

COMPLAINT INVESTIGATION REPORT

v. [redacted] and Maine Department of Education
Complaint 22.067C
Complaint Investigator: Rebekah J. Smith, Esq.
August 15, 2022

INVESTIGATION PROCEDURE

Complainant:

Respondents:

Maine Department of Education
Office of Special Services
23 State House Station
Augusta, Maine 04330

Student: [redacted] age [redacted], [redacted] School during the 2021-2022
school year

The Department of Education received this complaint filed by [redacted] (“Parent”) on May 19, 2022, regarding the education of [redacted]. A Draft Allegations Report was issued on May 25, 2022. An information session was held by videoconference on May 26, 2022. On June 7, 2022, [redacted] School District (“School District”) submitted 222 pages of documents. [redacted] a service provider for the Family, also submitted 9 pages of documents.

On June 6, 2022, the School District filed a response to the complaint. On June 7, 2022, the School District filed a supplemental response to the complaint. The Department of Education filed a response on July 6, 2022.

[redacted] Student’s Care Coordinator at [redacted], has served as an advocate for the Family. The School District is represented by Rachel Sears, Esq., and Eric Herlan, 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:

1. [redacted], Care Coordinator at [redacted]
2. [redacted], RN, School Nurse at [redacted]

3. , RN, Nurse and Co-Owner
4. , RN, former Part-Time Nurse for the School District
5. Parent
6. Education Technician III for the School District
7. Regional Nurse Manager for
8. Pupil Services Director for the School District
9. , Superintendent of the School District
10. , RN, Health Care Manager

PRELIMINARY STATEMENT

The Student is old. resides in with . The Student attended in as a -grade student during the 2021-2022 school year. The Student has an Individualized Education Plan (“IEP”) based on conditions of ADHD, Autism, Mild Intellectual Disabilities, Disorder of Written Expression, and generalized anxiety. The Student requires nursing services to attend school. Although MaineCare has authorized to receive nursing services full-time while at school through that agency has not been able to provide full-time services. In addition, for a period of time, were not able to provide any services because nursing services had been moved from Section 7 to Section 6 of the Student’s IEP, although they have since been restored to Section 7.

ALLEGATIONS

1. The School District did not provide the Student with the nursing services included in August 2021 IEP 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) which resulted in a denial of a free appropriate public education (“FAPE”) in violation of MUSER I (School district must provide FAPE).
2. The School District has not provided the Student with a free appropriate public education (“FAPE”) during the 2021-2022 school year when, because it could not provide the nursing services included in the Student’s IEP, it removed to a partial remote learning program in violation of MUSER I (School district must provide a free appropriate public education) and 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). The School District has also not provided the Student with a FAPE during the 2021-2022 school year when, because it could not provide the nursing services included in the Student’s IEP, it placed on an abbreviated school day program in violation of MUSER VI.2.L (An abbreviated school day can be initiated by the IEP Team for one of two reasons: 1) based upon the child’s individual educational needs or 2) based upon the child’s medical needs). Neither the remote learning program or the abbreviated school day program educated the Student in the least restrictive environment for the Student 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 School District altered the Student's IEP in October 2021 and February 2022 by reducing nursing services due to its inability to provide such services rather than based on the needs of the Student in violation of MUSER IX.3.A(d) (IEP must include a statement of special education and related services and supplementary aids and services that will be provided for the child to advance appropriately toward attaining annual goals, to be involved and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and non-disabled children in the activities described in this subparagraph).
4. The Department of Education has not ensured that the School District was providing the Student with FAPE and should take over the education of the Student and the provision of special education services pursuant to MUSER I (The Department of Education is designated as the State Educational Agency responsible for carrying out the State's obligations under the federal IDEA).

FACTUAL FINDINGS

Documentary Record

1. The Student attended _____ School within the School District as a _____ grade student during the 2021-2022 school year. (S-12.) Until _____ grade year, a private duty nurse from _____ attended school with the Student and was present throughout the school day. (S-5 to S-14.) The nurse's duties were monitoring for unsafe behaviors, taking the Student for frequent bathroom breaks, providing the Student with frequent hydration and nourishment, monitoring the Student's ileostomy bag, monitoring the Student's gastrostomy tube, and administering medications. (S-5 to S-14.)
2. Throughout _____ school, other than _____ grade year when the Student was remote due to COVID, the School District issued Individual Health Plans ("IHPs") for the Student for _____ diagnoses of short bowel syndrome and ileostomy and feeding tube due to failure to thrive. (S-1 to S-14)¹ The accommodations afforded to the Student included monitoring for unsafe behaviors, frequent bathroom breaks, frequent hydration, nourishment emergency coverage, staff education, and a 504 plan. (S-1 to S-14.) The nurse coverage protocol identified nurses to cover each day of the week, as well as a backup, in the event that the Student's _____ nurse could not be present at school. (S-4.) The School District's nurse coverage protocol also indicated that if no

¹ During _____ grade year (2020-2021), the Student participated in fully remote instruction due to the Covid-19 pandemic and the IHP was not updated. (Interview with _____.)

