

**COMPLAINT INVESTIGATION REPORT**  
**& , Parents v. School Department and program**  
**Complaint 22.021C**  
**Complaint Investigator: Rebekah J. Smith, Esq.**  
**March 8, 2022**

**INVESTIGATION PROCEDURE**

Complainants:

Respondents: School Department  
, Superintendent  
, Special Services Director

Program  
, Director

Student:

The Department of Education received this complaint on November 9, 2021. A Draft Allegations Report was issued on December 10, 2021. Although the Parents had identified Treatment Program (“ ”) as a respondent in their complaint, the Department of Education initially determined that could not be a respondent because it was not a public agency. A videoconference was also held on November 15, 2021. The Parents and representatives of School Department (“ ”) participated. As a result of the informational conference, a Revised Draft Allegations Report was issued on November 19, 2021, amending the deadlines for the submission of information. On November 23, 2021, the Parents provided three exhibits, marked as Parents Exhibits #1 to #3. Parents’ Exhibit #3 is a recording of a voicemail message which has been transcribed by the Investigator. Parents Exhibit #4 is a letter dated October 15, 2021, from the Student’s developmental pediatrician that was attached to the Parents’ complaint. The Parents also provided a videorecording of the September 9, 2021, IEP Team Meeting.<sup>1</sup>

On December 1, 2021, filed a response to the complaint as well as Exhibits A through E. An additional document provided by at the request of the Investigator is marked as Exhibit F.

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<sup>1</sup> The videorecording of the September 9, 2021, meeting is available at

The Department of Education subsequently concluded that [redacted] could in fact be identified as a respondent. On December 10, 2021, a Second Revised Draft Allegations Letter was issued identifying [redacted] as a respondent and setting deadlines for its submission of materials. On December 14, 2021, a second informational conference was convened, which was attended by representatives of [redacted] and their legal counsel.

On December 23, 2021, [redacted] filed a response to the complaint as well as 54 pages of email correspondence, designated as [redacted] Exhibit A. An additional document subsequently provided by [redacted] is marked as [redacted] Exhibit B.

The Parents are representing themselves. [redacted] is represented by Penelope Wheeler-Abbott and [redacted] is represented by Nathaniel Bessey, Esq.

The Complaint Investigator reviewed all documents, information, and responses from the parties. Both parties identified witnesses that they requested be interviewed. The following individuals were interviewed: [redacted], [redacted] at [redacted] Program; Dr. [redacted]; [redacted], Special Services Director at [redacted]; the Parents; [redacted], MS, CCC-SLP; [redacted], Social Worker; [redacted], Director; [redacted], Case Worker; [redacted], contracted by [redacted]; [redacted], Clinician/LCPC with [redacted].

The Parents requested stay put as part of the complaint investigation process. The Due Process Office responded that stay put was only available as part of a hearing process and that the Parents could file a hearing request to invoke stay put.

All witnesses identified by the parties were interviewed other than Dr. [redacted], the Student's provider at [redacted], who was not able to be reached.

## **PRELIMINARY STATEMENT**

The Student is [redacted] old. [redacted] resides in [redacted] with [redacted] parents. The Student has attended [redacted] Program for several years through an out-of-unit placement by the [redacted] School Department. Beginning in the fall of 2020, the Student exhibited a series of behavioral incidents that led to concern that [redacted] could no longer meet the Student's needs. The determination of whether the Student could continue at [redacted] was considered at an IEP meeting in June 3, 2021. The Student went without a placement or any services from June 2021 until mid-December 2021, when [redacted] began to receive limited remote instruction from [redacted]. The Student returned to [redacted] as a temporary placement on February 4, 2022.

## **ALLEGATIONS**

1. During the 2020-2021 school year, [redacted] Program reduced the Student's school day without the proper IEP procedures in violation of MUSER IX.3.C(6) (Changes to the IEP may be made either by the entire IEP Team, as provided in (4), by

amending the IEP rather than redrafting the entire IEP) and MUSER IX.3.C(4) (In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the SAU may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP). In addition, Program did not allow the Student to return to school after the IEP Team agreed that conduct was a manifestation of disabilities in violation of MUSER XVII.F(2) (If the SAU, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must return the child to the placement from which the child was removed, unless the parent and the SAU agree to a change of placement as part of the modification of the behavioral intervention plan).

Program, as the Student's receiving placement, failed to ensure compliance with MUSER IX.3.I (The receiving placement is responsible for implementing a child's Individual Education Program, which shall not be amended without an IEP Team meeting or the consent of the sending SAU and the parent (where applicable) and ensuring compliance with MUSER and the Individuals with Disabilities Education Act). School Department did not meet its obligation to ensure that

Program complied with MUSER while the Student was placed there in violation of MUSER IX.3.I(8) (Sending school administrative unit is responsible for ensuring compliance with MUSER).

2. School Department did not provide the Student with a free appropriate public education between December 2020 and January 2021 when was removed from Program to a remote learning program in violation of MUSER I (School district must provide a free appropriate public education). The remote learning environment was not the least restrictive environment for the student, because had no access to in-person staff or any peers, in violation of MUSER X.2.B (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 educational environment shall occur only when the nature or 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).
3. The Student was not provided extended school year services identified in IEP during the summer of 2021 in violation of MUSER IX.3.A(1)(d) and (g) (IEP must include statement of the supplementary aids and services to be provided to the child as well as the anticipated frequency, location, and duration of those services and modifications).
4. Although the Student's IEP effective September 9, 2021, to September 8, 2022, placed the Student in a staff intensive day treatment setting at Program, the Student has not received the services in IEP since the start of the 2021-2022 school year in violation of MUSER IX.3.A(1)(d) and (g) (IEP must include statement of the supplementary aids and services to be provided to the child as well as the anticipated frequency, location, and duration of those services and modifications).

## FACTUAL FINDINGS

1. The Student lives in [redacted] with [redacted] parents. ([redacted] Exh. A.) The Student attends the [redacted] Program (“ [redacted] ”) in an out-of-unit placement by [redacted] School Department (“ [redacted] ”), which is responsible for [redacted] education. ([redacted] Exh. A.) [redacted] is eligible for special education as a student with Autism. ([redacted] Exh. A.) The Student has been diagnosed with Anxiety Disorder, ADHD-combined type, Autism Spectrum Disorder, and Mild Intellectual Disability. ([redacted] Exh. A.; Parents Exh. #4.) The Student had been placed at [redacted] for several years as of the start of the 2020-2021 school year, when [redacted] behavior became significantly more disruptive. (Interview with [redacted] ; Interview with [redacted] .)
2. In July 2019, when the Student was [redacted] old, [redacted] was evaluated by psychologist [redacted], Ph.D. ([redacted] Exh. A.) Dr. [redacted] found that the Student showed scattered skills, with a personal strength in the area of decoding. ([redacted] Exh. A.) Dr. [redacted] found that the Student did not comprehend materials at the appropriate level and mathematics were also an area of weakness due to the Student’s difficulty with performing operations beyond simple addition, subtraction and multiplication, and [redacted] challenges in applying math concepts to everyday problem solving. ([redacted] Exh. A.) In the area of written expression, the Student performed best on more contrived processes such as combining sentences or composing sentences using a key word. ([redacted] Exh. A.) Dr. [redacted] diagnosed the Student with Autism Spectrum Disorder and Mild Intellectual Disability by history. ([redacted] Exh. A.) Dr. Rogers recommended that the Student be provided a highly modified curriculum that focused on remediating [redacted] areas of deficit. ([redacted] Exh. A.) Dr. [redacted] recommended that the Student’s education environment be designed in a manner that allowed [redacted] to feel a sense of accomplishment throughout the day and that providers should set small, measurable goals in each academic content area. ([redacted] Exh. A.) [redacted] suggested that the Student be involved in creating a reward system, so that [redacted] was reinforced for each goal that was met. ([redacted] Exh. A.)
3. On November 26, 2019, the [redacted] Department performed a Speech/Language Evaluation Report. ([redacted] Exh. A.) The report concluded that the Student’s IEP Team should consider moving speech therapy to a consult model until such time as the Student’s behavior was more settled and testing can be completed with accurate results. ([redacted] Exh. A.)
4. On September 8, 2020, a few days into the 2020-2021 school year, an incident report was filed regarding the Student’s refusal to follow an instruction and locking in the student bathroom, after which [redacted] attempted to clog the toilet with paper towels. ([redacted] Exh. B.) Staff guided the Student out of the bathroom, at which time the Student took [redacted] mask off and intentionally coughed in a staff member’s face and then spit on her face and attempted to spit at another staff member. ([redacted] Exh. B.) The Student then grabbed and broke the staff member’s face shield and hit the staff member on the top of the head. ([redacted] Exh. B.) After appearing to calm, the

Student began to spit at staff again, after which [redacted] was placed in seclusion. ( [redacted] Exh. B.) After being released from seclusion, the Student rushed the door and attempted to spit on staff again. ( [redacted] Exh. B.)

5. On September 9, 2020, an IEP team meeting was held to conduct the Student's annual review. ( [redacted] Exh. A.) The IEP Team established that the Student's programming would include 6.5 hours of special designed instruction per day, speech consultation services of 15 minutes per month, BCBA consultation of 2 hours per month, psychological services consultation of 30 minutes per month, and social worker services of 60 minutes per week. ( [redacted] Exh. A.) The Student was determined to be eligible for Extended School Year ("ESY") services. ( [redacted] Exh. A.) [redacted], then director of [redacted], reported that [redacted], a [redacted] with [redacted], would work with [redacted], a [redacted] contracted by [redacted], on the Student's behavior. ( [redacted] Exh. A.) It was noted that if the Student continued to break face masks, [redacted] might need to be educated in a remote setting due to safety concerns and the CDC guidelines. ( [redacted] Exh. A.) The Student's Father expressed unhappiness with the remote learning that had occurred in the spring, which was very limited and removed the Student from the routine of school. ( [redacted] Exh. A.)
6. Following the September 9, 2020 meeting, an Individualized Education Program ("IEP") was issued placing the Student in the [redacted] Day Program through September 8, 2021. ( [redacted] Exh. A.) The Written Notice reported that several factors were impacting the Student. ( [redacted] Exh. A.) Dr. [redacted] provided input on the Student's behaviors. ( [redacted] Exh. A.) The Student was noted to be highly motivated to earn attention from staff and peers and much of [redacted] behaviors appeared to serve that function. ( [redacted] Exh. A.) It was noted that there was also an escape/avoidance component to the Student's behavior, as [redacted] was able to sometimes avoid work demands due to [redacted] behavior. ( [redacted] Exh. A.) The Student's desire to avoid academic work was noted to likely be driven by [redacted] weak academic skills, which made grade level expectations unattainable. ( [redacted] Exh. A.) Of concern, the Student appeared unable or unwilling to learn from consequences unless they were significant in their impact, with short-term consequences being ineffective. ( [redacted] Exh. A.) The Student appeared to be developing behaviors which if demonstrated outside the school setting would likely lead to criminal charges. ( [redacted] Exh. A.) It was emphasized that the Team should convey to the Student the significance of [redacted] behavior in the larger school context. ( [redacted] Exh. A.) The Student was noted to be fixated on female staff, exhibiting significant efforts to touch body parts such as [redacted] and [redacted], as a result of which [redacted] access to those staff would be monitored and limited to the degree possible. ( [redacted] Exh. A.) Several specific strategies were recommended to assist the Team in providing the Student with a more successful experience. ( [redacted] Exh. A.) At the time, the Student was not able to maintain behavior in the classroom setting so was being instructed in a one-on-one setting. ( [redacted] Exh. A.) Dr. [redacted] indicated that it could not be overstated that the Student's behavior was considered extremely concerning and it was imperative to convey to the Student that [redacted] behavior has major

