student 2 continued to work with a private Speech and Language pathologist in home. Id.
17. Despite the challenges with effectively implementing any of Student 2's remote services, IEP Team was not reconvened to discuss an alternative plan. Additionally, CDS-York did not offer any services in Student 2's daycare setting. Id.

⁵ In individual due process complaint, Student 2's parent alleges that Student 2 was not receiving full special education services, including some of Specially Designed Instruction and some of related services during various periods of time between January 25, 2020 and present. Detailed findings about these issues can be found in Complaint Investigation Report #21.043, which is scheduled for publication by March 26, 2021.

18. Student 2 began attending the Morrison Center in Wells, Maine in-person again on August 31, 2020, and IEP services were largely implemented in accordance with IEP during the following months.⁶ Id.
19. On December 18, 2020, Student 2's parents were informed that the Morrison Center was closing its pre-kindergarten program, effective on January 15, 2021. See Student 2's State Complaint Investigation Form, dated January 19, 2021.
20. Student 2's parents were informed by CDS-York that no alternative in-person programs were available for Student 2 to receive in-person SDI. Although Student 2 has now been added to various waitlists, Student 2's parents were told that their daughter is unlikely to be accepted into any currently operating program during the 2020-2021 school year due to long waitlists across York county. Id.; see Interview with Student 2's parent on February 8, 2021.
21. Student 2 was offered a minimal amount of remote SDI through a relatively new CDS-York remote program (one hour, three times a week), but Student 2's parent believed the program's format would be ineffective for Student 2 due to age and specialized needs. As such, Student 2's parent declined these services. See Letter from Complainant dated December 28, 2020; Interview with Student 2's parent on February 8, 2021.
22. After a request from Student 2's parent, Student 2's IEP Team met on January 14, 2021 to discuss alternative options for implementing Student 2's IEP after the Morrison Center closed. See Student 2's State Complaint Investigation Form, dated January 19, 2021; Written Notice from Student 2's IEP Team Meeting on January 14, 2021.
23. CDS-York is currently aiming to open a CDS-run school in early to mid-February 2021, but Student 2's parents have not received any further updates about whether Student 2 can begin attending school again. In the meantime, Student 2's IEP is not being fully implemented. Additionally, Student 2's parent has now been informed that CDS might be able to provide staff to work with Student 2 in a daycare setting.⁷ See Interview with Student 2's parent on February 8, 2021; Written Notice from Student 2's IEP Team Meeting on January 14, 2021.

⁶ However, it appears that Student 2 was not receiving Speech & Language services at the Morrison Center until December 8, 2020. See Interview with Student 2's parent on February 8, 2021; Letter from Complainant on December 28, 2020.

⁷ Student 2's parent was originally informed by Student 2's Case Manager that CDS-York could not provide itinerant teaching staff in a daycare setting. See Interview with Student 2's parent on February 8, 2021.

24. Student 2's parents have not expressed any concerns about Student 2's 1:1 adult support ratio or about whether Student 2 is being educated in the least restrictive environment. Id.

Student 3

25. Student 3 is four years old, and [redacted] qualifies for special education based on the category of Other Health Impairment ("OHI") due to [redacted] diagnosis of Attention Deficit Hyperactivity Disorder ("ADHD"). See Interviews with Student 3's parent on February 1, 2021 & February 8, 2021. CDS-York is responsible for delivering Student 3's special education services under Part B of the IDEA.
26. Student 3's most recent Individualized Education Program ("IEP"), effective August 31, 2020, provides for 5 x 4 hours per week of Specially Designed Instruction. Student 3 also requires 3 x 30 minutes per week of Speech & Language services, 2 x 30 minutes per week of Occupational Therapy, and 2 x 30 minutes per week of Physical Therapy. Student 3's current IEP requires 1:1 adult support for all services (although [redacted] original IEP required 2:1 adult support). Id.
27. On November 1, 2019, CDS-York began fully implementing Student 3's IEP as written at the Shooting Stars Program in Scarborough, Maine. Student 3 began receiving [redacted] Speech & Language services at this time as well.⁸ Id.
28. As a result of the COVID-19 pandemic and in response to the Governor's orders, on March 16, 2020, Student 3's preschool program closed for in-person services.
29. Student 3 was offered a limited amount of remote instruction (approximately 1 hour per day of group meeting time on ZOOM and 30 minutes per week for a check-in with [redacted] special education teacher). Id. However, according to Student 3's parent, none of the remote instruction offered was specially designed for Student 3, nor was it appropriate to meet [redacted] needs as identified by [redacted] IEP. Otherwise, Student 3 received no specially designed instruction between March 16, 2020 and June 6, 2020, and [redacted] was given no alternative options to provide these services. Id.⁹
30. Between July 14, 2020 and August 14, 2020, Student 3 received Extended School Year ("ESY") services. [redacted] attended the Shooting Stars Program for

⁸ Student 3's initial IEP became effective on October 10, 2019, but [redacted] placement was not initially available. As such, [redacted] received no special education services between October 10, 2019 and November 1, 2019. Notably, Student 3's initial IEP did not require OT or PT services until [redacted] IEP was amended in September 2020. See Interviews with Student 3's parent on February 1, 2021 & February 8, 2021.