- back up nurse could be present when the nurse was absent, the Student would not receive supplemental feedings and fluids. (S-4.)
3. The Student's IHP for grade year has not been finalized. (S-12.)
 4. , Pupil Services Director for the School District, had a phone call with the Parent on April 12, 2021, regarding the Student's nursing services. (S-16.) The Parent reported that she was very frustrated and was going to keep the Student home. (S-16.)
 5. On April 14, 2021, an IEP Team meeting was held to conduct the Student's annual review. (S-23.) At that time, the Student was fully remote due to COVID but it was anticipated that would return to school full-time when COVID restrictions were lifted. (S-40.) It was noted that the Student received a "very elevated" ranking on the Autistic Diagnostic Observation Schedule that had been performed in October 2020. (S-25.) The Student was also noted to be significantly elevated in areas of the Achenbach Child Behavior Checklist, including conduct, social problems, attention, rule breaking, and aggressive behavior. (S-25.) The Student's least restrictive environment was determined to be the life skills program with attendance at specials, recess, and lunch with peer group. (S-25.) The Student's Mother agreed with placement in the life skills program. (S-27.)
 6. The Team determined that the Student would continue to receive speech and language therapy for 30 minutes twice weekly and occupational therapy for 30 minutes twice weekly; receive specialized instruction for reading, writing and math 60 minutes per day in the life skills room; attend specials with grade level peers when appropriate and with staff assistance when needed; receive functional skills instruction for 30 minutes per day; continue to receive visual supports, preferential seating, prompting/cuing to stay on task; and check for understanding and directions, scribe, and/or voice to text as needed on allowed assessments; and IHP implementation by the nurse and nursing care from outside agency to tend to the Student's nutritional needs, bolus feeds, ileostomy care and other medical needs as they arose. (S-24.) The IHP implemented by an agency nurse was included in Section 6 of the Student's IEP. (S-37.) Having the nursing services identified in Section 6 created a problem for , which had been directed by the Maine Department of Health and Human Services to provide services in a school only when the service was listed in Section 7 of a student's IEP. (Interview with .)
 7. On April 16, 2021, a Written Notice was issued regarding the April 14, 2021, IEP Team meeting. (S-23.) The Student's IEP was issued for the period April 26, 2021, to April 13, 2022. (S-29.) The IEP noted that the Student required the presence of a nurse throughout day, which sometimes caused to miss class time and that slower processing speed caused to fall behind in academics, have difficulty paying attention, and have difficulty focusing, which caused to miss the content of some academic lessons. (S-32.) The Parent reported that the Student had received HTC and BHP services all summer, focused on social and emotional skills, which the

- Parent felt placed the Student in a good position to return to school. (S-41.) The Parent reported that [redacted] was skipping the 8 a.m. feeding but implementing a feeding between 11:30 a.m. and 12:30 p.m. (S-41.) The Parent expressed optimism that the Student could manage a return to full school days but also requested that school staff implement rest or down time during the day if the Student required it. (S-41.) Section 6 of the IEP identified an IHP implemented by an agency nurse as a supplementary service being provided to the Student. (S-37.)
8. On August 26, 2021, the Student's IEP Team met for a program review meeting. (S-53.) The Team determined that the goals and accommodations written during the April 2021 IEP remained appropriate to meet the Student's needs. (S-54.)
 9. On August 27, 2021, following an August 26, 2021 IEP program review meeting, a Written Notice was issued reflecting the August 26, 2021, Team determinations. (S-53.) Section 7 of the IEP was updated to reflect the provision of private duty nursing for seven hours per day in the special and general education settings. (S-54.) Ms. [redacted] reported during the complaint investigation that the Student's nursing service was moved from Section 6 to Section 7 of the Student's IEP pursuant to guidance that the service was required to be in Section 7 of the IEP to allow [redacted] to attend school pursuant to MaineCare instructions. (S-21.) The Team determined that the Student would participate with peers in a Grade [redacted] setting due to the appropriateness of that level combined with the flexibility that the [redacted] grade schedule allowed. (S-54.) No other changes were made to the Student's IEP. (S-54.) The Parent fully participated in the IEP meeting and expressed agreement with all determinations made. (S-56.)
 10. Towards the end of October 2021, Ms. [redacted] was informed that [redacted] was losing nurses due to the impending COVID vaccine mandate and they would only have a nurse to come to school with the Student two to three days per week. (Interview with [redacted].)
 11. On October 28, 2021, the Parent met with school staff and [redacted] staff to discuss how to provide the Student's nursing care given the potential lack of nurses that [redacted] was experiencing. (S-21.) [redacted] was able to provide nursing services in school three days a week but could not provide full-time services due to a lack of personnel. (S-17.) The Team discussed how to manage the Student's nursing care needs the other two days per week. (S-17.)
 12. On October 29, 2021, the Parent contacted Ms. [redacted] to report that the [redacted] nurse would come to school with the Student Monday through Thursday. (Interview with [redacted].) The Parent requested remote instruction for the Student on Fridays. (Interview with [redacted].)
 13. On October 29, 2021, Ms. [redacted] reported to other school staff that she had spoken to the Parent that afternoon and explained that the School District needed to work on the Student's IHP to determine exactly what they needed to provide to keep the Student safe at school. (S-60.) Ms. [redacted] stated that the Parent agreed that the