- consequences and will not be tolerated. ( Exh. A.) Dr. expressed concern that otherwise the Department of Corrections could become involved in the future. ( Exh. A.)
7. On September 21, 2020, an incident report was filed regarding the Student's refusal to follow directions, swearing, and trying to lock in the bathroom. ( Exh. B.) The Student pushed staff and grabbed for the staff member's personal protective equipment and ran into the bathroom. ( Exh. B.) During the incident that followed, the Student threw water at a staff member, hit staff several times, attempted to kick staff, and threw a metal chair at staff. ( Exh. B.) The Student was restrained but punched staff as they subsequently released from the restraint. ( Exh. B.) The Student was suspended from school for three days for destruction of property and spitting at staff. ( Exh. B.)
  8. For all of the restraint or seclusion incidents that fall, school staff offered the Student strategies to calm down, an alternative space, sensory breaks, and access to the social worker. ( Exh. B.) also informed of each incident involving the Student. (BRP Exh. A.)
  9. On September 22, 2020, another incident occurred, in which the Student spit upon staff as was being searched due to threats to harm Ms. ( Exh. B.) The Student was secluded but continued to threaten staff by stating that would go to their house and "beat their " threatened to spit on them every day, threatened to beat them so badly they would have to go to the emergency room, and called a staff member ( Exh. B.) Another incident report was filed for an event that occurred that afternoon during which the Student threatened to stab the director, slice her in the neck, stab her in the stomach, stab her in the face, and kill her. ( Exh. B.) The Student sprayed staff with a cleaning agent, broke a fire alarm, and was restrained by staff. ( Exh. B.)
  10. On October 5, 2020, the Student sprayed staff with water, hit staff, broke a hand sanitizing unit off the wall and threw it at staff, took apart the thermostat, and placed hand sanitizer between the thermostat wires. ( Exh. B.) The Student hit and spit on staff. ( Exh. B.) The Student was suspended for three days for property destruction, spitting on staff, and spraying sanitizer on staff. ( Exh. B.)
  11. On October 27, 2020, the IEP Team meeting held a Chapter 33 meeting. ( Exh. A.) School Department offered to conduct a neuropsychological evaluation to obtain information on other possible diagnoses that could be impacting the Student, who at that point in the year had experienced three incidents of restraint and/or seclusion and two critical incidents. ( Exh. A.) The Team agreed that staff would continue to follow the Student's behavior plan and the Team needed to obtain further clarification on the Student's diagnoses and recommended a more in-depth evaluation. ( Exh. A.) Ms. reported that was

- getting to a point where they might not be able to continue to manage the Student's behaviors, noting the Student's intent to harm and lack of remorse. ( Exh. A.) The BCBA's reported that they thought that the function of the Student's behaviors was primarily attention seeking and that there might be some other pieces coming into play such as other diagnoses. ( Exh. A.) The Student's Father asked for the opportunity to consult with the Student's developmental pediatrician, Dr. , before further evaluations were ordered. ( Exh. A.)
12. The Parents ultimately declined the neuropsychological evaluation for the Student on the basis that Dr. , who had been treating the Student ever since diagnosis, did not feel it was needed. (Interview with Parents.) Dr. felt that the neuropsychological evaluation would be intended to identify new diagnosis, even though the Student already had four diagnoses in the record. (Interview with Parents.)
  13. On November 5, 2020, the Student destroyed a hand sanitizer unit and a noise cancellation machine, assaulted staff, broke their personal protective equipment, attempted to call 911, and caused excessive disruption in classrooms. ( Exh. B.)
  14. On November 6, 2020, the Student broke a school computer, swore and threatened staff, threw items, and kicked staff. ( Exh. B.) The Student called 911 with cell phone twice during the incident. ( Exh. B.) The Student's father took to the Emergency Room due to the incidents that were occurring at school as well as some that were occurring at home. ( Exh. B.)
  15. On November 12, 2020, the Student swore, took a staff member's keys, exposed , and threatened to on staff. ( Exh. B.) The Student made a motion close to staff, attempted to spit on staff, and charged at a staff member, hitting him in the stomach. ( Exh. B.)
  16. On November 17, 2020, another IEP Team meeting was held to review the Student's program. ( Exh. A.) Although the Student was still attending full days of school to receive in-person instruction, the Student would be placed on an abbreviated day if was unable to maintain safety to the extent that staff was not able to safely manage behavior, with remote learning a further option if there were continued episodes of unsafe behavior. ( Exh. A.) The IEP Team agreed to reconvene if there was another significant incident in order to hold a manifestation determination meeting, noting that a manifestation determination meeting was required when the Student reached 10 days of school suspension to determine if the Student's behaviors were disability related or a were a failure of the SAU to implement the IEP. ( Exh. A.) The Team considered having the Student return to school on an abbreviated day but rejected this option because the Team wanted to give the Student another chance to attend a full day of school in person, believing that school was the best place for the Student to be if could maintain safety. ( Exh. A.) It was also noted that the Student was on a waiting list at

for a more in-depth evaluation/medication management and the Team sought to keep the Student regulated as best as possible until then. ( Exh. A.) At that time, the Student had been suspended for a total of nine days since the beginning of the school year for assaulting staff and the school resource officer, calling 911 from school three times, spitting at staff and breaking personal protective equipment, among other maladaptive behaviors. ( Exh. A.) Even though the Student was receiving one-on-one instruction in a separate classroom due to safety issues, continued to display significant incidences of physical aggression against staff. ( Exh. A.) The Student's Father expressed concern and indicated that he hoped to see the Student have a decent stretch without significant incidents. ( Exh. A.) Although he wanted to see the Student get back on track, he stated that they would cross that bridge if the Student is unable to maintain safety at school and was put out on remote learning. ( Exh. A.)

17. On November 17, 2020, the Student's Behavior Support Plan was revised. ( Exh. A.) The Behavior Support Plan had initially been developed in April 2017 and revised in October 2018, April 2019, September 2019, November 2019, March 2020, September 2020, and November 2020. ( Exh. A.) The Behavior Support Plan was developed by , M.A., , and , a special education teacher at . ( Exh. A.) The Behavior Support Plan hypothesized that when presented with difficult or non-preferred tasks, the Student engaged in problematic behavior to escape or delay the task with the behavior becoming very attention-seeking in nature if escape was not achieved. ( Exh. A.) Based on recent consults and review of the data, the staff developing the Behavior Support Plan hypothesized that the Student engaged in most of the target behavior as a way to gain access to adult and/or peer attention. ( Exh. A.) It was noted that the Student's behavior often changed in an escalating manner as an attempt to gain attention when it was removed and that the Student could have a very difficult time regulating emotional state, and as became more emotionally heightened, behaviors became more overt and sexual in nature. ( Exh. A.) The Behavior Support Plan targeted the following behaviors for reduction: refusal, aggression, inappropriate language, property destruction, sexualized behavior, and spitting. ( Exh. A.) Behaviors targeted for an increase were: ask for a break, ask for help, ask for one more minute when needed, use a strategy from list of options provided, follow adult directions, use school-appropriate language, wear a mask, and keep hands and feet to . ( Exh. A.) It was noted that the triggers for the Student's behavior were: task demands, non-preferred or difficult work tasks, corrective feedback, when other peers were having a "hard time," limited attention from staff and/or peers, changes in schedule or routine, preferred staff providing attention from others, and fire alarms going off. ( Exh. A.) Several protective strategies were identified to help staff working with the Student. ( Exh. A.) The Behavior Support Plan also included intervention plans for negative Student behavior. ( Exh. A.) Data was to be collected daily and analyzed at least monthly. ( Exh. A.)



18. On November 30, 2020, an incident of restraint or seclusion was filed because the Student swore at staff, pulled on a staff member's mask, opened and leaned out the window, spit at staff, and kicked at staff. ( Exh. B.) The Student was suspended for one day and moved to a modified day upon return. ( Exh. B.)<sup>2</sup>
19. On December 7, 2020, a critical incident report was filed because the Student assaulted staff members and exhibited extensive sexualized behavior. ( Exh. B.)
20. On December 10, 2020, another IEP Team meeting was held at which the Team conducted a manifestation determination. ( Exh. A.) The Team agreed that all of the Student's behavioral incidents were related to disability. ( Exh. A.) The Student had reached 10<sup>th</sup> day of suspension, triggering a review of Behavior Support Plan. ( Exh. A.) As a result of behavior, the Student, who had been attending on an abbreviated day, would be moved to remote learning. ( Exh. A.) The Student's placement at remained pending and , Director of Special Services for , indicated she would be getting information on alternative day treatment programs in the area such as and . ( Exh. A.) According to the written notice of the meeting, reported "they are unable to manage the Student safely at this time." ( Exh. A.) The Team determined that the Student, who continued on a waiting list for so medications could be adjusted, potentially needed a more staff intensive school program to access and benefit from education. ( Exh. A.) The IEP Team agreed to meet after Christmas break and revisit a discussion about programming options for the Student which may include another placement. ( Exh. A.)
21. On December 10, 2020, the Student's Individualized Education Program (IEP) was amended to include the Parents concern about the Student being at home for remote learning. ( Exh. A.) The Parents were aware that the Student did not stay focused and roamed the internet instead of doing assigned school work. ( Exh. A.) The Parents were also concerned about adjusting their work schedules to accommodate having the Student home doing remote learning. ( Exh. A.)
22. On December 11, 2020, Ms. received an email from the Student's Mother that she had not heard from the about remote learning for the day. ( Exh. C.) Ms. replied that wanted to schedule an IEP meeting after Christmas break to discuss plans to bring the Student back to . ( Exh. C.) Ms. and Ms. had discussed bringing in a from the Portland area to observe the Student in school program, consult with staff, and make recommendations. ( Exh. C.)

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<sup>2</sup> There is no Written Notice of an IEP Team meeting at which the determination was made to place the Student on an abbreviated day program.

23. On December 16, 2020, Ms. \_\_\_\_\_ informed the Student's Mother that had contracted with Dr. \_\_\_\_\_, from \_\_\_\_\_ Family Services. ( \_\_\_\_\_ Exh. C.) Ms. Bennett also stated that if \_\_\_\_\_ could not provide a program for the Student, with consultation with Dr. \_\_\_\_\_, that they would need to consider other schools quickly. ( \_\_\_\_\_ Exh. C.) Ms. \_\_\_\_\_ reported that she was trying to look for placements for the Student within commuting distance, specifically \_\_\_\_\_ Academy and \_\_\_\_\_. ( \_\_\_\_\_ Exh. C.)
24. On December 28, 2020, Ms. \_\_\_\_\_ informed the Parents that Dr. \_\_\_\_\_ would be scheduled for an observation of the Student at \_\_\_\_\_. ( \_\_\_\_\_ Exh. C.)
25. On January 5, 2021, Ms. \_\_\_\_\_ informed the Parents that Dr. \_\_\_\_\_ could observe the Student at \_\_\_\_\_ the following Tuesday (January 12) and that she would also like to observe the Student on Zoom before the in-person observation. ( \_\_\_\_\_ Exh. C.) Ms. \_\_\_\_\_ contacted \_\_\_\_\_ to request that the Student be allowed to return to school that week for observation by Dr. \_\_\_\_\_. ( \_\_\_\_\_ Exh. C.)
26. On January 6, 2021, the Parents informed Ms. \_\_\_\_\_ that the Student would be entering \_\_\_\_\_ on January 7, 2021. ( \_\_\_\_\_ Exh. C.) Ms. \_\_\_\_\_ contacted Dr. \_\_\_\_\_ to request that she observe the Student at \_\_\_\_\_. ( \_\_\_\_\_ Exh. C.)
27. On January 7, 2021, an IEP Team meeting was held at which the Team reviewed the Student's program and remote learning plan. ( \_\_\_\_\_ Exh. A.) \_\_\_\_\_ agreed to accept the Student after \_\_\_\_\_ release from \_\_\_\_\_ and implement recommendations from \_\_\_\_\_ and Dr. \_\_\_\_\_. ( \_\_\_\_\_ Exh. A.)
28. On January 8, 2021, the \_\_\_\_\_ School Department issued a written notice for a transfer meeting for the Student given \_\_\_\_\_ residency at \_\_\_\_\_. ( \_\_\_\_\_ Exh. C.) The \_\_\_\_\_ School Department retained responsibility for the Student's education while \_\_\_\_\_ resided at \_\_\_\_\_. ( \_\_\_\_\_ Exh. C.)
29. On January 21, 2021, staff at \_\_\_\_\_ recommended that Dr. \_\_\_\_\_ complete a functional behavioral analysis after the Student was discharged from \_\_\_\_\_. ( \_\_\_\_\_ Exh. A.) The \_\_\_\_\_ treatment team there agreed with the Parents and Dr. \_\_\_\_\_ that a neuropsychological evaluation was not necessary. (Interview with Parents.)
30. On January 22, 2021, Ms. \_\_\_\_\_ emailed an administrator at \_\_\_\_\_ Academy asking that the Student be placed on the waiting list. ( \_\_\_\_\_ Exh. C.) On January 25, 2021, \_\_\_\_\_ Academy confirmed that the Student was on their waiting list. ( \_\_\_\_\_ Exh. C.)
31. On February 8, 2021, an IEP Team meeting was held. ( \_\_\_\_\_ Exh. A.) A behavior goal was added to the Student's IEP focused on a reduction in identified