⁹ Student 3 received some virtual Speech & Language services between March 16, 2020 and June 6, 2020. See Interviews with Student 3's parent on February 1, 2021 & February 8, 2021.

4 hours per day, 5 days per week, with a 1:1 adult support ratio. All ESY services were provided in accordance with the Student's IEP. Id.

31. On September 8, 2020, the Shooting Stars Program reopened for the 2020-2021 school year. Due to COVID-19 related concerns, Student 3 is only receiving 5 x 3 hours per week of SDI (instead of the 5 x 4 hours per week needs according to IEP). The Student currently receives 30 minutes per week of Physical Therapy (rather than the 60 minutes per week required by IEP). Id.
32. At present, no efforts have been made by CDS-York to compensate for Student 3's unmet needs or to provide an alternative option for Student 3's ongoing unfulfilled service needs. Id.
33. Student 3's parents support a 1:1 adult support ratio for their son, and they have no reported concerns about whether Student 3 is being educated in the least restrictive environment. Id.

Unnamed Students

34. The total number of students served by CDS-York fluctuates significantly over the course of any given year, as children turn 3 years old and transition from Part C early intervention services to Part B special education services, and, at the end of each school year, as older children transition into kindergarten.
35. Currently, CDS-York serves 489 students with active IEPs, and CDS-York acknowledges that approximately 20% of students served by CDS-York (about 99 children) are not currently receiving their full special education services, as required by their individual IEPs. See CDS-York Response to Systemic Complaint, dated January 8, 2021.
36. In addition to Student 1 and Student 2, CDS-York has identified 75 other children who are presently on some type of waitlist awaiting a program placement, as of January 8, 2021. Id.
37. CDS-York also provided a list of "Children Awaiting Placement" as part of this complaint investigation on January 13, 2021. That list includes the names of **88 students** (including Student 1 and Student 2) who are awaiting placement for a program or service. Of those 88 students, **51 students** are listed as awaiting a programming placement to receive Specially Designed Instruction. Of those 88 students awaiting a program or service, **37 students** are currently awaiting more than one service (i.e. SDI and OT and Speech & Language services). Of the 88 students on the list, **75 students** had been waiting more than 30 days for a placement as of January 13, 2021.¹⁰ See

¹⁰ Presumably, the number of students who have been waiting longer than 30 days for placement is likely to increase in the coming weeks and months because some of the 13 students who have been waiting less than

“Children Awaiting Placement” spreadsheet, provided by CDS-York on January 13, 2021.

38. In addition to the 88 children awaiting placement for services, CDS-York has identified another 5% of their total student group (approximately 24 students), who, like Student 3, are not receiving their full IEP services, even though these students are placed. See CDS-York Response to Systemic Complaint, dated January 8, 2021.
39. When interviewed for this complaint investigation, CDS and CDS-York staff all demonstrated a proper understanding of their obligations, per MUSER IX(3)(B)(3), to implement a student’s IEP as soon as possible following the IEP Team Meeting, and no later than 30 days after the IEP Team’s initial identification of a student who needs special education and supportive services.
40. Nevertheless, all staff members interviewed also described a very high demand for placements in special education programs in York County for children ages 3 to 6 years receiving Part B services. This high demand existed prior to the current COVID-19 pandemic, and many CDS-York staff members described a frequent scenario where children who turns 3 years old during the late winter or spring, or who are identified for services in the late winter or spring, regularly go without programming until summer or fall because placements are already at capacity by that time of year.
41. CDS-York recognized this common problem in its complaint response, stating, “[T]o the extent an IEP service is not immediately available upon the effective date of a student’s IEP, it has been the practice of CDS-York to make up services at a mutually agreeable time, typically in the summer. Such services would be provided in addition to any Extended School Year (“ESY”) services that the IEP Team determined were necessary.” See CDS-York Response to Systemic Complaint, dated January 8, 2021.
42. All CDS and CDS-York staff members also confirmed during interviews that the COVID-19 pandemic has grossly exacerbated existing placement difficulties by reducing the capacity of current programs. Program space is very limited due to necessary social distancing measures, unexpected and sudden closures of special education programs such as the Morrison Center, and reductions in the workforce for special education jobs. Many CDS-York staff members described the waitlist of children awaiting placement as larger

30 days for placement appear to be placed on waitlists for SDI at programs, such as the Margaret Murphy Centers for Children or Waban, which already have lengthy waitlists for the current school year. Additionally, the list of “Children Awaiting Placement” is likely to expand as additional children in York County turn 3 years old and transition from Part C services to Part B services. See “Children Awaiting Placement” spreadsheet, provided by CDS-York on January 13, 2021.

than ever before due to the COVID-19 pandemic. See Interviews with CDS-Staff on February 3, 2021 & February 5, 2021.