- Student did not require a nurse to be sitting in front of seven hours per day in order for to be able to attend school. (S-60.) Ms. explained that she believed the next steps were to examine the IHP, determine if the School District could implement the IHP with the nurse on staff, and, if not, advertise for someone to support the Student during the school day. (S-60.) She concluded that if the School District could hire an LPN or RN who could also float in the building throughout the day, that would be ideal. (S-60.)
14. On November 1, 2021, a Written Notice was issued stating that the Student would be losing one of private duty nurses from effective October 29, 2021. (S-89.) The Notice indicated that the Parent opted to access the remote learning option for the Student when an nurse could not attend school with the Student. (S-21 and S-88.) The Team considered having the School Nurse administer the Student's medications and bolus feedings throughout the school day but this was rejected because the School Nurse was not able to commit to the seven hours per day of nursing services required by the Student's IEP. (S-89.) The Team discussed different options for the Student to attend school for a portion of day but rejected these options because without a nurse available within eye/ear shot of while was in school, the IEP would not be satisfied. (S-89.)
 15. Also on November 1, 2021, a Written Notice was issued indicating that the Student's IEP Team had agreed to amend the Student's IEP without a meeting to reflect abbreviated days for a total of 23 hours of school per week due to the reduced amount of time that the Student could attend school due to the nursing shortage. (S-104.)
 16. On November 19, 2021, , the School Nurse at School, requested medication orders, tube feeding orders, tube feeding procedure orders, MIC-KEY button procedure orders, and ileostomy orders from the office of Dr. . (S-17.)
 17. In December 2021, the School District continued to work to obtain medical orders. (S-21.) The Mother contacted the School District to report that family members were ill and would not be accessing remote services. (S-21.)
 18. On December 22, 2021, the Student's Father passed away unexpectedly. (S-21.)
 19. On January 3, 2022, the Parent contacted School District staff to state that she planned to have the Student return to school three days per week with an nurse. (Interview with .)
 20. Also on January 3, 2022, , the Student's Care Coordinator at , followed up with the School District to determine if it had advertised for a nurse, as discussed in the last Team Meeting. (S-107.) Ms. replied that she had made multiple efforts to obtain the required paperwork that would help them determine the level of qualification that the new nurse would need to ensure that the Student's needs were met at school. (S-109)

21. On January 4, 2022, Ms. [redacted] replied to Ms. [redacted], Judy [redacted] ([redacted] School Principal), [redacted] (Regional Nurse Manager at [redacted]) and [redacted] ([redacted] School Nurse) stating that she was waiting for Nurse [redacted] email containing the forms, specific needs, and the documentation requested. (S-109.) Ms. [redacted] indicated that she would follow up with the Student's provider and apologized that the provider had not responded to Ms. [redacted] (S-109.) Ms. [redacted] requested a checklist from Ms. [redacted] of what she needed and stated that once received, she would start working on it as soon as possible. (S-109.)
22. As the Regional Nurse Manager at [redacted], Ms. [redacted] conducts an assessment every couple of months to review and update the Student's plan of care. (Interview with [redacted]) She usually establishes the plan of care by visiting the home and she also attends doctor's appointments that are specific to the Student's serious psychological needs. (Interview with [redacted].)
23. On January 5, 2022, Ms. [redacted] emailed Ms. [redacted], Ms. [redacted], Ms. [redacted] and Ms. [redacted] stating that the school forms requested by Ms. [redacted] had been faxed over on December 15, 2021 at 10:40 a.m. (S-110.) Ms. [redacted] indicated that other attempts had also been made in obtaining the necessary paperwork including sending forms home with the Student's nurse as well as other times that forms were sent home by other means. (S-110.) On that same date, Ms. [redacted] replied that she had in fact not received the paperwork sent by fax and requested that the paperwork be emailed directly to her. (S-110.)
24. On January 10, 2022, Ms. [redacted] emailed Ms. [redacted], Ms. [redacted], Ms. [redacted] and Ms. [redacted] following up on the documents that she had requested be sent directly to her through email. (S-111.) On the same day, Ms. [redacted] replied that the documents had just been emailed. (S-111.)
25. On January 20, 2022, Ms. [redacted] reached out to the Parent via email to discuss getting the Student back into school full-time. (Interview with [redacted].) Ms. [redacted] never heard back from the Parent. (Interview with [redacted].)
26. Also on January 20, 2022, [redacted] Medical Center provided two [redacted] Medication Permission Forms allowing the administration of Methylphenidate and Guamfacine, also to treat ADHD. (S-113 to S-116.)
27. On January 26, 2022, Ms. [redacted] sent a follow up email to Ms. [redacted], Ms. [redacted], Ms. [redacted], and Ms. [redacted] inquiring about the status of the paperwork, indicating that the School District needed the requested documentation so that they could determine how to best support the Student and enable [redacted] to attend school five days per week. (S-111 to S-112.)
28. On January 30, 2022, Ms. [redacted] emailed the Parent, Ms. [redacted], Ms. [redacted], Ms. [redacted], Ms. [redacted] and Ms. [redacted] to provide the Parent an update about the school nurse support. (S-117.) Ms. [redacted] stated that the required paperwork had been