- target challenging behavior. ( Exh. A.) The Student's IEP was amended to reflect that these services were being delivered at . ( Exh. A.) It was noted that upon discharge from , a transfer IEP meeting should be convened by to discuss any proposed changes that might need to be considered for a less restrictive environment. ( Exh. A.)
32. On February 12, 2021, Ms. confirmed with administrators that had agreed to continue to pay tuition and to pay for the one-on-one educational technician assigned to the Student to hold spot at while was at . ( Exh. C.)
33. While the Student was , staff created a Positive Behavior Support Plan for the Student. ( Exh. A.) The Student presented with a history of engaging in elevated levels of problem behavior including aggression, property destruction, elopement, inappropriate touching of others, disrobing, and inappropriate vocalizations. ( Exh. A.) The target behaviors were physical aggression, property destruction, elopement, inappropriate touching, inappropriate verbalization, and noncompliance. ( Exh. A.) The working hypothesis of the plan was that the Student's target problem behavior was potentially related to being denied access to preferred activities, disruption in routine, adult-directed demands, and accessing attention. ( Exh. A.) A token system was used for reinforcement. ( Exh. A.) Specific responsive procedures were identified for each of the targeted problem behaviors. ( Exh. A.) If the Student's target behaviors reached a point where there was imminent risk of harm, the Student's safety would be supported by staff following approved safety management plan options. ( Exh. A.) The Plan was developed in collaboration with the Developmental Disorders inpatient team. ( Exh. A.)
34. Also while the Student was , a Communication Overview report was issued by , CCC-SLP, of , the academic portion of . ( Exh. A.) He noted that the Student was a verbal communicator who demonstrated significant language processing delays. ( Exh. A.) Mr. observed that the Student demonstrated a strong preference for adult interactions over peers. ( Exh. A.) The Student was noted to have difficulty waiting and in resolving conflict with others, to demonstrate poor physical boundaries with others, and to require prompting to identify emotions during times of dysregulation. ( Exh. A.) The Student was to have male staff only for all activities of daily living. ( Exh. A.) A variety of self-regulation strategies were identified to increase the Student's ability to attend, learn, process information, and decrease impulsivity. ( Exh. A.)
35. Mr. worked with the Student on social pragmatic skills such as gaining attention and maintaining conversation. (Interview with .) He noticed that the Student exhibited more challenging behaviors in a larger group, which he presumed was partly due to anxiety. (Interview with .) To address challenging

behaviors, the staff increased individual therapy and gradually reintroduced peers to the Student's setting. (Interview with .) education was provided partially in an individual classroom, in which Mr. provided direct instruction and modeling of social interactions before bringing in peers. (Interview with .) The Student was restrained or secluded seven times during stay at . (Interview with .) Mr. noted the importance of creating an environment that would allow for success, understanding that some demands and less structured social times were more challenging for the Student and required interventions and modifications to limit the unpredictability of those settings. (Interview with .)

36. , a social worker at , worked primarily with the Student's parents on discharge planning, noting that she had met with the Parents many times to discuss ongoing concerns since the Student's discharge. (Interview with ) Ms. felt that the educational system misunderstood the Student to be defiant when actions were a manifestation of autism. (Interview with .) Ms. does not believe the Student currently qualifies for or requires a residential placement. (Interview with .) Ms. noted that a key component in managing the Student's behaviors was to avoid power struggles. (Interview with .) Ms. opined that the Student would thrive at Academy if were placed there. (Interview with .)

37. On April 5, 2021, discharged the Student. ( Exh. A.) issued a Discharge Summary which explained that programming occurred through academic demands and tasks coupled with sensory and communication strategies to assist the students in learning healthy coping strategies to increase their independence through improved emotional regulation. ( Exh. A.) The Discharge Summary identified the progress the Student had made toward the three IEP goals related to behavior. ( Exh. A.) The first goal was that by September 8, 2021, given positive behavioral supports, the Student would use functional communication to describe how feels and identify a coping strategy to try when feels dysregulated 95% of the time, as measured by daily behavior data collection. ( Exh. A.) The progress noted toward this goal was that the Student had difficulty expressing how felt and identifying coping strategies to use when dysregulated; was using coping strategies when dysregulated 25% of the time. ( Exh. A.) The second IEP goal related to behavior was that by September 8, 2021, given a positive behavior support plan and access to coping strategies, the Student would exhibit a 75% reduction in target challenging behaviors (aggression, property destruction, inappropriate touching, and inappropriate verbalizations) from present levels. ( Exh. A.) Between January 27, 2021, and February 9, 2021, the Student displayed 16.9 instances of aggression, 18.1 instances of property destruction, 3.5 instances of inappropriate touching, and 10.7 inappropriate verbalizations per day, as measured by daily behavior data tracking. ( Exh. A.) Between March 19 and April 1, 2021, the Student exhibited an average of 15.5 instances of aggression per day, 28.9 instances of property destruction per day, 17 instances of inappropriate touching per

day, and 15.8 inappropriate verbalizations per day. Exh. A.) The majority of the behaviors occurred during school hours when the Student was in group settings or when other staff and/or peers were nearby; the Student's target behaviors were consistently lower when in a low-stimulation environment with one staff member.

Exh. A.) Another IEP goal related to speech/language and social skills was that by September 8, 2021, given direct speech/language therapy, modeling, and fading prompts, the Student would appropriately gain social attention and maintain an appropriate topic of conversation for at least two minutes in 8 of 10 opportunities as measured by speech therapy data collection and observation. Exh. A.) In

terms of progress, the Student was able to use appropriate language to greet others, but did not identify appropriate versus inappropriate times or inhibit greetings during times when it was not appropriate. Exh. A.) The Student was able to maintain a topic of conversation on a preferred topic for more than three minutes in a one-on-one environment, though these conversations are typically related to restricted interests (e.g., information about iPads, personal details about others).

Exh. A.) was able to maintain a topic of conversation chosen by another for two turns. Exh. A.) The Student had more difficulty in group settings than in low-stimulation one-on-one settings. Exh. A.) The

Discharge Summary recommended that because the Student had difficulty regulating behavior during social interactions in group settings, and generally struggled with understanding how to appropriately navigate social settings, these environments be faded into daily expectations with positive supports following successful interactions. Exh. A.) It was noted that the Student responded well to

positive praise. Exh. A.)

38. staff recommended that the Student transition directly back to school. Exh. A.) The Student returned to on April 6, 2021.

Exh. C.) Dr. remained available to support staff and consult with Ms. and Ms. to make recommendations on the Student's program.

Exh. C.) The Student's initial return to in early April 2021 went smoothly. Exh. A.)

39. By April 27, 2021, critical incident reports regarding the Student's behavior began to occur again on a regular basis. Exh. B.) Approximately 18 incident

reports were filed due to the Student's behavior between April 27, 2021, and June 14, 2021. Exh. B.) Although staff were utilizing the Behavior

Intervention Plan created at , the Student continued to display significant dangerous aggressive and sexualized behaviors. Exh. B.)

40. On May 4, 2021, the Student was suspended for pulling a fire alarm and behavior that day also included inappropriate touching and exposing Exh. A.)

41. On May 10, 2021, the Affirmative Action Coordinator for the School Department issued a report on the result of her investigation into the Student's inappropriate touching and sexualized comments to a teacher. Exh. B.) The Coordinator found that the Student's actions had been substantiated and resulted in a

violation of the School Department Nondiscrimination Affirmative Action Policy. ( Exh. B.)

42. On May 12, 2021, Ms. sent the behavior support members of the Student's Team and Ms. an email indicating that was struggling with the Student's significant behaviors. ( Exh. A.) She noted that they were following the Behavior Intervention Plan provided by even though it was time and resource intensive. ( Exh. A.) She reported that the Student was exposing on a regular basis, peeing on staff and in the classroom, assaulting staff when did not like the lack of attention, spitting on staff, chasing staff, and making highly sexualized comments regularly. ( Exh. A.) Ms. indicated that the Team would meet the following day and requested that they discuss the prior concept of the Student being supported by a Behavioral Health Professional and an educational technician. ( Exh. A.) Ms. requested that Ms. , the for , and Dr. work together on the Student's program. ( Exh. C.)
43. On May 12, 2021, Ms. sent an email to Academy checking on the Student's status on the waiting list. ( Exh. C.)
44. On May 13, 2021, a Critical Incident Report was filed due to the Student's excessive disruption in a classroom and hallway, walking out of class, destruction of timers, and assault on staff, which resulted in the room being cleared. ( Exh. B.) The report indicated that every one of 12 potential interventions were attempted. ( Exh. B.) During the incident, when the Student realized a lock had been installed on a door, yelled out "what the is this , I'm going to break this ," at which point began pulling aggressively on the handle of the door and eventually broke the seal on the lock and opened the door. ( Exh. B.) The Student continued to yell and swear, threatening to break the lock every time it was repaired. ( Exh. B.) The Student refused to follow staff directives and grabbed the staff member, pushing the staff member into the door. ( Exh. B.) The Student kicked the staff member in the leg several times, grabbed the door and slammed it several times, and grabbed a staff member and pressed body against hers saying "I want to ." ( Exh. B.) The incident continued for over four hours, with the building on soft lockdown. ( Exh. B.)
45. On May 13, 2021, Ms. received an email from the Student's Father that was concerned about the Student's recent suspension. ( Exh. C.) The Student's Father expressed concerns about the Student's placement at because he felt had not provided sufficient supports to meet the Student's needs. ( Exh. C.) The Student's Father asked about the status of the waiting list at and options for the summer. ( Exh. C.) Also on May 13, 2021, Ms. emailed the Student's Father and replied that she had called to get an update on the waiting list. ( Exh. C.) Ms. passed on information regarding when was holding their program and

- information about a new program opening in through that they could consider. ( Exh. C.)
46. On May 14, 2021, Ms. provided the Parents with the Student's behavior data from April 12, 2021 through May 12, 2021. ( Exh. C.) Between April 12 and May 12, 2021, the Student had exhibited 55 incidences of physical aggression, 18 incidences of property destruction, 20 incidences of elopement, 79 incidences of inappropriate touch, and 47 incidences of inappropriate verbalization. ( Exh. A.)
47. Also on May 14, 2021, Ms. requested that Dr. observe the Student at before the end of the school year. ( Exh. C.) Ms. reported that the program at was failing, that she was looking for other placements, and that the Parents wanted Dr. to do another observation. ( Exh. C.) Also on May 14, 2021, Ms. received an email from asking for a referral packet regarding the Student and obtaining a release for the Parents to sign. ( Exh. C.)
48. In addition, a 30-day Transfer/Review meeting was held by the IEP Team on May 14, 2021. ( Exh. A.) The Team reviewed the recent critical incident reports and behavior data. ( Exh. A.) Ms. reported that would try to maintain safety until June 14 and that the Team would reconvene in early June to determine whether could offer to the Student. ( Exh. A.) The Team considered limiting the Student's exposure to staff but rejected this option because staff reported the Student also went after staff with sexualized behaviors/comments. ( Exh. A.) The staff reported that they have been implementing the behavior plan from and using a visual schedule and visual token economy. ( Exh. A.) The Student had several days with only minor behaviors when first returned from but more significant behavior began around the end of April and had continued, without any discernible or predictable pattern, even during preferred activities. ( Exh. A.) The Student was educated in a room that had all to that was attached to a classroom. ( Exh. A.) Despite this physical set up, the Student had been able to expose to peers. ( Exh. A.) The Student was engaging in sexualized behaviors during earned time and preferred activities like an earned walk outside. ( Exh. A.) In addition to Dr. Ms. and Ms. continued to consult with the Student's teachers. ( Exh. A.) The group had determined that the Student's behaviors were unmanageable at . ( Exh. A.)
49. During the IEP Team meeting, Ms. expressed concern about the Student setting off other students, exposing to other students, putting the whole school building at risk by pulling the fire alarm, and having to put the school in lock down. ( Exh. A.) staff did not believe the Student's sexualized behavior would decrease and did not feel that they could alter the environment enough to meet the Student's needs. ( Exh. A.) Both and