43. During interviews, CDS staff and CDS-York staff also properly understood their obligations, per MUSER IX(3)(B)(3), to reconvene the IEP Team if a student's IEP cannot be fully implemented due to an inability to hire or contract with the professional staff necessary to implement a student's IEP. They recognized that the purpose of reconvening the IEP Team is to identify alternative service options for the student and to determine whether any amendment to the IEP is necessary to address the initial inability to implement the IEP as planned. Id.
44. However, multiple CDS-York staff members also candidly acknowledged during interviews with the complaint investigator that CDS-York has not consistently reconvened the IEP Teams when a student is placed on a waitlist for programming for more than 30 days. For example, Student 1, Student 2, and Student 3's IEP Teams were not reconvened within 30 days after each student stopped receiving special education services in accordance with their IEPs in Spring 2021. CDS-York staff acknowledged during interviews that Student 1, Student 2, and Student 3 are not the only ones who experienced this procedural breakdown. Id.
45. Equally concerning, CDS-York staff acknowledged to the complaint investigator that, when IEP meetings have occurred during a service interruption, IEP Teams have frequently neglected to identify alternative service options for students, relying on a CDS-York practice (described above) of waiting until a student can be enrolled in a program in the summer or fall, rather than attempting to provide alternative arrangements for services in the meantime, particularly with regard to specially designed instruction. Id.
46. In sum, there is a clear indication that numerous unnamed students served by CDS-York have been affected by CDS-York's practices of: 1) adding students to long waitlists for programs that are unlikely to accept the student until the summer or following fall; and 2) neglecting to reconvene the IEP Team when the student awaiting placement does not begin receiving services within 30 days.

COVID-19 Specific Challenges, Practices, and Procedures¹¹

47. When the COVID-19 pandemic required schools to close in March 2020, CPS and CPS-York were faced with an extraordinary challenge to provide ongoing special education services during an unprecedented national public health crisis. In particular, the population of 3 to 6 year old students who receive Part B special education services is especially difficult to service remotely.
48. In April 2020, various staff members at CDS-York instructed Case Managers, IEP Administrators, and service providers that ESY determinations would be placed on hold. The CDS-York Program Manager stated, “Without knowing what the summer will bring, we are not putting ESY on places, so as to avoid an SPU [Services Previously Unmet] or Comp Ed situation that we cannot fulfill. We cannot agree to provide a service knowing that we may not have the means due to COVID-19.” See Email from CDS-York Program Manager to Director of Therapy Services at the Morrison Center, dated April 9, 2020.
49. On May 20, 2020, the CDS-York Director advised Part B CDS-York staff as follows, “...when determining ESY for children, COVID-19 is not to be considered. ESY is being determined based on their March quarterly. Everyone has regressed during COVID-19 so that does not count.” See Email from CDS-York Site Director to CDS-York staff, dated May 20, 2020; see also Email from CDS-York Site Director to CDS-York staff, dated May 27, 2020 (“...ESY – which is an IEP team determination and should be based on the March quarterly and for remote services ONLY.”).
50. Beginning on June 15, 2020, CDS re-instated the option of in-person Part B services on a child-by-child bases for ESY services; however, due to the widespread community transmission of COVID-19 in York County, ESY was to remain in a remote platform unless a case-by-case determination was made that a child was unable to meaningfully access their program remotely. See Email from CDS State Director, dated June 10, 2020; Email from CDS-York Program Manager to CDS-York Case Managers and IEP Administrators, dated June 11, 2020.
51. Similarly, during April 2020, CDS-York staff initially communicated with Case Managers, IEP Administrators, and service providers that students with unmet needs due to COVID-19 related service gaps could not receive compensatory services during April school vacation. Instead, only students

¹¹ Because the specific allegations and requested corrective action for this systemic complaint did not address any and all service interruptions caused by the COVID-19 pandemic (instead focusing largely on service interruptions caused by waitlists and program capacity issues), this section of the factual findings will not be an exhaustive examination of all of CDS’ responses to service interruptions caused by the COVID-19 school closures. Nevertheless, this section does consider the policies and practices that CDS-York implemented with respect to the named children and unnamed children who experienced a loss of services due to the COVID-19 pandemic due to a lengthy waitlist or program capacity issues.

with documented unmet needs prior to March 16, 2020 were eligible to receive compensatory hours for Services Previously Unmet (“SPU”).

52. Quickly, CDS revised that position, stating, “Over April Break, services can be provided to those students for whom authorizations for services were created prior to the transition to the remote provision of supports and services. Services can also be provided to students who have received significantly less services than the frequency and intensity indicates on the IEP...Those students for whom services have only recently begun should not receive services during April break since no services are owed nor have they received significantly less services than the frequency and intensity identified on the IEP indicates.” See “Part B/619 Contracted Provider Q & A,” by CDS State Director Roy K. Fowler, dated April 15, 2020.
53. On May 20, 2020, the CDS-York Director advised Part B CDS-York staff as follows, “...do not worry right now about SPU for time during COVID-19. Those decisions and calculations are still being figured out at the state level. More information will come.” See Email from CDS-York Site Director to CDS-York staff, dated May 20, 2020; see also Email from CDS-York Site Director to CDS-York staff, dated May 27, 2020 (“I need to stress one more time that SPU during COVID-19 is not to be discussed at this time...this should NOT be discussed in teaming or meetings, if an outside provider or parent bring them up, it is the responsibility of the Part B Case Management Team to give guidance about this happening in the future and to end the conversation.”).
54. On June 15, 2020, the CDS-York Director advised Part B CDS-York staff again, stating, “Just a reminder that if a child received ANY remote service or the parent was offered and didn’t respond or the parent declined, the child is NOT eligible for ANY COVID-19 SPU.” See Email from CDS-York Site Director to CDS-York staff, dated June 15, 2020.
55. In November 2020, CDS-York opened a remote classroom in an attempt to meet the needs of students who are still awaiting classroom placements. See Email from CDS-York Site Manager and CDS-York staff, dated October 27, 2020. Currently, CDS-York is attempting to open multiple in-person classrooms within the next few months to meet additional needs of the many students who continue to await classroom placements. See Interview with CDS-York Director on February 5, 2021.