- requested on several occasions and again indicated that the paperwork was needed to determine the level of qualification required to provide the services to the Student at school. (S-117.) Ms. indicated that she had sent follow up emails to both Ms. and Ms. on January 26, 2022, but had not heard back. (S-117.) Ms. suggested a virtual IEP Team Meeting to discuss the current status. (S-117.)
29. On February 9, 2022, Medical Center provided three Medication Permission Forms for administration of Methylphenidate and Guamfacine to treat ADHD and Peptamen to treat short bowel syndrome. (S-119 to S-122.)
30. On February 15, 2022, Ms. and Ms. had a phone call with the Parent and others to review the state of the medical orders. (S-19.) The Parent indicated that the doctor's office had faxed over orders and they did not know what else could be done. (S-19.) Ms. stated her belief that the Student did not need seven hours of nursing service per day. (S-19.) The Parent agreed that they would be able to utilize the School Nurse to administer the Student's care while was at school when an nurse was not present. (Interview with .) They also made a plan at that time for the School Nurse to shadow the nurse a few more times. (Interview with .) The School District also agreed to move the accommodation from Section 7 back to Section 6. (Interview with .)
31. On February 15, 2022, a Written Notice was issued amending the Student's IEP by agreement without an IEP Team meeting, stating that the School District had contacted the Parent by telephone to discuss the private duty nursing services in Section 7 of the IEP and that the IEP would be amended to move this service from Section 7 and instead return to being listed as an accommodation in Section 6. (S-136.) The Student's IEP was also amended to reflect the addition of special transportation as needed, an accommodation to reflect adult support throughout the school day, and the continuation of live tutoring via google meets on the days when the Student was unable to come to school. (S-136.)
32. On February 16, 2022, Ms. sent an email to Ms. , the Parent, Ms. , Ms. and Ms. in response to a phone call from Ms. . (S-117.) Ms. reported that she was still working on finding a nurse to fill in for the three days needed and indicated that Ms. still needed to put a job listing out for skilled LPN or RN, asking if Ms. had all documentation needed to place the advertisement. (S-117.)
33. On February 16, 2022, Ms. replied to Ms. that the school nurse was continuing to work on the correct orders and that the nurse had spoken with Dr. 's office many times. (S-118.) She indicated that the nurse would be finalizing the Student's Individualized Health Plan once she had received everything that she needed. (S-118.) Ms. stated that she, Ms. , Ms. and the Parent had all spoken the previous evening and agreed to having the school nurse

- provide the skilled nursing care on the days that an nurse could not be present. (S-118.) Ms. concluded that they all hoped to have this all accomplished during the week they returned from February break. (S-118.)
34. On February 11, 2022, of Dr. 's office contacted Ms. , who had requested a review of the medication order forms and information about specific times each medication should be administered, as well as the dosage for Guanfacine, corrections to the start date, and a physician signature. (S-17.)
 35. On February 15, 2022, Ms. contacted the Maine State Board of Nursing in the presence of Ms. . (S-18.) Ms. was informed by the individual at the Board office that a dietician could write dietary orders after a physician had ordered use of a feeding tube and MIC-KEY. (S-18.)
 36. On February 28, 2022, Ms. faxed a note to Ms. requesting the following orders signed by a physician: medications, tube feeding via MIC-KEY, care of ileostomy, emptying ileostomy pouch, and replacing dislodged MIC-KEY button. (S-19.)
 37. Also in February 2022, the School District learned that Ms. would be out from late March until after April break, informing the Parent and beginning a search for a coverage nurse. (S-21.)
 38. On March 2, 2022, Ms. shadowed , the nurse from who regularly attended school with the Student three days a week. (S-19.) Ms. observed Ms. administer medication and provide tube feedings to the Student. (S-19.) The Parent reiterated to School District staff that Dr. 's office did not understand what more was needed for orders. (S-19.)
 39. On March 4, 2022, Ms. sent an email to the Parent, copying Ms. and Ms. , stating that in an effort to keep her informed of the progress on their end, that Ms. had contacted Dr. 's office and was told that Dr. was out for the rest of the week. (S-139.) Ms. indicated that Nurse left a message for Dr. to call her when she returned to the office. (S-139.)
 40. On March 11, 2022, Ms. called Dr. 's office to request medical orders. (S-20.)
 41. On March 11, 2022, an email was sent from Ms. to the Parent, Ms. , Ms. and Ms. giving an update on Nurse 's efforts to get the information she needed to complete the Individualized Health Plan. (S-140.) Ms. indicated that Nurse had contacted Dr. 's office again and was asked what she needed from Dr. . (S-140.) Nurse explained what she needed and was told Dr. would call her back. (S-140.)