- reported that they did not believe \_\_\_\_\_ could meet the Student's needs at that time. ( \_\_\_\_\_ Exh. A.) It was noted that the Student was grabbing \_\_\_\_\_ and \_\_\_\_\_ behinds and sometimes becomes \_\_\_\_\_. ( \_\_\_\_\_ Exh. A.) The Student was being educated with a one-on-one special education teacher who switched out with another teacher, one of whom was male and the other was female. ( \_\_\_\_\_ Exh. A.) \_\_\_\_\_ staff had observed that the more staff who were around the Student, the more heightened \_\_\_\_\_ became so they tried to limit the number of staff members around \_\_\_\_\_. ( \_\_\_\_\_ Exh. A.) The Parents requested that Dr. \_\_\_\_\_ conduct an observation and make recommendations. ( \_\_\_\_\_ Exh. A.) The Student's Father reported that he believed the Student's sexualized behaviors were being reinforced because they garnered a big reaction. ( \_\_\_\_\_ Exh. A.)
50. On May 19, 2021, \_\_\_\_\_ informed \_\_\_\_\_ that they had no openings for programming for the summer. ( \_\_\_\_\_ Exh. C.)
51. On May 21, 2021, Dr. \_\_\_\_\_ observed the Student at \_\_\_\_\_. ( \_\_\_\_\_ Exh. A.) The program was not typical that day and the Student's special education teacher was out. ( \_\_\_\_\_ Exh. A.) The day was quite busy. ( \_\_\_\_\_ Exh. A.) The Student was appropriate with staff throughout the observation. ( \_\_\_\_\_ Exh. A.) The program was fast-paced to prevent the Student from resorting to behaviors and included cooking, a favored activity for the Student. ( \_\_\_\_\_ Exh. A.) Dr. \_\_\_\_\_ observed that a token system was used; the visuals were good; and staff was pleasant with the Student. ( \_\_\_\_\_ Exh. A.)
52. On June 3, 2021, Ms. \_\_\_\_\_ contacted \_\_\_\_\_ Academy to inquire about possible openings for \_\_\_\_\_. ( \_\_\_\_\_ Exh. C.) \_\_\_\_\_ Academy replied that they could not take a student just for \_\_\_\_\_ and that the Student still remained on their waiting list. ( \_\_\_\_\_ Exh. C.)
53. On June 3, 2021, an IEP Team meeting was held to review the Student's program and to discuss \_\_\_\_\_ services. ( \_\_\_\_\_ Exh. A.) On two days that week, the Student had exposed \_\_\_\_\_ to other students and staff and rubbed \_\_\_\_\_ on staff. ( \_\_\_\_\_ Exh. A.) Two Critical Incident Reports had been filed during the prior two days. ( \_\_\_\_\_ Exh. A.) On June 1, 2021, the Student's problem behavior lasted all day and included aggression, multiple hours of noncompliance, exposure of \_\_\_\_\_ and backside to staff, elopement, and mild property damage. ( \_\_\_\_\_ Exh. A.) \_\_\_\_\_ staff reported that they did not believe that the Student could be provided \_\_\_\_\_ services there because the Student required a more restrictive setting. ( \_\_\_\_\_ Exh. A.) The Team determined that the Student's IEP programming and behavior plan were appropriate and would continue. ( \_\_\_\_\_ Exh. A.) Academically, the Student had been doing life skills and was able to remain on task for about 10 minutes before having to switch to another task. ( \_\_\_\_\_ Exh. A.) The behavior plan from \_\_\_\_\_ was still being implemented in a one-to-one setting with a peer visiting approximately five times since April vacation week. ( \_\_\_\_\_ Exh. A.) Dr. \_\_\_\_\_ would continue consulting with the Team and would assist with recommendations to transition the Student into a new school day treatment program.



- ( Exh. A.) It was determined that the last day of school for the Student at would be June 14, 2021. ( Exh. A.) No other options were considered related to continuing the Student's program at over the summer. ( Exh. A.) The Parents expressed concern about a new placement for the Student for the fall and wanted to participate in services. ( Exh. A.) The Parents were considering two options for placements at Academy and/or in which was a new program opening in the fall; the Parents requested to tour both programs. ( Exh. A.) The Student's Father reported that the Student engages in sexualized behaviors to gain attention and did not engage in sexualized behaviors out in the community. ( Exh. A.)
54. The Parents understood the outcome of this meeting to be that could not provide ESY programming for the Student because they did not have enough staff but that agreed to keep the Student through the end of the 2020-2021 school year in recognition of the family that an alternative placement was being sought. (Interview with Parents.) The Parents understood that in order for the Student to return to , was going to provide a one-on-one support while would provide a full-time . (Interview with Parents.)
55. Ms. understood the outcome of this meeting to be that the IEP Team had determined that was no longer the least restrictive environment for the Student. (Interview with .)
56. and staff agree that the June 4, 2021, meeting included discussion of what the Student's least restrictive environment was, but they disagree as to whether it was focused on only summer services or whether the discussion encompassed school-year programming as well. (Recording of September 9, 2021, IEP Team Meeting.)
57. On June 11, 2021, Ms. contacted to explain that continued to seek an placement for the Student as well as a school year placement. ( Exh. C.)
58. In the final incident of the spring semester, on June 14, 2021, the Student entered Ms. 's office, grabbed a water bottle, dumped it all over the floor and Ms. , then shut the door and would not let other staff in. ( Exh. B.) then grabbed Ms. 's car keys and refused to return them. ( Exh. B.) After being guided to a seclusion space, the Student spit on and hit staff. ( Exh. B.) The Student rubbed Ms. 's car keys on , threw them at the wall, and pushed the buttons on the keys to set off the car alarm. ( Exh. B.) The Student charged staff, hit them aggressively, and spit on them. ( Exh. B.) This event began while the Student was on an earned break and sitting quietly in a room. ( Exh. B.)
59. On June 14, 2021, , Superintendent of School Department, reached out to the Interim Superintendent of School Department to ask if

- School Department could reconsider providing the Student with services at given that had contracted with multiple s to support the staff throughout the year and was willing to continue support during . ( Exh. A.) Ms. responded to School Department administrators that the IEP Team had met on June 3, 2021, and determined that was not the least restrictive environment for . ( Exh. A.) She opined that continued to not be an appropriate placement for the Student, noting that they had worked with many behavioral specialists and had not received any recommendations for changes to the program they were implementing. ( Exh. A.) Ms. polled the members of the Student's IEP Team, all of whom agreed that the Team had determined on June 3, 2021, that was no longer an appropriate placement for the Student. ( Exh. A.)
60. On June 14, 2021, Ms. contacted the Maine Department of Education for ideas for schools that could serve the Student and received a suggestion to contact in and Academy in . ( Exh. C.) Ms. obtained an application packet from , a residential program that might take the Student as a day treatment student. ( Exh. C.) Ms. emailed the Parents and reported that she could not find an program for the Student but she would continue to try. ( Exh. C.) Ms. reported that she reached out to Academy in and in and that she had reached out again to . ( Exh. C.) She also reported that she had identified two potential new programs for the Student. ( Exh. C.) The Student's Father responded that the Parents would consider all options. ( Exh. C.)
61. On June 21, 2021, Ms. emailed the Parents that she still did not have an placement for the Student but 's Superintendent had asked if they could consider providing with some additional recommendations from Dr. . (Parents Exh. #2.)
62. On July 1, 2021, reported to that it had reviewed the Student's application and they did not have the capacity to provide the educational and behavioral support that the Student needed. ( Exh. C.) Ms. informed the Parents of the rejection from and asked them if there was anything they could do through outside services to get the Student some summer programming. (Parents Exh. #2.)
63. On July 14, 2021, Ms. contacted Academy to inquire as to whether could refer the Student for placement there. ( Exh. C.)
64. On July 16, 2021, Ms. contacted inquiring about the status of the Student's referral. ( Exh. C.) Having received no response, on July 19, 2021, Ms. again contacted . ( Exh. C.) responded that the admission team would be meeting soon to review referrals. ( Exh. C.)

65. On July 22, 2021, Ms. [redacted] sent an email to the Parents with an update on the Student's placement. ([redacted] Exh. C.) She relayed that [redacted] Academy served only [redacted] students so it was not an option. ([redacted] Exh. C.) She explained that [redacted] was reviewing the Student's application materials and [redacted] Academy would not be able to give them a response until they completed a hiring process. ([redacted] Exh. C.)
66. On August 4, 2021, Ms. [redacted] sent an email to [redacted] inquiring about the Student's referral. ([redacted] Exh. C.) [redacted] responded that they had reviewed the referral and had concerns about meeting the Student's needs in their program but recommended their [redacted] program as a better fit. ([redacted] Exh. C.)
67. On August 13, 2021, the Parents emailed Ms. [redacted] asking if there was any news regarding the Student's fall program. (Parents Exh. #2.) The Parents expressed a desire to know as soon as possible what to expect when the school year started. (Parents Exh. #2.) The Parents requested that if the Student was not able to attend any outside program, [redacted] should program for [redacted] with additional staff and space to meet [redacted] needs. (Parents Exh. #2.) The Parents also requested that an IEP Team meeting be held, with outside providers and [redacted] staff invited to discuss [redacted] success there. (Parents Exh. #2.) The Parents requested that the meeting include a determination of the Student's goals and supports so that [redacted] could be successful from the start of programming rather than waiting for things to go awry then trying to fix them after the fact. (Parents Exh. #2.)
68. The same day, Ms. [redacted] responded to the Parents, informing them that [redacted] would consider the Student for the [redacted] program, which Ms. [redacted] felt was a better fit for [redacted] than the [redacted] program where [redacted] would not have had peers and the space was not well set up for [redacted]. (Parents Exh. #2.) Ms. [redacted] explained that the Student's referral packet would be forwarded to the [redacted] program and that [redacted] Academy was waiting to determine if they would have sufficient staff to accept the Student. (Parents Exh. #2.) Ms. [redacted] promised to keep Dr. [redacted] and the Student's outside providers informed and to convene an IEP meeting to discuss what would be best for the Student's program. (Parents Exh. #2.) She concluded that she was very frustrated not to have an immediate answer but reassured the Parents that she was continuing to work on locating a program and that the Student would have a fall program. (Parents Exh. #2.)
69. On August 23, 2021, Ms. [redacted] contacted [redacted] Academy checking on the Student's status on the waiting list. ([redacted] Exh. C.) Ms. [redacted] was told they were still having staffing issues. ([redacted] Exh. C.)
70. On August 25, 2021, Ms. [redacted] informed the Parents that the Student was #4 on the waiting list at [redacted]. ([redacted] Exh. C.) She also reported that she had contacted [redacted] to see if they would allow the Student to return until [redacted] could be

transferred to . ( Exh. C.) Ms indicated that if would not allow to return, would be prepared to program for at School. ( Exh. C.) She apologized that the process was taking so long, explaining that staffing was a big issue at a lot of institutions. ( Exh. C.)

71. On August 27, 2021, Superintendent emailed School Department Superintendent , at Program for and Ms. about the Student's lack of a placement. ( Exh. C.) Ms. felt that it had been an IEP Team decision in June 2021 that the Student needed a more restrictive placement and thus the Student's placement going forward should be discussed by the full IEP Team. ( Exh. C.) Ms. felt that the Student had struggled at from the start of the 2020 school year. (Interview with Babin.) Superintendent responded as follows:

As the 20-21 school year was coming to a close, indicated that they would not be able to program for the student for At the spring IEP meeting, stated that they were not the least restrictive environment for this student. , the Special Director has been working to find an alternative placement for and has on a waiting list at The question is, will be able to provide services for this student until the placement is ready at (day program). The family is looking forward to continuing education at an appropriate day program this fall. It's my understanding that they are quite satisfied with the program and would be happy if could continue in that placement.