Least Restrictive Environment & Continuum of Alternative Placements

56. All CDS and CDS-York staff members interviewed were well-versed in CDS-York’s policies to provide students with special education services in the least restrictive environment. CDS-York case managers and IEP Administrators described an individualized process by which the members of each child’s IEP Team considers a full continuum of program options,

choosing the least restrictive option, whether that is a head start classroom, a public pre-kindergarten program, or a special purpose private school. The staff members agreed that the IEP Team must make a determination based on individualized data. See Interviews with CDS-Staff on February 3, 2021 & February 5, 2021.

57. Additionally, CDS has provided CDS-York staff members with accurate and detailed training about the importance of accurately determining a student's least restrictive environment. See "Child First" training, provided by CDS-York.
58. Importantly, numerous CDS-York Case Managers and a CDS-York IEP Administrator described the challenging process whereby IEP Team Members convene to determine the least restrictive environment for a 3-year-old child who has had little experience in a classroom setting, yet may demonstrate behaviors that create a safety risk, such as bolting. However, all staff members interviewed noted that IEP Teams regularly receive feedback from a child's service providers about necessary adjustments to the initial determination about the child's adult support ratio. See Interviews with CDS-Staff on February 3, 2021 & February 5, 2021.
59. CDS-York currently has 42 children placed in public preschool programs, and 27 children placed in Head Start classrooms. Also, CDS-York currently has children placed in more than 100 different programs, including public pre-k, head start, group child care, and special purpose private schools. See CDS-York Response to Systemic Complaint, dated January 8, 2021.

VI. Determinations

- A. CDS-York does not provide all students with a free and appropriate public education ("FAPE"). MUSER II(13); MUSER IX(3)(B); MUSER IV(4)(A); MUSER IX(3)(B); 34 CFR 300.17; 34 CFR 300.323(a). **Systemic Violation Found Regarding the Practice of Delaying or Denying FAPE for Students Placed on Waitlists.**

Children in Maine, ages birth to twenty-two who have disabilities, may not be excluded from the benefits of services to which they are entitled under the IDEA. 34 CFR 300.34; MUSER XI. The Maine Department of Education shall ensure the provision of appropriate services, regardless of the nature and severity of a child's disability or developmental delay. MUSER I(2).

Federal and State law provide that all children with disabilities have available to them a free appropriate public education ("FAPE") that emphasizes special education and

related services designed to meet their unique needs and prepare them for further education, employment, and independent living. See 34 CFR 300.101; 34 CFR 300.531; MUSER I. FAPE requires special education and related services that are reasonably calculated to enable the child to make progress appropriate in light of the child's unique circumstances. See *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017).

A child's Individualized Education Plan ("IEP") details these necessary special education and related services, and the IEP must be implemented as written, including all required components. 34 C.F.R. 300.323(c); MUSER IX(3)(B)(3). The failure to implement a student's IEP can result in a denial of FAPE. See *Endrew F. v. Douglas Cty. Sch. Dist.*, 137 S.Ct. 988, 999 (2017). However, not every deviation from an IEP constitutes a denial of FAPE. See *L.C. and K.C. v. Utah State Bd. Of Ed. et al.*, 43 IDELR 29 (10th Cir. 2005).

Material failures to implement an IEP will result in a denial of FAPE. See *Sumter Cty. Sch. Dist. 17 v. Heffernan*, 642 F.3d 478, 484 (4th Cir. 2011); *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir.2007) ("a material failure to implement an IEP violates the IDEA."); *S.D. v. Portland Public Sch.*, 2014 WL 4681036, 6 (D. Me. 2014) ("In addition to developing an IEP that is reasonably calculated to provide meaningful educational benefits, a school district is required to implement the IEP in accordance with its requirements. Although perfect implementation is not necessarily required, courts have found that 'the failure to implement a material or significant portion of the IEP can amount to a denial of [a free appropriate public education]'" (internal citations omitted).).

Van Duyn details further, "[a] material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. And, the 'materiality standard does not require that the child suffer demonstrable educational harm in order to prevail.'"(citations omitted). 502 F.3d 811, 822 (9th Cir.2007).

Neither the IDEA nor the MUSER contemplate a scenario where public schools closures are required by a civil emergency. As such, there is currently no direct legal framework included in IDEA, Section 504, or MUSER, detailing the rights of special education students during this unprecedented COVID-19 pandemic.