42. On March 18, 2022, Ms. _____ again contacted Dr. _____'s office. (S-20.)
43. On March 20, 2022, the day before the annual meeting, Ms. _____ sent the Parent an email detailing their efforts. (Interview with _____.) The Parent sent back an email detailing several concerns that she wanted the Team to discuss during the annual meeting. (Interview with _____.) All of the allotted time for the meeting was spent discussing the Parent's concerns about nursing. (Interview with _____.) As a result of that meeting, the Team gave Ms. _____ a to-do list which she began working on right away. (Interview with _____.)
44. On March 29, 2022, an email was sent from Ms. _____ to the _____ School Based Health Center to see if they could provide nursing services for the Student if the Student was brought to School three times a day. (S-141.) Ms. _____ explained that the Student's private duty nurse was only available two days per week and that the school nurse was leaving on medical leave beginning the next day. (S-141.) _____ School Based Health Center was not able to provide assistance. (S-141.)
45. On March 29, 2022, Ms. _____ emailed Ms. _____ and Ms. _____ stating that she had just received a call from _____, from _____, inquiring about the doctor's orders. (S-143.) Ms. _____ confirmed that there had been multiple conversations, faxes, etc., with Dr. _____'s office to get the orders. (S-143.) Mr. _____ indicated that Dr. _____'s office wanted Ms. _____ to come up with a plan of care that they could just sign off on. (S-143.) Ms. _____ explained that medical orders needed to come first and then a plan of care could be developed. (S-143.)
46. At some point in March 2022, the School District posted a job opening for a part-time, temporary nurse to cover Ms. _____'s duties. (S-22.) Also during March, the Parent requested that the School District provide one-to-one nursing coverage during the school day as provided by a nurse hired by the School District. (S-22.)
47. On March 30, 2022, Ms. _____ emailed the Parent, copying Ms. _____ and Ms. _____, following up on a voicemail that Ms. _____ had left the Parent, in advance of their scheduled meeting the following day. (S-144.) Ms. _____ reviewed the current status of: the School District's posted nursing care position; the area home health/nursing agencies she had contacted; a current and former nurse at _____ she had contacted; the _____ School she had contacted about their school-based clinic run by _____; and Ms. _____'s surgery and expected return date. (S-144.) Ms. _____ also explained her hope that Ms. _____ could continue with her Wednesday and Thursday schedule the following month and that she had not heard back from Ms. _____ regarding any applicants for the nursing position. (S-144.) Ms. _____ offered two hours per day of in-home tutoring for the Student or the option of the Student coming into school for two hours per day for academic instruction around _____ medication needs. (S-144.)

48. An IEP Team meeting was held on March 31, 2022. (S-146.) The Written Notice for the meeting, issued on April 5, indicated that the scheduled meeting time was not long enough to discuss parent concerns and complete an annual review. (S-146.) The Team decided to reconvene on a date prior to April 14, 2022. (S-146.) The Notice stipulated that the Student would attend school from 8:00-10:00 a.m. on the days when private nurse is unable to come to school and while the school nurse is out on medical leave. (S-146.) Due to the abbreviated school day status, the IEP Team decided to meet every 20 school days until the Student returned to a full schedule. (S-146.) No changes were made to the current IEP at that time. (S-146.)
49. On April 1, 2022, Ms. reached out to State Medicaid Education Liaison to get assistance responding to's statement that it would not be able to provide the Student with nursing services if they were not in Section 7 of the IEP and also how to determine whether the Student required full-time nursing services at school. (S-150.)
50. On April 5, 2022, Ms. informed the Parent and other members of the Student's team that she had made all the phone calls and contacted all the people which she had agreed to contact during the meeting the previous Thursday. (S-153.) Ms. updated the group that they were in the process of obtaining a release to allow the School District to talk with the Student's gastrointestinal doctor, noting that the DOE School Nurse Consultant had indicated that the Student's medical orders should come from the gastroenterologist, Dr. , not Dr. . (S-153.) Ms. also inquired about setting up the next IEP Team Meeting on the morning of April 13, 2022. (S-153.)
51. On April 7, 2022, Ms. emailed of , Ms. and Ms. to report that Dr. had not seen the Student for two years and indicated that he could not write the orders for the Student. (S-155.) Ms. also stated that the DOE School Nurse Consultant had recommended that the Student's doctor write a plan of care specifically for the School and include only the medications/feedings that would occur during the school day. (S-155.) She included the DOE School Nurse Consultant's specific expectations from the medical orders that would allow the school nurse to create a plan of care:
- Medication dose/route/time. If given via g-tube it should specify flushing with XX amount of water before and after.
Feeding should also include amount, manner that it is given (gravity via syringe, push via syringe, pump, etc.) and whether or not it needs to be flushed before/after with water and how much.
Water needed for hydration through out the day via G-tube? How much/how often?
52. Later on April 7, 2022, Ms. wrote again to say that she had reached out to Dr.'s office and been told that Dr. would not be able to write the orders that the School District was requesting. (S-157.) Ms. then reached

out again to the DOE School Nurse Consultant and the State Special Education Director for further advice and clarification. (S-156.)