( Exh. D.)

72. On August 31, 2021, Superintendent again contacted School Department and staff requesting an update on the status of the Student. ( Exh. D.) Ms. reiterated that she did not believe that was the Student's least restrictive environment. ( Exh. D.) Superintendent asked if would keep the Student while located another placement for ( Exh. D.) He reported that Ms. and Dr. believed that could provide a program for the Student and that not enough time has been given to allow Dr. to make programming recommendations. ( Exh. D.) Mr. responded that she was sensitive that was in a bind to find programming for the Student because was on a wait list. ( Exh. D.) She reiterated her belief that the Team had determined at the June 3, 2021, IEP Team meeting that was no longer the least restrictive environment for the Student. ( Exh. D.) She noted that after the meeting had ended Ms. continued to meet with the Parents to discuss alternative placements to , several of which had been identified. ( Exh. D.) She also reiterated her prior statements to Ms. from June, when Ms. had inquired about the student attending at , that an IEP meeting would need to be held for the

Student to return to [redacted] because the IEP Team agreed that [redacted] was not the least restrictive setting for the student. ( [redacted] Exh. D.)

73. Superintendent [redacted] replied as follows:

My only interest in this matter is to limit the educational disruption for the student in question. [redacted] is actively seeking an alternate setting for this student and would place [redacted] if that was immediately available. Unfortunately, this isn't the case as [redacted] has [redacted] on a waiting list. As you know, [redacted] doesn't operate a [redacted] school program so we do not have an appropriate placement in our facility for this student. It's my understanding that [Dr. [redacted]]'s opportunities to observe the student, interact with [redacted] staff, and provide feedback was quite limited. [redacted]'s observations indicated that staff and student interactions were appropriate and managed effectively. As indicated in my earlier message with [redacted] School Department administrators], [redacted] is willing to provide [redacted] with resources to support this student as needed. I recognize that this is a challenging student who may need services beyond what [redacted] can program for but leaving this student and family without a placement this fall seems unreasonable given [redacted]'s role in our collaborative. I understand that [redacted] may not be able to program for this student in the long run [redacted] been a student of the program for 7 years) but an unwillingness to fill the gap while waiting for placement is surprising to me. If we simply need to hold an IEP meeting to determine appropriate placement I would suggest that we schedule a meeting asap. It's my understanding that [redacted], the parents, and [Dr. [redacted]] felt that [redacted] may be able to provide the least restrictive environment for this student. . . . What if anything can [redacted] do (with support from [redacted]) to program for this student (now to fill gap)?

( [redacted] Exh. D.)

74. Ms. [redacted] responded directly to Superintendent [redacted], stating, "If this child/student is discharged from [redacted] into a black hole without a placement it is not only unethical but something I think the whole [redacted] board and [redacted] School Department need to address." ( [redacted] Exh. D.)

75. On September 2, 2021, Ms. [redacted] sent Ms. [redacted] an email stating that she was sending the Student to school at [redacted] on September 7, 2021, and that [redacted] placement and [redacted] LRE had not changed. ( [redacted] Exh. C.) Ms. [redacted] responded that she disagreed that the Student's LRE was [redacted] and stated that the Student was no longer placed at [redacted]. ( [redacted] Exh. C.) The same day, Ms. [redacted] emailed [redacted] Academy to check on the suitability of their new program in Unity for the Student. ( [redacted] Exh. C.) The DOE explained to Ms. [redacted] that a waiver could be granted to allow [redacted] Academy to take the Student even though their program only went to 8<sup>th</sup> grade because the Student was in a life skills program and was very low-achieving academically. ( [redacted] Exh. C.)

76. Also on September 2, 2021, Ms. [redacted] emailed the Parents that the Student would begin at [redacted] on September 7, 2021. ([redacted] Exh. C; Parents Exh. #2.) The same day, Ms. [redacted] began the scheduling of an emergency IEP meeting for the Student. ([redacted] Exh. C.) Ms. [redacted] emailed Ms. [redacted] that she was arranging transportation and planned to send the Student to [redacted] on September 7, 2021, because she believed it was the least restrictive environment for the Student at that time. ([redacted] Exh. C.) Ms. [redacted] stated that the Student's IEP Team had not changed placement yet and therefore [redacted] would continue at [redacted] although at the next IEP meeting, the Team could discuss the Student's program and placement. ([redacted] Exh. D.)

77. Later on September 2, 2021, Ms. [redacted] replied to Ms. [redacted] as follows:

As I have said over the course of the summer and into the fall, I am sensitive to the fact that [redacted] is having difficulty in getting an appropriate placement for this student. At the June 3, 2021 IEP meeting it was determined that the [redacted] Program was not the least restrictive environment for the student. The [redacted] Program is no longer the LRE and the student requires a more restrictive setting, it would be inappropriate of [redacted] to transport this student to the program on Tuesday, September 7, 2021 as [redacted] is no longer a student of the program. It is my understanding that you are working to coordinate an IEP meeting to discuss placement at the [redacted] Program. This is the appropriate pathway for the team to discuss whether something has changed for the student and the program is the least restrictive environment making it an appropriate placement.

( [redacted] Exh. D.)

78. On September 3, 2021, Ms. [redacted] responded to Ms. [redacted] by email, stating that the IEP team never made a determination that [redacted] was not the LRE. ([redacted] Exh. C.) Ms. [redacted] in turn responded that if the Student was transported to [redacted] on September 7, 2021, [redacted] van would be asked to leave. ([redacted] Exh. C.) Ms. [redacted] stated as follows:

I want to be clear that the [redacted] Program is not able to provide staffing or services for the Student at this time. If [redacted] transports [redacted] to the [redacted] Program facility on Tuesday, the van will be asked to leave, in order to protect the safety and well being of the Student, as well as the other students and staff of [redacted]. You should not arrange for transportation for the Student to [redacted] unless and until the IEP Team has had a chance to meet and agree upon a plan with appropriate supports. [redacted] is not this student's placement at this time, and has not been since June, 2021. At the IEP Team meeting on June 3, which you and I both attended, [redacted] personnel and [redacted]'s contracted [redacted], [redacted], agreed the student required a more restrictive placement and greater supports than could be provided by [redacted].

. At the time of the June 2020 IEP Team Meeting, the Student was engaging in significant behaviors, including highly sexualized behaviors, that created an unsafe environment for [redacted] and for others, despite [redacted]'s implementation of a behavior plan developed by [redacted], and provisions of significant supports. It was the IEP Team's determination at that point that the student would cease to attend [redacted] as of June 2021. After the IEP Team made the determination to end [redacted] placement at [redacted], you dismissed the [redacted] personnel file from the IEP Team meeting and continued to discuss other placement options with the student's parents. I understand that [redacted] has had difficulty securing an appropriate program placement for the Student since that meeting, but [redacted] cannot now be expected to provide services on short notice, particularly where it has previously been determined that [redacted] was not an appropriate program placement for this student. I want to emphasize that [redacted] is prepared to work with [redacted] and with [redacted]'s family as appropriate. Certainly, the IEP Team can consider whether it is possible to provide interim programming for the Student, with additional supports as determined by the IEP Team, while the Student awaits a placement at [redacted] or a similar program that can offer the type of therapeutic supports that the IEP Team has previously determined is necessary for the Student. It is not possible, however, for [redacted] to provide services for a child of the Student's considerable needs without an IEP Team meeting and a determination of a plan and supports, nor is it reasonable for [redacted] to request that it do so. [redacted] personnel were prepared to attend an IEP Team meeting earlier this summer, and offered to attend a meeting this afternoon at 3 pm, in order to ensure that the Team could meet before the beginning of the school year, but [redacted] did not schedule an IEP Meeting at any of these earlier times. I appreciate that [redacted] is now looking to schedule an IEP Team meeting for next week and [redacted] personnel will participate in that meeting in good faith. [redacted] cannot provide programming for the Student in advance of that meeting however.

( [redacted] Exh. D.)

79. Ms. [redacted] replied to Ms. [redacted] as follows:

I agree that [redacted] Program staff have been saying for some time that they do not believe that [redacted] is the least restrictive placement for this student. But as you know, that is different than whether [redacted]'s IEP team has made that determination, which we have not. Also, the opinion that a placement is not the least restrictive placement for a student does not mean that the student's placement will change especially when no other placement has been identified... I am confident that [redacted] can appropriately staff placement at least until that meeting.

( [redacted] Exh. D.)

80. The same day, Ms. [REDACTED] left the Parents a voicemail indicating that there was a legal battle between [REDACTED] School Department and [REDACTED] regarding the Student returning to school there the following week. (Parents Exh. #3.) She explained that the Student could continue to attend [REDACTED] because [REDACTED] had not yet discharged and there was no new placement for [REDACTED]. (Parents Exh. #3.) Ms. [REDACTED] reported that the Student could still attend [REDACTED] starting the following week unless [REDACTED] discharged [REDACTED], but if they did, [REDACTED] would file a complaint with the DOE and invoke stay put. (Parents Exh. #3.) Ms. [REDACTED] offered for the Parents to call her with any questions. (Parents Exh. #3.)
81. In response, the Parents emailed Ms. [REDACTED] on September 3, 2021, to express concern that the Student would not get good treatment from [REDACTED] and they preferred [REDACTED] not go there at all. (Parents Exh. #2.) They asked if [REDACTED] could provide staff for the Student to attend [REDACTED] Academy and also what a program at [REDACTED] or [REDACTED] School would look like as a temporary placement until [REDACTED] could attend [REDACTED]. (Parents Exh. #2.)
82. On September 6, 2021, Ms. [REDACTED] reached out to Dr. [REDACTED] asking if she could make recommendations to address the Student's sexualized behaviors. (Exh. C.)
83. The Student was transported by van to [REDACTED] on the morning of September 7, 2021, but [REDACTED] asked the van driver to return the Student home. (Interview with [REDACTED])
84. On September 7, 2021, at 10:51 a.m., Ms. [REDACTED] emailed Ms. [REDACTED] regarding her frustration with Ms. [REDACTED]'s account of the June meeting, which Ms. [REDACTED] did not attend. (Exh. D.) Ms. [REDACTED] was adamant that the IEP Team did not change the Student's placement but did agree to explore other day treatment possibilities, primarily because [REDACTED] staff felt that maintaining the Student's placement at [REDACTED] was not the least restrictive placement. (Exh. D.) She stated that other members of the Team "did not agree with the [REDACTED] opinion on the LRE issue." (Exh. D.) Ms. [REDACTED] reiterated that she believed that [REDACTED] could work as an interim placement for the Student and stated her opinion that the special education rules did not give them other meaningful choice for that interim placement. (Exh. D.) Ms. [REDACTED] noted that the Team would be meeting on September 9, with Dr. [REDACTED] present to provide suggestions on how to program in a safe and secure manner at [REDACTED] while looking at other possibilities. (Exh. D.)
85. On September 9, 2021, Ms. [REDACTED] contacted [REDACTED] Academy in follow up to her submission of an informational survey on the Student. (Exh. C.) The same day, Ms. [REDACTED] let the Parents know that [REDACTED] continued to have inadequate staffing to admit the Student. (Exh. C.)