Nevertheless, the Office of Special Education Programs (“OSEP”), within the US Department of Education’s Office of Special Education and Rehabilitative Services, has provided limited guidance to assist states and special educators with their roles in continuing to satisfy federal guidelines. Specifically, OSEP has specified, once a school begins providing educational services to the general student population,¹² a school district “must make every effort to provide special education and related services” in accordance with each student’s IEP and in a manner that ensures a free, appropriate public education for all eligible students. See Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, dated March 12, 2020, Office of Special Education Programs, available at <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>. Importantly, the circumstances surrounding the COVID-19 pandemic do not necessitate a waiver of CDS-York’s responsibility to provide children with a free, appropriate public education (“FAPE”), unless schools are unable to provide educational services in any form to the entire student population. Id.

OSEP and the Maine Department of Education (“MDOE”) have both formally recognized that the provision of FAPE may look different during a pandemic than during a time of normal school operations. The US Department of Education’s Office for Civil Rights (“OCR”) and the Office of Special Education and Rehabilitative Services (“OSERS”) stated, “To be clear: ensuring compliance with the [IDEA]...should not prevent any school from offering educational programs through distance instruction.” See Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary, and Secondary Schools while Serving Children With Disabilities, dated March 21, 2020, Office for Civil Rights & Officer of Special Education and Rehabilitative Services, available at <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf> (“It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities. The determination of how

¹² By contrast, OSEP provided that if an education unit “closes its schools to slow or stop the spread of COVID-19 and does not provide any educational services to the general student population, then an LEA would not be required to provide services to student with disabilities during that same period of time.” See Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, dated March 12, 2020, Office of Special Education Programs, available at <https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>.

FAPE is to be provided may need to be different in this time of unprecedented national emergency.”).

The MDOE also cites to March 2020 OSEP Guidance (<https://sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf>) in clarifying, “SAUs are not required to provide the exact service hours of the IEP but should develop plans that are appropriately designed to support student learning in an alternative context.” See Office of Special Services COVID-19 Communication, available at <https://www.maine.gov/doe/learning/specialed/director>. The MDOE has further recognized that remote learning will never fully replicate a traditional school experience. Instead, remote learning can take many forms, which includes both synchronous online learning, where an instructor provides lessons in real time to students by computer or telephone, and asynchronous remote education, where an instructor prepares a lesson in advance for students to engage in learning on a flexible timeframe. See Remote Learning Plan Guidance, Maine Department of Education, available at <https://www.maine.gov/doe/covid-19/planguidance>.

Finally, current guidance suggests that, in situations where special education services are unavoidably delayed due to alternative instructional models during the COVID-19 pandemic or where specialized services cannot be adequately delivered in an alternative method, once schools resume “normal” operations, IEP Teams must make an individualized determination as to whether compensatory services may be required. See Office of Special Services COVID-19 Communication, citing OSEP Guidance from March 2020, available at <https://www.maine.gov/doe/learning/specialed/director>.

In the present complaint, CDS-York is currently unable to fully implement the IEPs of approximately 20% of the children it serves. This amounts to nearly 100 children whose IEPs are not being implemented as written. While CDS-York might argue that not *all* of these implementation gaps are material, CDS-York conceded on January 8, 2021 that approximately 15% of the children it serves (at least 73 children) are currently awaiting placement for special education or related services, and the waitlist provided by CDS-York on January 13, 2021 shows 88 children currently awaiting placement. This suggests that CDS-York’s inability to implement these students’ IEPs is more than a minor discrepancy between the services being provided and the services required. If the

88 students on the waitlist for program did not require the services they are waiting for, the students would surely not be added to such lengthy waitlists. Student 3 also presents an example of a child who is not awaiting a program (and not accounted for on the list of 88 children awaiting placement), but who is nonetheless experiencing a material reduction in special education and related services. Therefore, there is sufficient evidence to conclude that CDS-York currently engages in a practice of not ensuring FAPE for all its students, in violation of MUSER II(13); MUSER IX(3)(B); 34 CFR 300.17; 34 CFR 300.323(a).

CDS-York has presented the complaint investigator with a plethora of evidence regarding the unavailability of necessary preschool programs, providers, and resources, particularly during the COVID-19 pandemic when numerous programs have abruptly shut their doors to pre-k and preschool students. For example, the closing of Morrison Center programs, with preschool sites throughout York County, immediately displaced dozens of special education students served by CDS-York, including Student 1 and Student 2. Further, numerous special purpose private programs in York County are currently operating at a lower capacity during the COVID-19 pandemic (like the program Student 3 attends). This reduced capacity is likely due to an adherence to CDC guidelines regarding social distancing, due to a commitment by preschools to the safety of their students and staff, and due to staffing shortages within preschool programs resulting from the national health crisis and from the closure of in-person childcare options for teachers and other staff members who are also parents.

However, the circumstances surrounding the COVID-19 pandemic (and the associated program closures) do not necessitate a waiver of CDS-York's responsibility to provide children with a free, appropriate public education ("FAPE"). Additionally, there is considerable evidence that many of the same IEP implementation barriers and practices at CDS-York pre-existed the COVID-19 environment.