53. On April 8, 2022, Ms. [REDACTED] emailed Mr. [REDACTED] and Ms. [REDACTED], copying Ms. [REDACTED], indicating that she had not heard back from them and asking for confirmation that they were receiving her emails. (S-156.) Ms. [REDACTED] also included the information she had received from the DOE School Nurse Consultant regarding the law that guides the parameters of school nurse responsibilities. (S-156.) Ms. [REDACTED] reported that Dr. [REDACTED]'s office had stated that they would not be able to write the orders and that, therefore, further contact with them would not be helpful. (S-157.) Ms. [REDACTED] also stated that since Dr. [REDACTED] had not seen the Student in two years, he also could not provide the orders at that time, but he was in the process of scheduling the Student to be seen. (S-157.) Ms. [REDACTED] also updated the Parent on the status of the School District's efforts. (S-159.)
54. On April 13, 2022, the Student's IEP Team Meeting met for [REDACTED] annual review, which was followed by a Written Notice on April 15. (S-163.) The Student's IEP was developed to include the majority of instruction in the special education (life skills) setting; time in the least restrictive environment would reflect approximately 23% of the day; 90 minutes per day of specially designed instruction in English and Language Arts in a special education setting; 60 minutes per day in a special education math setting; 30 minutes per day in a special education science/social studies setting; 30 minutes per day in a special education functional life skills setting; 60 minutes per week in a special education Speech/Language setting; 60 minutes per week in a special education occupational therapy setting; 15 minutes per trimester consulting with a school social worker; 90 minutes per day of nursing services in a special education setting; transportation to and from school daily as needed; academic goals will address reading, writing, math and content skills in science and social studies; functional goals will address OT, speech, behavior and functional life skills. (S-163.) In addition to the 90 minutes per day of nursing services to be provided by the School Nurse, identified in Section 7 of the Student's IEP, Section 6 of the Student's IEP included an IHP to be implemented by an outside agency nurse. (S-185 & S-188.)
55. Also on April 13, 2022, Ms. [REDACTED] reported to Ms. [REDACTED], the Parent, and [REDACTED] staff that the Student had an upcoming appointment with Dr. [REDACTED] and the Parent wanted help preparing for the appointment to coordinate what the School District needed. (S-160.) Ms. [REDACTED] requested that Ms. [REDACTED] provide a clear outline, in a list format, of what the School District needed, as well as any School District forms needed, so that the Parent could bring it to the appointment with Dr. [REDACTED]. (S-160.) On the same day, Ms. [REDACTED] replied that she would be able to provide this information. (S-161.)
56. On April 15, 2022, Ms. [REDACTED] emailed Ms. [REDACTED] and the Parent stating that while she already had the forms on file signed by the provider and the Parent, that to be safe and cover all bases, she wanted new forms directly from Dr. [REDACTED]. (S-189.) On

- that same day, _____ of the Superintendent’s office emailed Ms. _____ stating that _____ at _____ Pediatric Gastro (Dr. _____’s office) had reported that although she received Ms. _____’s fax, she could not fill it out because they had never prescribed any medications for the Student. (S-190.)
57. At some point in April 2022, the School District began delivering the Student home multiple times during the school day to allow _____ medication and feeding to be done at home because no school nurse was present at _____ School. (S-22.)
58. The Student's school day was expanded to end at 2:00, with the Student being transported home multiple times during the day for _____ medications and feeding because there was no school nurse in the building. (S-22.) This did not work well for the Student and the practice was ended quickly. (Interview with Parent.) The Student returned to in-home tutoring with Ms. _____ and the School District offered options to provide speech language services and occupational therapy. (S-22.)
59. Ms. _____ fully expected to have the medical orders waiting when April break ended. (Interview with _____.) When the orders had not arrived by the end of break, Ms. _____ called Dr. _____ and she was told they had given them everything and the doctor did not need to do anymore. (Interview with _____.)
60. Around this time, _____ stopped providing nursing services to support the Student due to a staff shortage and the Student stopped attending school. (Interview with _____.)
61. On April 28, 2022, Ms. _____ sent a letter to the Parent indicating that she had tried numerous times to contact the Parent by phone but that all calls went to voicemail and that the Parent’s voicemail was full. (S-82.) Ms. _____ outlined the efforts that the School District had made to offer the Student a FAPE since the annual IEP meeting on April 13, 2022. (S-82.) Ms. _____ reiterated that the School District was communicating with the Student’s physician in an attempt to gather information in order to safely administer medications to the Student and explained that the School District was in the process of hiring another nurse to cover for the school nurse while she was away on medical leave. (S-82.) She noted that the Parent had been offered options for the Student to receive _____ Speech and OT either in-person in school or virtual therapy sessions. (S-82 & S-83.)
62. On April 29, 2022, Ms. _____ emailed the Parent stating that she attempted to return _____ call but that it went right to voicemail and the voicemail box was full so that she could not leave a message. (S-192.) Ms. _____ indicated that she would try the Parent again after she finished a meeting. (S-192.) On that same day, the Parent replied to Ms. _____ stating that she had personally given all the medical information she could give, that it was out of _____ hands, and that she had no control over what the medical offices were giving to Ms. _____. (A-192.) The Parent stated that the medical offices had confirmed that they had given Ms. _____ all that they had. (S-192.) The Parent stated that her and her _____ health, mental state, and medical problems had all been thrown into overdrive and that it was