86. On September 9, 2021, the Student's IEP Team met to conduct an annual review of the Student's program, develop a new IEP, and determine the Student's needs to be successful in education program. ( Exh. A.) continued to reiterate its position that the Student was discharged from at the June 3, 2021, IEP Team meeting, even though maintained that the meeting was to discuss ESY services and no notice of discharge had been issued at that time. ( Exh. A.) reported that a one-on-one educational technician, hired by , and a BHP, provided by , would need to be in place before the Student would be allowed to return to . ( Exh. A.) The Team agreed that the Student required a staff intensive placement with social work services, and psychological services consultation, a functional life skills program, and speech therapy to access and benefit from educational program. ( Exh. A.) The Team also agreed that the Behavior Support Plan issued at would be implemented and that the Student's behavioral goals in IEP would remain in effect. ( Exh. A.) The Team agreed to meet on a monthly basis to monitor the Student's progress in educational program and make adjustments based on recommendations from , speech therapist, social worker, special education teacher, and outside providers. ( Exh. A.) The Team determined that the Student's least restrictive environment continued to be the day treatment program at . ( Exh. A.) The Team also determined that the Student needed to work on appropriate social skills to become more successful with staff and peer interactions and to get needs met in a productive way without resorting to maladaptive behaviors. ( Exh. A.)
87. With regard to other placement options, reported that it had been working on several other placements for the Student, with the Student on waiting lists at Academy and at the program, where was number 4 on the waiting list. ( Exh. A.)
88. The Parents expressed concern that the Student would not be allowed to attend until additional staffing had been put into place. (Parents Exh. #1.) The Parents requested direct services, a life skills program that helped the Student with daily tasks, physical activity throughout the day, appropriate and positive behavior supports, close adherence to the Student's behavior plan, appropriate incentives. (Parents Exh. #1.) The Parents expressed flexibility regarding the Student's actual placement but asked for the opportunity to speak with representatives of any proposed program, tour the facility, and ask questions of representatives at an IEP meeting for any program proposed by . (Parents Exh. #1.) The Parents expressed their belief that was not an appropriate place for the Student to attend, as the IEP Team has agreed in the past. (Parents Exh. #1.) The Parents stated that nevertheless they were open to the Student's placement at for a time-limited period until could be transferred to another program that was more suited to needs, requesting that facilitate such a transfer as expeditiously as possible, to include determining the needs of another facility and offer assistance to such a facility, such as required to meet those needs and allow the Student to attend. (Parents Exh. #1.)

89. On September 9, 2021, following the IEP Team meeting, an IEP was issued for the Student for the period of September 9, 2021, to September 2, 2022, which placed the Student at . ( Exh. A.)
90. On September 10, 2021, Academy reported that they could not serve the Student. ( Exh. C.) Ms. responded that the DOE would grant a waiver if their program could serve the Student. ( Exh. C.)
91. On September 13, 2021, Ms. contacted Maine to ask if they could contract for services. ( Exh. C.) responded that they did not have s or clinicians to support the Student in school program due to staffing issues. ( Exh. C.)
92. On September 17, 2021, Ms. emailed the Parents that she was waiting to hear back from about contracting for a since the School Department already had a contract with . ( Exh. C.)
93. On September 29, 2021, Services provided Ms. with information about contracting with a on their staff. ( Exh. C.) The same day, Ms. forwarded the Parents the paperwork they would need to fill out. ( Exh. C.)
94. On October 4, 2021, entered into a contract with Services for a year of services. ( Exh. C.)
95. On October 7, 2021, the Student's Father reported that he did not want to hold an IEP Team meeting since the Student was not receiving any services yet. ( Exh. C.)
96. On October 15, 2021, Dr. , the Student's developmental pediatrician from the issued a letter identifying the Student's diagnoses as Anxiety Disorder, ADHD-Combined Type, Autism Spectrum Disorder, and Mild Intellectual Disability. (Parents Exh. #4.) She provided an updated list of medications and a report on most recent Vineland. (Parents Exh. #4.) She noted that the Student was not receiving any services while out of school. (Parents Exh. #4.)
97. On October 24, 2021, Ms. contacted asking for a copy of the Student's discharge paperwork as well as 's written discharge procedure. ( Exh. C.)
98. On October 26, 2021, , who had become the Director of Program, responded that had not discharged the Student from the program but if would like to enroll the Student, would enroll if they could bill . ( Exh. C.)

99. On October 27, 2021, Ms. [redacted] requested that [redacted] enroll the Student and bill [redacted] for tuition. ( [redacted] Exh. C.) [redacted] did not pay [redacted] for 2021 services and did not pay for a school year placement at [redacted] for the 2021-2022 school year until this conversation. (Interview with [redacted].) The cost of the Student's placement at [redacted] is typically between \$4,000 and \$5,000 per month depending on how many school days in the month. (Interview with [redacted].)
100. On October 27, 2021 and October 29, 2021, [redacted], MA, CAGS, NCSP, issued an evaluation of the Student in which she concluded that the Student exhibited adaptive behavior skills which fell generally below the 1st percentile rank. ( [redacted] Exh. A.) She noted that the data supported the Student's prior diagnoses of Autism Spectrum Disorder and Mild Intellectual Disability. ( [redacted] Exh. A.)
101. On November 1, 2021, Ms. [redacted] reached out to [redacted] Academy regarding the Student's spot on the waiting list and was told that they were still having staffing issues. ( [redacted] Exh. C.)
102. On November 3, 2021, Ms. [redacted] informed the Student's Parents that the process of securing a BHP to work with the Student at [redacted] was nearly complete. ( [redacted] Exh. C.)
103. On November 11, 2021, Ms. [redacted] received an email from [redacted] reporting that the referral for a BHP had been entered and [redacted] was in the process of checking references for a potential hire. ( [redacted] Exh. C.)
104. On December 17, 2021, [redacted] staff members, [redacted] Services staff members, and the potential BHP candidate met to review the Student's profile. (Interview with [redacted].)
105. On December 21, 2021, an IEP Team meeting was held. ( [redacted] Exh. F.) It was determined that the Student would be provided remote learning one hour per day and social services 30 minutes per day twice per week provided by [redacted] staff. ( [redacted] Exh. F.) The least restrictive environment for the Student was identified as the day treatment program at [redacted]. ( [redacted] Exh. F.) The remote instruction was to be temporary until the BHP from [redacted] Services was ready to start on site at [redacted]. ( [redacted] Exh. F.) The process for meeting and integrating the BHP who had been identified by [redacted] Services was reviewed. ( [redacted] Exh. F.)
106. The Student has remained at home with [redacted] Parents throughout the 2021-2022 school year. (Interview with Parents.) The Student receives Home and Community Treatment through [redacted] for approximately 12 to 15 hours per week in the summer and 11 hours a week in the fall. (Interview with Parents.) Although the Student is eligible for Section 28 services, [redacted] has not received them because [redacted] has not had a BHP on staff. (Interview with Parents.) The Student has not received any academic or functional life skills education this school year. (Interview with Parents.)

107. As of January 31, 2022, the Student remained on a waiting list for a placement at \_\_\_\_\_ and \_\_\_\_\_ Academy. (Interview with Parents.) Although the Parents had asked to tour both facilities, they had not been able to do so. (Interview with Parents.) The Parents feel they have more information on \_\_\_\_\_, where Ms. \_\_\_\_\_ has worked and speaks highly of the program. (Interview with Parents.) The Parents are amenable to the Student returning to \_\_\_\_\_ for a short period of time until the Student can be placed in another program. (Interview with Parents.) The Parents feel that \_\_\_\_\_ has excluded the Student as much as they could by having the Parents come get \_\_\_\_\_ or suspending \_\_\_\_\_ even though the Student's behaviors were clearly manifestations of \_\_\_\_\_ disability. (Interview with Parents.)
108. The Student returned to \_\_\_\_\_ on February 3, 2022. (Feb. 1, 2022, Email from \_\_\_\_\_.) A BHP and a BCBA from \_\_\_\_\_ Services provide services at \_\_\_\_\_ Program in collaboration with \_\_\_\_\_ staff. (Feb. 1, 2022, Email from \_\_\_\_\_.) Ms \_\_\_\_\_, the BCBA at \_\_\_\_\_, recently resigned and \_\_\_\_\_ has not yet replaced her. (Feb. 1, 2022, Email from \_\_\_\_\_.) As a result, \_\_\_\_\_ Services staff are training the \_\_\_\_\_ staff. (Feb. 1, 2022, Email from \_\_\_\_\_.)
109. \_\_\_\_\_ staff continues to implement the Behavior Support Plan issued by \_\_\_\_\_. (Interview with \_\_\_\_\_.) It is understood that the Student's baseline behaviors may have changed as a result of \_\_\_\_\_ lengthy absence from a school setting. (Interview with \_\_\_\_\_.)
110. \_\_\_\_\_ has contracted with \_\_\_\_\_ in Portland, a psychological firm which will begin an evaluation of the Student at the end of February. (Interview with \_\_\_\_\_.) The Student is due for \_\_\_\_\_ triennial evaluation in March 2022. (Interview with \_\_\_\_\_.)
111. It has been demanding for the Parents to have the Student at home since June 2021 with no educational programming. (Interview with Parents.) The Parents note that throughout this time, the Student has not received any academic or functional life skills education. (Interview with Parents.) The Parents want the Student back in full-time educational programming. (Interview with Parents.) The Student frequently references \_\_\_\_\_ desire to return to school and asks when \_\_\_\_\_ can go back when they drive by \_\_\_\_\_. (Interview with Parents.) The Parents have observed that the lack of routine has triggered negative behaviors from the Student such as not listening, not following directions, exhibiting negative reactions, pretending to do things \_\_\_\_\_ knows \_\_\_\_\_ is not supposed to do, and touching personal items \_\_\_\_\_ is not supposed to touch. (Interview with Parents.) The Parents note that the Student's discharge plan from \_\_\_\_\_ intended that \_\_\_\_\_ be enrolled in a structured day treatment program right away. (Interview with Parents.)
112. \_\_\_\_\_ has not discussed with the Parents what compensatory education services it might offer to address the Student's lack of a program since June 2021. (Interview with Parents.) The Parents feel that the Student will need additional

- programming to make up for the time [redacted] has lost. (Interview with Parents.) The Parents did not think tutoring in the home would work because there were other service providers coming to the house for outside services and it was hard for the Student to adapt to multiple people coming into the home. (Interview with Parents.)
113. [redacted] is open to ideas for compensatory education, including enhanced summer programming or camp if there were any appropriate options. (Interview with [redacted].) [redacted] does not believe it is capable of providing in home tutoring to the Student because it has only academic tutors who are not trained in behavior management. (Interview with [redacted].) [redacted] is amenable to providing in home services, even if it required two adults, but the Parents would have to be present. (Interview with [redacted].) Ms. [redacted] noted that although the Student does not meet the i-treat requirements for a clinical residential placement, [redacted] could refer for a residential educational program if other options do not come through. (Interview with [redacted].)
114. [redacted], the Student's Targeted Case Manager at Counseling Services, observed that the Student's negative behaviors ramped up in the fall of 2021 when [redacted] was supposed to return to school but did not. (Interview with [redacted].) She noted that [redacted] Parents did a great job of managing [redacted] behavior at home to avoid an escalation to crisis that might necessitate or qualify the Student for residential treatment. (Interview with [redacted].) Ms. [redacted] does not believe the Student would be eligible for residential treatment, noting that she was part of the process to get [redacted] admitted to [redacted] and that a request to extend eligibility after sixty days had been denied. (Interview with [redacted].) The Student's case management goals are related to advocating for [redacted] educational programming to be more stable. (Interview with [redacted].)
115. [redacted], the Student's Pathways clinician, began working with the Student in September 2021. (Interview with [redacted].) She worked with [redacted] three times a week for a total of 11 hours each week, 8 hours of which include a BHP from [redacted]. (Interview with [redacted].) She works with the Student on zones of regulation, understanding triggers, and self-calming. (Interview with [redacted].) Ms. [redacted] noted that the Student was not listening to the BHP well and was testing boundaries with her. (Interview with [redacted].) She noted that she does not provide the Student any educational programming. (Interview with [redacted].) Ms. [redacted] observed that being out of school had negatively impacted the Student's socialization and she was working with [redacted] on appropriate social conversations, noting [redacted] characteristic of being curious. (Interview with [redacted].) The Student told Ms. [redacted] frequently that [redacted] missed school and [redacted] missed [redacted] teachers. (Interview with [redacted].) Before Christmas, [redacted] would express hope that [redacted] would return to school before Christmas. (Interview with [redacted].) Since the holiday passed, [redacted] often says [redacted] hopes [redacted] can return to school this week or next week. (Interview with [redacted].) Ms. [redacted] was able to stop the Student from making sexual comments to her by shutting [redacted] down and telling [redacted] it was inappropriate, which was effective. (Interview with [redacted].)

She noted that when a new person enters the scene, [redacted] will attempt the same behavior. (Interview with [redacted].)