Whenever CDS-York faces an issue with hiring providers or obtaining resources, it is obligated to resolve these problems through good faith efforts within 30 days¹³ or

¹³ MUSER X(2)(A)(5) states: "If a school administrative unit is unable to hire qualified staff for the provision of related services, the unit shall make an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel to provide related services to children with disabilities." The complaint investigator has reviewed significant evidence of CDS-York's good faith efforts.

reconvene the IEP Team to consider other alternatives for each individual student. CDS-York, based on evidence provided in documents and interviews, has a current practice of failing to reconvene each student's IEP Team no later than 30 days after the start date of the IEP Team's development of the IEP to determine what changes need to be made to the IEP to reflect the inability to commence services. See MUSER IX(3)(B)(3).

Additionally, CDS-York has issued policies surrounding the permissible allocation of ESY services and the allocation of compensatory services for previous needs unmet that have further limited their IEP Teams' abilities to determine which alternative services were necessary for each individual child to progress despite the inability to commence services.

MUSER VI(2)(I) outlines the IEP decision making process:

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding: (1) the children's needs and appropriate goals; (2) the extent to which the child will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and (3) the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP Team must consider the parents' concerns and the information that they provide regarding their child in determining eligibility; developing, reviewing, and revising IEPs; and determining placement. Id.

Of course, it is the IEP team that is best situated to consider the child's unique needs, including academic growth, the child's progress towards grade-level proficiencies, the child's behaviors that may interfere with their growth, and additional information and input provided by the child's parents. See MUSER V(2)(B); MUSER VI(2)(J). As written and applied, CDS-York's policies regarding the provision of ESY services and the provision of compensatory services problematically determined the outcome of students' IEPs outside of the IEP team process, setting up a system by which IEP Teams

Unfortunately, those significant efforts have yet to resolve the placement supply issue in York County, even prior to the COVID-19 pandemic.

It is apparent that CDS-York continues to make reasonable efforts to recruit and hire providers who are appropriately and adequately trained, but in the meantime, the CDS-York must find another option to continue to provide FAPE to all students who are in need of services to access their special education curriculum.

required approval from CDS-York staff to commence an important conversation about compensatory services and/or ESY services. In the case of Student 1, Student 2, and Student 3, the CDS-York Case managers and IEP administrators were expressly instructed not to discuss the possibility of additional compensatory services (or SPU) because all three students were offered remote services in some form during the COVID-19 closures in Spring 2020. This policy does not consider that Student 1, Student 2, and Student 3 did not have access to remote education that met their needs or remote education that resembled the SDI required by their individual IEPs. Instead, CDS-York's policies about ESY and SPU unnecessarily closed-off decision-making capabilities of the IEP Team, without recognizing that the IEP team, according to MUSER, is best situated to consider all aspects of the student's educational plan.

Considering all of the above, this complaint finds systemic violations by CDS-York regarding the practice of delaying or denying FAPE for students who have been placed on waitlists awaiting services or students whose IEPs have not been fully implemented.

- B. CDS-York artificially limits the placement options for students, thereby not providing students with an education in the least restrictive environment ("LRE"). MUSER X(2)(B); 34 CFR 300.114(a)(2)(i-ii). **No Systemic Violation Found.**

Children with disabilities must be educated in the least restrictive environment, with children who are not disabled, in a regular education environment, to the maximum extent appropriate. 34 CFR 300.114; MUSER X(2)(B); *L.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir., 2004). MUSER X(2)(B) elaborates further:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, shall be educated with children who are not disabled, and special classes, separate schooling, or other removal of students with disabilities from the regular education environment shall occur only when the nature and severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Id.; 20 USC §1412(a)(5); 34 CFR 300.114.

The mandate for the least restrictive environment has been described by the U.S. Supreme Court as “embodying a ‘preference’ for ‘mainstreaming’ students with disabilities in ‘the regular classrooms of a public school system.’” *C.D. v. Natick Pub. Sch. Dist.*, 924 F.3d 621 (1st Cir. 2019) (citing *Bd. of Educ. v. Rowley*, 458 U.S. 176, 202-03 (1982)). See *Endrew F. v. Douglas County Sch. Dist.*, 137 S. Ct. 988, 999 (2017). Nonetheless, the IDEA's preference for mainstreaming "is not absolute." *T.M. v. Cornwall Cent. Sch. Dist.*, 752 F.3d 145, 162 (2d Cir. 2014).

Beyond Student 1’s unique individual experience, which will be addressed fully in Student 1’s individual complaint investigation #21.036C, there was no systemic evidence gathered in this complaint to suggest that CDS-York is artificially limiting the placement options for its children by requiring education in a more restrictive setting. CDS-York fully trains its staff to make determinations about the least restrictive environment within the individualized framework of each IEP team meeting, and the CDS-York staff members who were interviewed are fully dedicated to administering the LRE principles, while also recognizing that the LRE determination is a data-driven inquiry and each parent must be provided with sufficient input.

CDS-York Case Managers and IEP Administrators have a practice of first asking the IEP Team to consider whether FAPE can be provided in a general education setting with supports. If not, the IEP Team will determine a placement along the continuum of program choices, selecting the least restrictive option. Additionally, CDS-York has dedicated itself to expanding the number of placements available for children in public preschool programs and Head Start classrooms, even during a pandemic environment when placement opportunities are difficult to expand.