- obvious what Ms. _____ was requesting, did not exist. (S-192.) The Parent stated that it was a skill, not an order, and that this could go on for years. (S-192.) The Parent stated that she had nothing more to give in this situation, that it was very frustrating to say the least, and that it was a misjustice for _____ child. (S-192.)
63. At the end of April, _____, Ed Tech III with the School District, who had worked with the Student for years, began to provide in home tutoring services two hours per day, five days per week. (Interview with _____.)
64. On May 2, 2022, an updated IEP was issued after the Parent expressed concern about the Student's grade level for various skills. (S-169.) The Parent reported that the Student was capable of many tasks but it took _____ a long time to process information. (S-169.) The Parent indicated that they use a reward system to reinforce appropriate behavior. (S-169.)
65. On May 2, 2022, _____, RN, began her part-time interim position with the School District, with her primary focus being to obtain the medical orders the School District felt it still needed. (S-22.) Ms. _____ was available to work with the Student five days per week once the medical orders were in place. (S-22.) Although she spent some time in the Student's home, she did not provide any services to the Student at school because the Student did not return to school for the rest of the school year. (Interview with _____.)
66. In mid-May 2022, the Parent began demanding one on one nursing for seven hours per day. (Interview with _____.)
67. On May 16, 2022, Ms. _____ reached out to the State Medicaid Education Liaison to request that they discuss the IEP matter again and stating that she had questions from the IEP Team. (S-151.) While they weren't able to connect by phone that day, Ms. _____ followed up with another email to Ms. _____ regarding determining the Student's level of need. (S-151.) Ms. _____ referred Ms. _____ to the State Director of Special Services Birth to 22 or the DOE School Nurse Consultant for assistance, who Ms. _____ contacted the next time requesting a meeting. (S-152.)
68. On May 16, 2022, the Student's IEP Team met regarding the Student's abbreviated day and conducted a program review. (S-196.) The Written Notice issued on May 25, 2022, stated that no changes were made to the current IEP and that the Team would meet again on May 24, 2022 at 1:00 to continue the discussion. (S-196.)
69. On May 24, 2022, the Student's IEP Team met to review the Student's nursing care needs. (S-220.) The School District wanted to have the Student return to school. (Interview with _____.) The Written Notice issued on May 27 indicated that the Team agreed that the Student's IEP would be amended to reflect seven hours of daily nursing care in Section 7 as a related service. (S-220.) In addition, the School District agreed with the Parent's request to use the private duty nurse from _____ three days per week while the School District would hire a per diem nurse for the remainder of the days to be present at school from 10:00 to 2:00. (S-220.) The

Parent declined the School District's offer to have the Student attend school from 8:00 to 3:00 or from 10:00 to 2:00. (Interview with .)

70. On May 24, 2022, said they were on the cusp of hiring a five day a week nurse. (Interview with .) They were very confident that they would have full nursing coverage for the fall of 2022 although they asked that the School District hire a per diem nurse to be available when did not have nurse coverage. (Interview with .) The Parent, however, wanted to meet the nurse but that was less likely with per diem nurses who are drawn from a pool. (Interview with .)
71. was not able to provide nursing services to the Student in school for the rest of the year and the Student did not return to school. (Interview with .)
72. On May 25, 2022, the Student's speech therapist reported to Ms. that the Student had missed 12 speech therapy sessions and that she had made spaces in her schedule in which to meet with the Student while was in school. (S-87.)

Interviews

73. The Parent feels that Nurse is not interested in taking care of the Student. (Interview with Parent.) When Ms. was hired by the School District to provide nursing services to the Student on a part-time basis, she told the Parent that she was hired part time to "clean this stuff up." (Interview with Parent.) Ms. would make three trips to provide the student's medications and feedings. (Interview with Parent.) There was a safety issue because of the student's colostomy bag, G-tube and the gauze that has to be changed regularly. (Interview with Parent.) One day during transportation back and forth to school, the Student's colostomy bag leaked and the Student was sitting in stool in the van. (Interview with Parent.) The Student started to cry and stated that "can't do this anymore." (Interview with Parent.)
74. The Parent believes that the Student also needs full time nursing care for learning disorder of microcephalic. (Interview with Parent.) She noted that the Student picks at skin and makes bleed. (Interview with Parent.) The Student also has behavioral issues and is not good on feet. (Interview with Parent.) Somebody has to be aware if is not getting enough fluids because is hyponatremic and cannot regulate sodium levels. (Interview with Parent.) When the Student gets pale or has other symptoms, needs to be administered sodium, extra fluid, or pedialyte. (Interview with Parent.)
75. The Student's doctors' offices expressed frustration to the Parent because the School District was asking for "skills" not "orders." (Interview with Parent.) The doctors' offices stated that they had given the orders and had given the School District everything that they could to allow them to create a health plan and provide nursing services for the Student. (Interview with Parent.)