116. [redacted], the BCBA contracted by [redacted], has been involved with the Student since [redacted] was in third grade and was the author of the Student's original Behavior Intervention Plan. (Interview with [redacted].) She was the primary BCBA involved with the student until about three years ago when [redacted] obtained its own BCBA. (Interview with [redacted].) When Ms. [redacted] first worked with the Student, [redacted] was not able to stay in the classroom due to [redacted] disruptiveness. (Interview with [redacted].) For several years after that, the Student was in the classroom full-time with sensory breaks. (Interview with [redacted].) When [redacted] teacher of several years changed, the Student had a difficult time and staff saw a return to old behaviors as well as new behaviors that were sexualized in nature. (Interview with [redacted].) She observed that the Student's challenging behaviors are mitigated when [redacted] is stimulated by a new environment but that when things became normalized and routine, [redacted] began to reengage in attention seeking behaviors. (Interview with [redacted].) Ms. [redacted] has not observed the Student since early 2020 but remained engaged with [redacted] IEP Team. (Interview with [redacted].) She is not optimistic that the Student will be successful at [redacted] even with a full-time BHP, noting that when it was determined in spring 2021 that [redacted] was not an appropriate placement for the Student [redacted] was being supported by two full-time supports. (Interview with [redacted].) Ms. [redacted] believed that the Team concluded at the spring 2021 IEP meeting that [redacted] was not an appropriate placement for the Student. (Interview with [redacted].) Ms. [redacted] opines that the Student needs a stronger clinical program. (Interview with [redacted].)

117. Ms. [redacted] feels that the Student is one of the most challenging students at [redacted]. (Interview with [redacted].) [redacted] staff found it very difficult to shape the Student's behaviors. (Interview with [redacted].) She is concerned for [redacted] own safety as well as the 45 other students in the program. (Interview with [redacted].) Ms. [redacted] opines that the Student requires a residential facility where [redacted] has 24-hour supervision to ensure safety. (Interview with [redacted].) She noted that there were incidents where the Student went to other staff member's homes, that the Parents had to physically drag the Student at times, and [redacted] has exhibited unsafe and dangerous behaviors at home. (Interview with [redacted].) Ms. [redacted] believes that the Student is not capable of remote learning, which would require two adults in the home with [redacted], which would be a safety risk. (Interview with [redacted].) She noted that the Student requires programming that takes [redacted] into the community, which [redacted] is not set up to provide. (Interview with [redacted].)

118. [redacted], the former BCBA at the [redacted] Program, has been involved with the Student's program. (Interview with [redacted].) She helped to implement and modify the Behavioral Intervention Plan originally drafted by Ms. [redacted]. (Interview with [redacted].) It was determined when the Student returned to [redacted] from [redacted] that [redacted] curriculum would focus more on life skills and incorporate activities [redacted] enjoyed such as cooking. (Interview with [redacted].) She is not hopeful that the Student's return to [redacted] will be successful, noting that staff

is not trained to address the Student's sexualized behaviors. (Interview with .) Ms. opined that the Student needs a more therapeutic setting, which she believes was the determination of the Student's IEP Team in June 2021. (Interview with .) Her notes from the June 4, 2021, IEP meeting state that stated that it was not the least restrictive environment due to sexualized behaviors and physical aggression. ( Exh. C.) She agreed that the Student's behaviors ruled out home based services as an option. (Interview with .)

119. Although Ms. has offered to explore a residential placement for the Student, the Parents have declined. (Interview with .)

## **DETERMINATIONS**

1. During the 2020-2021 school year, Program and School Department reduced the Student's school day without utilizing the proper IEP procedures in violation of MUSER IX.3.C(6) and MUSER IX.3.C(4). In addition, Program did not allow the Student to return to school after the IEP Team agreed that conduct was a manifestation of disabilities in violation of MUSER XVII.F(2). As such, Program, as the Student's receiving placement, failed to ensure compliance with MUSER IX.3.I and School Department, as the Student's sending district, did not meet its obligation to ensure that Program complied with MUSER while the Student was placed there in violation of MUSER IX.3.I(8).
2. Program and School Department did not provide the Student with a free appropriate public education between December 2020 and January 2021 when was removed from Program to a remote learning program in violation of MUSER I and MUSER XVII.1.F. The remote learning environment was not the least restrictive environment for the student, because had no access to in-person staff or any peers, in violation of MUSER X.2.B.
3. The Student was not provided ESY services identified in IEP during 2021 in violation of MUSER IX.3.A(1)(d) and (g).
4. Although the Student's IEP dated September 9, 2021, to September 8, 2022, placed the Student in a staff intensive day treatment setting at Program, the Student has not received the services in IEP since the start of the 2021-2022 school year in violation of MUSER IX.3.A(1)(d) and (g).

## **ANALYSIS OF ISSUES #1 AND #2**

1. Between approximately December 2, 2020, and December 10, 2020, Program and School Department reduced the Student's school day without utilizing the proper IEP procedures in violation of MUSER IX.3.C(6) and MUSER IX.3.C(4). **VIOLATION FOUND; DENIAL OF FAPE.**

2. Between December 11, 2020, and January 6, 2021, [redacted] School Department and [redacted] Program did not provide the Student with a free appropriate public education between December 2020 and January 2021 when [redacted] was removed from [redacted] Program to a remote learning program in violation of MUSER I, and MUSER XVII.1.F, and MUSER X.2.B. **VIOLATION FOUND; DENIAL OF FAPE.**

Students with disabilities are entitled to a free appropriate public education pursuant to MUSER I and 22 U.S.C. § 1412(a)(1). The discipline of students with disabilities is governed by MUSER XVII and 34 CFR 300.530. A school administrative unit that sends a student to an out-of-unit placement retains the administrative responsibility for the education of the student and has specific responsibilities as outlined in MUSER IX.3.I, including ensuring compliance with MUSER. The receiving placement also holds certain responsibilities as outlined in MUSER IX.3.I, including ensuring compliance with MUSER.

On November 24, 2021, the Maine Department of Education issued an Administrative Letter clarifying the IEP requirements for out-of-unit placements. ([redacted] Exh. E.) The Department expressed concern that some school districts and programs believed that MUSER XI.3.I allowed a receiving out-of-unit placement to remove a student with a disability from school for any reason, without utilizing the IEP Team process and without maintaining “stay put” in the event of a dispute. ([redacted] Exh. E.) The Department reiterated that an out-of-unit placement could not terminate a student’s placement without going through the IEP process. ([redacted] Exh. E.)

During the fall of 2020, the Student was suspended several times for violations of [redacted]’s code of conduct. MUSER XVII.1.B(1) allows school personnel to remove a student with a disability who violates a code of student conduct from [redacted] placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct.

On November 30, 2020, the Student’s behavior, which included swearing at staff, pulling on a staff member’s mask, opening and leaning out the window, spitting on staff, and kicking at staff, resulted in [redacted] suspension for one day. When [redacted] was returned to school, presumably on December 2, 2020, [redacted] was moved to an abbreviated day. This decision was not confirmed by an IEP determination or noted in a Written Notice.

The Student’s abbreviated day placement lasted until December 10, 2020, when an IEP Team meeting was held to review a behavioral incident on December 7, 2020, in which the Student assaulted staff members and exhibited extensive sexualized behaviors. By that time, the Student had accumulated ten days of suspensions (not including the time [redacted] was out of school on an abbreviated day schedule, which should have been counted towards the accumulation of ten days). The IEP Team specifically met to hold a manifestation determination meeting because the Student had accumulated 10 days of suspension to determine if the Student’s behaviors were disability related or if there was a failure of the school administrative unit to implement the Student’s IEP. The IEP Team determined that the Student’s behaviors were manifestations of [redacted] disability. The IEP Team also determined that the Student would be moved to remote



learning. The Student's IEP retained \_\_\_\_\_ Program as the placement but was amended to include the Parent's concerns about the change in the Student's location to home for remote learning.

Team members were aware that the Student was on a waiting list for \_\_\_\_\_ for an admission. The Team agreed to meet after the holiday break and revisit the Student's programming options, which could include a different placement. The Student entered \_\_\_\_\_ on January 7, 2021, ending \_\_\_\_\_ remote instruction from \_\_\_\_\_.

Pursuant to MUSER XVII.1.F, if the Team determined that the Student's behavior was a manifestation of \_\_\_\_\_ disability, the Team had to conduct a functional behavioral assessment, unless one occurred prior to the behavior, or review the behavioral intervention plan and modify it as necessary to address the behavior. The Student's behavioral plan had been revised less than a month prior and \_\_\_\_\_ staff was implementing it with fidelity. In addition, \_\_\_\_\_ contracted with Dr. \_\_\_\_\_, a BCBA, within a week of the IEP Team meeting to work with the Team. As such, subsection (1) of MUSER XVII.1.F. was satisfied.

Subsection (2) of MUSER XVII.1.F, however, required that except as provided in paragraph (G) of MUSER XVII.1., the IEP Team was required to return the Student to the placement from which \_\_\_\_\_ was removed, unless the Parents agreed to a change of placement as part of the modification of the behavior plan. The Parents here clearly did not agree, as documented in the Written Notice and also in the Student's amended IEP, to the Student's removal from school to remote programming. There was no indication that the IEP Team was moving the Student to remote programming pursuant to the "special circumstances" provision of the rule, at MUSER XVII.G., allowing school personnel to remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student has carried to or possessed a weapon at school, knowingly possessed or used illegal drugs, or inflicted serious bodily injury upon another person while at school.

During the Student's placement on an abbreviated school day between December 2, 2020, and December 10, 2020, and also during the Student's removal to remote learning, which occurred between December 11, 2020, and January 6, 2021, the Student was removed from the least restrictive environment that the Team had identified as \_\_\_\_\_. The Written Notice of the December 10, 2020, meeting does not include a finding by the Team that remote learning was the LRE for the Student; instead, it summarily stated that the Student "was on an abbreviated day and will move to remote learning," after the Team determined that all of the Student's behavioral incidents were related to \_\_\_\_\_ disability. Although either \_\_\_\_\_ or \_\_\_\_\_ could potentially have invoked the opportunity to seek a due process hearing regarding the Student's removal from a placement on the basis of discipline, neither did so.

As such, \_\_\_\_\_, as the Student's receiving placement, violated MUSER IX.3.I, which required it to implement the Student's IEP and ensure compliance with MUSER and the Individuals with Disabilities Education Act. In addition, \_\_\_\_\_ School Department did not meet its obligation to ensure that \_\_\_\_\_ Program complied with MUSER while the

Student was placed there in violation of MUSER IX.3.I(8), charging the sending school administrative unit with responsibility for ensuring compliance with MUSER.

The failure to provide the Student with the placement and the LRE identified in IEP from approximately December 2, 2020, to January 6, 2021, resulted in a denial of FAPE.

### **ANALYSIS OF ISSUES #3 AND #4**

3. The Student was not provided ESY services identified in IEP during 2021 in violation of MUSER IX.3.A(1)(d) and (g). **VIOLATION FOUND; DENIAL OF FAPE.**
4. Although the Student's IEP dated September 9, 2021, to September 8, 2022, placed the Student in a staff intensive day treatment setting at Program, the Student has not received the services in IEP since the start of the 2021-2022 school year in violation of MUSER IX.3.A(1)(d) and (g). **VIOLATION FOUND; DENIAL OF FAPE.**

There is no dispute that in the summer of 2021, the Student was not provided ESY services even though IEP in effect for that time period identified ESY services as three 180-minute sessions per week from July 5, 2021, through August 27, 2021.

Following the Student's return to on April 6, 2021, after being discharged from , struggled to maintain safety in the Student's behaviors. By April 27, 2021, critical incident reports began to recur on a regular basis even though staff was utilizing the Behavior Intervention Plan developed at . Approximately 18 incident reports were filed regarding the Student's behavior in the approximately six-week period between April 27, 2021, and June 14, 2021. As explained in the incident reports, the Student continued to display significant dangerous aggressive and sexualized behaviors. The Student's behaviors also resulted in a violation of the School Department Nondiscrimination Affirmative Action Policy, as determined by the Affirmative Action Coordinator for the School Department.

By May 12, 2021, Ms. was sounding the alarm to the Student's IEP Team that staff were struggling mightily with the Student's behaviors. She reported that the Student was exposing on a regular basis, peeing on staff and in the classroom, assaulting staff when did not like the lack of attention, spitting on staff, chasing staff, and making highly sexualized comments regularly. Ms. asked that the Team consider supporting the Student with a BHP and an educational technician. She asked that Ms. and Dr. be deployed to work together on the Student's program. Ms. , recognizing the fragility of the placement, contacted and Academy, about possible referrals for the Student. She also requested that Dr. observe the Student at before the end of the school year, reporting to Dr. that the placement was failing and she was looking for other placements.