Nonetheless, it should be noted that the specific focus of this systemic complaint related to the individual experiences of Student 1, Student 2, and Student 3, and unnamed students who are similarly situated to those three students. Student 1, Student 2, and Student 3 all present with significant special education needs, and all three students have IEP Teams who have determined unanimously that their most appropriate and least restrictive environments are special purpose private schools. Parents of all three students agree that their child’s most appropriate, least restrictive environment is a self-contained

preschool classroom.¹⁴ As such, the complaint investigator feels that this determination regarding CDS-York's adherence to LRE requirements is limited in scope to the specific facts of this systemic complaint and the specific document disclosures produced by the facts of the systemic complaint.

In sum, no systemic violation is found related to CDS-York artificially limiting placement options for students by denying the least restrictive environment.

- C. CDS-York has not ensured that students have access to a continuum of alternative placements to meet their needs, including Head start, Kindergarten, Reverse Mainstream, public preschool, and group child care. MUSER X(2)(B); MUSER X(2)(C); 34 CFR 300.115. **No Systemic Violation Found.**

Children with disabilities are entitled to access a continuum of alternative placements that are available to meet a child's special education needs. 34 CFR 300.115; MUSER X(2)(B).

There is also no systemic evidence provided to suggest that CDS-York has a policy, practice, or procedure in place that prevents children from accessing a continuum of alternative placements to meet their needs. CDS-York has a practice of offering Head Start, Kindergarten, Reverse Mainstream, public preschool, and group childcare placements. The dire lack of availability of special purpose private school placements (and CDS-York's practices and policies in response to that unavailability) is addressed in systemic allegation 1. However, this investigation concludes that, based on the evidence reviewed, CDS-York engages in practices, policies, and procedures that ensure access to a continuum of alternative placements.

Again, it must be noted that the specific focus of this systemic complaint related to the individual experiences of Student 1, Student 2, and Student 3, as well as unnamed students who are similarly situated. As such, the complaint investigator feels strongly that this determination regarding CDS-York's full provision of a continuum of alternative placements is limited in scope to the specific facts of this particular systemic complaint and the specific document disclosures produced by the factual findings of this complaint.

¹⁴ Student 1's parents (as well as a number of Student 1's service providers) have expressed concern about Student 1's highly restrictive 1:1 adult support ratio, as detailed in the Factual Findings above. Nevertheless, Student 1's parents believe that a self-contained preschool environment is appropriate for Student 1 based on individualized needs.

CORRECTIVE ACTION PLAN TO BE COMPLETED BY CDS-YORK¹⁵

1. CDS-York must immediately create new program placements, either independently, or in partnership with local public school districts.

Beginning on or before March 1, 2021, and by the 1st of each month thereafter until June 1, 2022, CDS-York will provide a report to the Maine DOE detailing the new classrooms and additional program placements for CDS-York children that have been created since the date of this complaint investigation report or since the date of the prior month's report. Each report shall include:

- The number of children awaiting program placements, both as a raw number and as a percentage of total children within CDS-York's responsibility.
- The amount of time any child on a waiting list has been waiting for services.¹⁶
- The services currently being provided to any child who remains on a waiting list.
- The dates of the most recent IEP Team Meetings for any child who continues to wait for services.

¹⁵ CDS-York submitted a detailed proposal for resolution of this systemic complaint to the Commissioner of the Maine Department of Education on February 3, 2021. While the Commissioner felt CDS-York's proposal was thoughtful and well-designed, the Commissioner ultimately determined that it would be critical for a full complaint investigation process to be completed, including the issuance of factual findings and determinations regarding the systemic allegations. However, many aspects of CDS-York's proposal for resolution are adopted as part of this Corrective Action Plan.

The Complainant objected to the resolution proposed by CDS-York on February 3, 2021, arguing that it would be more appropriate to engage an independent expert. The Complainant envisioned an expert who would craft a structure for CDS-York to deliver compensatory education and comply with Corrective Action Plan requirements, while also developing a plan to dramatically increase the capacity of CDS-York (in terms of placements, staffing, and/or funding) to effectively meet the needs of the children it serves.

In crafting this Corrective Action Plan, the complaint investigator concluded that the most efficient way to ensure the timely provision of both compensatory education and ongoing services to for children in York County is to address the most glaring issue directly and immediately – CDS-York has a long-standing capacity problem due to a reliance on private preschool providers, as well as a practice of accepting lack of capacity as a justification to delay or deny FAPE to its students. The sole reliance on private providers to provide special education services to children is untenable. CDS-York needs to develop and manage preschool programs independently, or in partnership with public school districts, in order to ensure that children are receiving the services to which they are entitled. While the COVID-19 pandemic highlighted the problems inherent with CDS-York being fully dependent on private providers who have no individual duty to provide FAPE to students, CDS-York has long been aware of this tension between their legal obligation to provide FAPE and their lack of control over private preschool programs. An independent expert would surely come to this same conclusion quickly, and the Corrective Action Plan attempts to address CDS-York's capacity problems in several ways.

¹⁶ The amount of time a child has been awaiting services shall determine the child's place on the waitlist as new CDS-York programs become available.