At an IEP Team meeting on May 14, 2021, Ms. reported that would try to maintain safety until June 14, 2021, and that the Team would reconvene in early June to

determine if [redacted] could offer ESY to the Student. Although different Team members had different takeaways from this meeting, it doesn't appear that [redacted] limited its concerns to ESY to be about its ability to staff the Student to the level identified in [redacted] IEP. Instead, the focus of the conversation was [redacted]'s concern about the safety of the Student and staff and the disruptiveness and dangerousness of [redacted] ongoing behaviors. Ms. [redacted] explained that [redacted] did not believe that the Student's sexualized behaviors were going to decrease and felt they could not alter the environment enough to meet the Student's needs. Both the BCBA's at the meeting, as recorded in the meeting notes, stated that [redacted] could not meet the Student's needs at that time despite [redacted]'s continued adherence to the Behavior Improvement Plan and specific strategies developed by [redacted] staff. After the meeting, Ms. [redacted] continued in her efforts to determine if [redacted] Academy could offer the Student a placement. Throughout this process, Ms. [redacted] has kept the Parents informed of placement and hiring conversations and options.

On June 3, 2021, another IEP Team meeting was held, following two days of significant behavior by the Student that resulted in critical incident reports. It was agreed that Dr. [redacted] would continue to consult with the Team and would assist in recommendations to transition the Student to a new day treatment program. It was also determined that the Student's last day at [redacted] would be June 14, 2021. The Parents expressed concern about the lack of a program for ESY services and requested to tour both [redacted] Academy and [redacted] in relation to a fall placement for the Student.

Although [redacted] did not issue a discharge notice to the Student at that time, the conversation at the June 2021 IEP meeting was consistent with the message that [redacted] had begun delivering in the fall of 2020 and which it elevated in the spring of 2021 after the Student's return from [redacted] : It did not feel that it could provide the Student's programming in the least restrictive environment any longer. [redacted] did not bill [redacted] for ESY services for the Student, an indication that it was not holding a placement for the Student.

Over the summer and into the fall, Ms. [redacted] continued to explore many potential placements for the Student, with all but two – [redacted] Academy and [redacted] – determining that they were not appropriate placements for the Student. Although Ms. [redacted] has offered to explore a residential placement, which some IEP Team members feel the Student requires, the Parents do not wish to consider a residential option. [redacted] administrators and [redacted] School Department administrators also became involved in the conversation, with [redacted] staff continuing to assert their perspective that the Student's IEP Team had determined that [redacted] could no longer meet [redacted] needs as of June 2021 and that in order for the Student to return to [redacted], IEP Team would need to determine that [redacted] could in fact meet [redacted] needs in the least restrictive environment and renew [redacted] placement there.

[redacted] did not bill [redacted] for a program that would begin in September 2021 and [redacted] did not pay [redacted] for a program for the Student for September and October 2021, although [redacted] agreed to accept a reenrollment of the Student in November 2021 under the staffing plan agreed to by the Team and [redacted] resumed monthly tuition payments in November 2021.

The transport of the Student to \_\_\_\_\_ on September 7, 2021, and the instruction from \_\_\_\_\_ to the van driver to return the Student home was very disruptive to the Student and \_\_\_\_\_ family, regardless of how the miscommunication occurred.

At the September 9, 2021, IEP Team meeting, a plan was developed for the Student to return to \_\_\_\_\_, as a temporary placement, and be supported by a one-on-one educational technician, hired by \_\_\_\_\_, and a BHP, provided by \_\_\_\_\_. Although \_\_\_\_\_ secured the one-on-one educational technician shortly thereafter, it took several months for \_\_\_\_\_'s contract with \_\_\_\_\_ Services to result in the hiring of a BHP to work with the Student.<sup>3</sup>

On February 3, 2022, the Student returned to \_\_\_\_\_. Ms. \_\_\_\_\_ has reported that the first few days of the Student's placement back at \_\_\_\_\_ have been successful.

Nevertheless, the Student did not receive any of the services identified in \_\_\_\_\_ IEP as ESY services for the summer of 2021 and did not receive any of the services identified in \_\_\_\_\_ IEP for the 2021-2022 school year until February 3, 2022, other than very limited remote programming.

On August 25, 2021, when it was becoming clear that no day treatment program was going to be available to the Student for the start of the school year, Ms. \_\_\_\_\_ indicated that if \_\_\_\_\_ would not allow the Student to return, \_\_\_\_\_ would be prepared to program for the Student at \_\_\_\_\_ School. On September 3, 2021, the Parents asked if \_\_\_\_\_ could provide staff for the Student to attend \_\_\_\_\_ Academy and also inquired about what programs at \_\_\_\_\_ or \_\_\_\_\_ would look like as a temporary placement until the Student could attend \_\_\_\_\_. Although barriers to implement home-based or remote instruction existed, there did not appear to be any further development of these options to fill the gap either while staff was secured to resume programming at \_\_\_\_\_ or another program had a placement for the Student.

Despite Ms. \_\_\_\_\_'s efforts to locate an alternative day treatment for the Student, the Student has missed approximately nine months of ESY and school year programming. This resulted in a denial of FAPE to the Student in violation of MUSER IX.3.A(1)(d) and (g).

As a result of the lack of programming for the Student for nine months, the Parents and outside providers have observed regression. The lack of routine has triggered negative behaviors from the Student, such as not listening, not following directions, exhibiting negative reactions, pretending to do things \_\_\_\_\_ knows \_\_\_\_\_ is not supposed to do, and touching personal items \_\_\_\_\_ is not supposed to touch. The Parents feel that the Student will need additional programming to make up for the time \_\_\_\_\_ has lost.

Most interviewees believed that compensatory education in the form of an extended school day would be unsuccessful for the Student. As such, a more appropriate form of compensatory education would be to extend the Student's eligibility for special education and related services for one year from the time at which it would otherwise expire.

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<sup>3</sup> Although some remote programming began in December 2021, it has not been significant enough to offset the denial of FAPE that was ongoing.

## **CORRECTIVE ACTION TO BE COMPLETED BY THE RESPONDENTS**

The Student was denied FAPE for approximately one month, December 2, 2020, to January 6, 2021, during the 2020-2021 school year. For eight days in December 2021<sup>4</sup> and three days in January 2022<sup>5</sup> the Program excluded the Student from attending school and thus denied FAPE. The Student was also denied FAPE during the summer of 2021 and the entirety of the 2021-2022 school year until February 3, 2022. In total, the Student was denied FAPE for approximately ten months. The following corrective actions are ordered:

1. Program will return tuition payments for the eleven days in December 2021 and January 2022 that the Student was excluded from attending school to the Schools by February 1, 2023.
2. Program will review the information pertinent to MUSER IX.3.I (see link below). The Program shall abide by the federal standard and provide FAPE to eligible students who are placed at their program or face further corrective action from the Department of Education.

[ADMINISTRATIVE LETTER: IEP REQUIREMENTS FOR OUT-OF-UNIT PLACEMENTS – Maine DOE Newsroom](#)

3. As compensatory education, is ordered to extend the Student's eligibility for special education services for one year from the time at which it would otherwise expire. The Student's triennial evaluation in March 2022 should include consideration of regression that may have occurred during the Student's removal from school and the Student's IEP Team should thereafter consider whether any specific services should also

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<sup>4</sup> December 11, 14, 15, 16, 17, 18, 21, and 22, 2021.

<sup>5</sup> January 4, 5, 6, 2022.

be provided as compensatory education in addition to the one year of extended eligibility for the Student.

4. With regard to the failure of both \_\_\_\_\_ Program and \_\_\_\_\_ School Department to meet the obligations outlined in MUSER IX.3.I in disciplining the Student, both are required to provide reporting to the Department of Education for one year regarding the removal of any special education student for disciplinary reasons to a placement other than the placement identified in the Student's IEP, including a reduction to part-time or a removal to remote education, including the documentation of a manifestation determination and the fulfillment of the duties outlined in MUSER XVII.F regarding the discipline of students with disabilities.



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email, and no response was ever provided to [redacted] email prior to [redacted] transfer of the Student to [redacted] on the first day of school, four days later.

Copies of the relevant emails were provided to the investigator by [redacted], but some of the time stamps may have been cut off when they were printed out, and two key emails appear to have been collated in the incorrect order ([redacted] exhibits D-10 and D-11). For the investigator's reference, I am attaching a clean copy of the email chain, and also summarize the four key emails described in paragraphs 75-79 of the Complaint Investigation Report, in the correct order:

- **Thursday, September 2, 2021, 11:38 am.** Email from [redacted] to [redacted].  
“... My plan right now is to arrange transportation and send [redacted] to [redacted] Program next Tuesday, September 7<sup>th</sup>...” (Complaint Investigation Report, ¶75)
- **Thursday, September 2, 2021 at 5:17 pm.** Email from [redacted] to [redacted].  
“...The [redacted] Regional Program is no longer the LRE and the student requires a more restrictive setting, it would be inappropriate of [redacted] to transport this student to the program on Tuesday, September 7, 2021 as [redacted] is no longer a student of the program. It is my understanding that you are working to coordinate an IEP meeting to discuss placement at the [redacted] Program. This is the appropriate pathway for the team to discuss whether something has changed for the student and the program is the least restrictive environment making it an appropriate placement.” (Complaint Investigation Report ¶77)
- **Friday, September 3, 2021 at 8:44 am.** Email from [redacted] to [redacted]:  
“...Let's do our best to get this meeting together as soon as possible. I am confident that [redacted] can appropriately staff [redacted] placement at least until that meeting” (Complaint Investigation Report, ¶79)
- **Friday, September 3, 2021 at 4:37 pm.** Email from [redacted] to [redacted]: “I want to be clear that the [redacted] Program is not able to provide staffing or services for the Student at this time. If [redacted] transports [redacted] to the [redacted] Program facility on Tuesday, the van will be asked to leave, in order to protect the safety and well-being of the Student, as well as the other students and staff of [redacted]. You should not arrange for transportation for the Student to [redacted] unless and until the IEP Team has had a chance to meet and agree upon a plan with appropriate supports. ...” (Complaint Investigation Report, ¶78)

As noted, the Complaint Investigation Report erred in describing [redacted] 8:44 am email as a response to [redacted] 4:37 pm email, when it was in fact the other way around.<sup>1</sup> [redacted] did not provide a timely response to [redacted] Friday email, which had stated unequivocally that [redacted] was not prepared to program safely for the student prior to an IEP Team

<sup>1</sup> The timeline provided by [redacted] appears to correctly reflect that no response was provided by [redacted] to [redacted] email of September 3, 2021 prior to the student's being transported to school on September 7, 2021. See Exhibit C-8.



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meeting, but simply transported the student to the following Tuesday, despite very clear statement that it could not safely program for the Student that day.<sup>2</sup>

accepts the conclusions of the Complaint Investigation Report and is prepared to comply with the Corrective Action Plan as it relates to ,<sup>3</sup> which does not expect to change as a result of the correction of the above factual error. Nevertheless, considers this factual error to be material, particularly given the lengths to which went to try to prevent the unfortunate situation that occurred on the first day of school.

Having alerted the Department to this factual error within the required timeline, respectfully requests that the Complaint Investigation Report be revised to reflect the correct order of the email exchange on September 3, 2022.

Very truly yours,

BRANN & ISAACSON

Nathaniel A. Bessey

NAB/  
Enclosure

cc:

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<sup>2</sup> The September 7, 2021 email reproduced at Exhibit D-12 was not sent until after 10 am., more than an hour after the Student had already been transported by .

<sup>3</sup> Specifically, will 1) refund to tuition payments for the 11 days in December 2021 and January 2022 that the Student was provided with remote learning; 2) review and continue to abide by the requirements of MUSER IX.3.I and the Maine DOE's November 2021 Administrative Letter on the topic of Out-of-Unit Placements; and 3) it will provide reporting to the Department of Education for a period of one year regarding the removal of any special education student for disciplinary reasons).