- The percentage of children with IEPs from CDS-York receiving IEP services in public pre-k classrooms.
 - If any children remain on the waitlist for program placement, a plan for the creation of additional preschool programs to be implemented within the following 30 days to address unmet student need.
 - If any children remain on the waitlist for service providers, and a plan for the identification of new related service providers to be implemented within the following 30 days to address unmet student need.
2. **On or before March 1, 2021**, CDS and/or CDS-York must submit a proposal to Maine DOE regarding the following:
- Hiring new staff to oversee programming development either state-wide, with an emphasis on York County, or specifically in York County.
 - Hiring new staff who can provide improved fiscal management to CDS in order to oversee the fiscal impact and planning of new programs.
 - Hiring or allocation of current staff resources to ensure implementation of this Corrective Action Plan in accordance with all prescribed timelines.
 - Hiring or allocation of current staff resources in York County to ensure that the individual staff members who are writing student IEPs are also working directly and/or communicating directly with the students and families they service.
3. **On or before March 15, 2021**, CDS-York is required to conduct an audit of all special education files for students with disabilities where instruction and/or related services have not been fully provided since March 30, 2020 and provide a report of the audit to the Maine DOE. CDS-York must provide a list of the type of service and time for all missed services to each parent whose child did not receive full services.

As part of the audit, CDS-York must also determine the date when each affected student lost services or first became eligible for services that were unavailable. Based on those dates, CDS-York must create an ordered waitlist to be used when CDS-York opens new programs.¹⁷

If, as part of an individual file audit, CDS-York concludes that a student was provided with any amount of remote services since March 30, 2020, a full description of the specific nature of the remote services offered must be included, as well as an explanation about whether the student was able to successfully engage with his or her

¹⁷ The order of the waitlist shall **not** be determined by the date when each student's case manager or referral coordinator requested programming for the student. The waitlist shall be based strictly on the amount of time each student has been without services.

remote services. This process will likely require direct contact with remote service providers and parents because reliance on each student's service log will not suffice to ensure a full analysis of remote services provided. **A copy of the full audit report and updated waitlist for services must be submitted to the Maine DOE on or before March 15, 2021.**

4. **No later than April 1, 2021**, CDS-York is required to schedule an IEP meeting for every student whose child did not receive full IEP services, as soon as possible after completion of the audit in step one of this corrective action plan. The purpose of the IEP Team Meeting shall be to:
 - Discuss efforts to date to provide program placement for the child;
 - Consider whether the currently proposed placement is still appropriate considering the passage of time or whether the student requires a more restrictive or less restrictive environment than originally determined to receive his or her FAPE.
 - Consider whether the IEP can be partially implemented (if it cannot be fully implemented going forward) through the provision of remote services or other alternatives;
 - Review whether the student made appropriate progress between March 30, 2020 and the present;
 - Discuss whether compensatory services are now warranted, based on the student's present levels, for the failure to fully implement the student's IEP and/or provide FAPE.

If compensatory services are warranted, then the IEP Team shall develop a plan to provide those services as the IEP Team sees fit during the school year and/or during the summer, and parents must be given input about the amount and scheduling for the provision of compensatory services.

If a student's IEP Team never considered whether the child required ESY services during 2020, the IEP Team Meeting must also determine whether the child should have qualified for ESY benefits based on the child's individual needs and any available data. If necessary, additional compensatory services may be warranted related to the lack of provision of ESY.

Additionally, CDS-York must ensure that parents are advised of their procedural safeguards and the ability to contest the IEP Team decision about compensatory services using the dispute resolution process. **Copies of the Written Notices for these IEP Meetings must be submitted to the Maine DOE on or before May 15, 2021.**

5. CDS-York must immediately begin providing all compensatory services as determined necessary by the IEP Team Meetings above, and CDS-York must implement creative scheduling solutions to continue to provide compensatory services for any children who have not been fully compensated before they enroll in kindergarten in Fall 2021. **A monthly report regarding all compensatory services provided and compensatory services outstanding must be submitted to the DOE every month, beginning on June 1, 2021 and each month thereafter on the 1st of the month, until all compensatory services have been delivered.**
6. **On or before March 15, 2021,** CDS-York must conduct training for all Case Managers and IEP administrators to specifically review CDS-York's obligation to implement IEPs promptly (and no later than 30 days from the IEP Team's initial identification of the child's eligibility) and to reconvene an IEP Team Meeting within 30 days to address alternatives and consider the need for IEP amendments to account for the delay, in the event an IEP cannot be implemented as written. **This professional development must be completed with sign-in sheets and submitted to the DOE by March 15, 2021.**
7. **On or before August 31, 2021,** CDS-York must develop professional training to be offered to the superintendents and special education directors of each public school district in York County that has a public pre-k program. This program will aim to educate Districts on the need to provide placements for children with IEPs from CDS-York and to collaborate on increasing enrollment by children with CDS IEPs (and successfully implementing the IEPs of those children) in public pre-k classrooms. **This professional development must be offered to superintendents and submitted to the DOE by August 31, 2021.**
8. CDS-York must continue to partner and collaborate with the Early Childhood Technical Assistance Center for direct support and guidance regarding new preschool planning and program set up, investments in preschool curriculum for identified preschool children, and best evidence-based practices in all preschool programs.