76. _____, Pupil Services Director for the School District, feels that the School Nurse would be able to meet the Student's needs with the correct orders. (Interview with _____.) There were several days that the Student attended school with no nurse present. (Interview with _____.) Ms. _____ has not seen any documentation that the Student requires one-on-one nursing throughout the school year. (Interview with _____.)
77. As of this report, the School District staff feels they do not have the correct medical orders. (Interview with _____.) Nevertheless, the School District would like to have the Student back in school. (Interview with _____.) Ms. _____ feels that she bent over backwards to put things in place to allow the Student to attend school and receive appropriate nursing services. (Interview with _____.)
78. _____ School Nurse _____ has been the school nurse for five years. (Interview with _____.) She has been involved with the Student's care since 2017. (Interview with _____.) Every year she has tried to obtain medical orders for medication administration. (Interview with _____.) Ms. _____ has filled in for the _____ nurse when she could not be there. (Interview with _____.) Ms. _____ has not been involved in giving the Student care this year. (Interview with _____.) Ms. _____ went on medical leave and another nurse was hired to care for the Student during that time. (Interview with _____.)
79. Ms. _____ communicated directly with the Student's physician's office but never received responses to her calls or faxes. (Interview with _____.) She did at one point receive a medical permission form back but it was not consistent with what was written on the medication vials. (Interview with _____.)
80. Ms. _____'s understanding of what she needs is an order for medication administration twice per day at 10:00 and 2:00, two feedings during the day, the flushing of water after the administration of medications, and checking the Student's colostomy bag to ensure it is not leaking. (Interview with _____.) She opines that the two feeding orders can come from a dietician. (Interview with _____.) The DOE Nurse Consultant indicated that the medication orders should come from an M.D. or D.O. (Interview with _____.)
81. Ms. _____ feels she could meet the Student's needs given her other duties but that something else would have to wait. (Interview with _____.) Ms. _____ never knows when other children will enter the health office. (Interview with _____.) The main office would have to take over while she was attending to the Student. (Interview with _____.) On days when Ms. _____ is at the _____ School, she is not sure what would happen. (Interview with _____.) She has no real answers to this. (Interview with _____.) Maybe she would not go to _____ at all. (Interview with _____.)
82. _____, the part-time nurse hired by the School District in the spring, anticipated that she would provide services to the Student three days per week and

- that would provide care on the other two days. (Interview with .) After she started, Ms. was given the Student's health history, notes and file. (Interview with .) Ms. understood that she was to administer the Student's medications at 10:00, 12:00 and 2:00. (Interview with .) Ms. opined that providing skilled nursing services between 10:00 and 2:00 was sufficient to meet the Student's needs. (Interview with .)
83. Ms. sought to make contact with everybody involved with the Student's nursing care in order to get a more personal overview of what the Student's medical needs were like mentally, emotionally, and developmentally. (Interview with .) She spoke with staff and the Student's primary care provider's office on several occasions. (Interview with .) After speaking with , Ms. felt confident that she would be able to provide care to the Student at school. (Interview with .) Ms. knew what medications she needed and how to handle the G-tube. (Interview with .) Ms. requested that an active plan of care be sent from since the plan of care being used at the School District was not up to date. (Interview with .) Ms. however, responded that was not going to share any more information and that the School District should formulate their own plan of care and IHP. (Interview with .)
84. Ms. determined that the medication orders on file with the School District were not for the appropriate medications and had incorrect dosages. (Interview with .) Ms. asked for corrected orders from the primary care provider's office. (Interview with .) By then, everyone involved was butting heads, nobody was getting along, and Ms. was getting exhausted with road blocks. (Interview with .) At the IEP Team meeting she attended, Ms. felt that the Parent and the Student's IEP Team were not open to any of her suggestions. (Interview with .)
85. Ms. told the Parent that it was her intent to meet with her and the Student in their home so that they could become comfortable with . (Interview with .) Ms. stated that it was her purpose to get the Student back into school. (Interview with .) In conjunction, the School District was actively doing interviews for someone to take on the other days. (Interview with .)
86. wanted the IEP to say that the School District would fund per diem nursing services if staff could not attend school. (Interview with .) Ms. felt that that was not impossible but could not happen with the orders that the School District had on file. (Interview with .) She perceived that the Parent, staff, and staff were always up in arms and hostile to each other. (Interview with .) Once the services got back to Section 7, they

- seemed to be a little more lenient as to who cared for the Student. (Interview with .)
87. When Ms. visited the home, she asked the Parent if she was going to send the Student back to school for at least part time until the end of the year; the Parent reported that she was not and that the Student would start fresh the following year. (Interview with .)
88. Before Ms. finished her employment with the School District, she drafted an IHP to reflect the School's District's requirements and the Parent's statements. (Interview with .) Ms. feels that the Student's IHP should be reviewed more frequently than once per year to reflect any changes. (Interview with .) She notes that if does not have a nurse to serve the Student on any given day, a per diem nurse would need to be able to come in and provide care based on the IHP, so it is very important that the IHP is up to date. (Interview with .) Ms. still feels that she never got clarifications on the dosages of medications. (Interview with .) The primary care provider originally sent the Parent incorrect information on the medication administration form. (Interview with .)
89. Ms. feels that the School District tried everything to provide a safe environment for the Student. (Interview with .) She notes that the School District transported the Student back and forth, hired a nurse, and sent an education technician to house. (Interview with .)
90. , Education Technician for the School District, has worked with the Student for three years. (Interview with .) Ms. has been working with the Student in person in home. (Interview with .) Ms. works with the Student on all subjects, such as literacy and math, social studies, map skills and life skills. (Interview with .) Ms. creates the instructional plan for the Student which is approved by her supervisor. (Interview with .)
91. Ms. observed that during the Student's grade year, nursing was provided by nurses who were in school for the full day. (Interview with .) The Student received medications and feedings. (Interview with .) When the nurse was not working with the Student, she was close by and always in the room with . (Interview with .) There were times that the Student's bag was leaking and needed to be changed and certain things like that, which occurred approximately on a monthly basis. (Interview with .) Ms. believes that the school nurse could meet the Student's needs. (Interview with .) The Student could be removed from class to go to the nurse's office to deal with a leaking bag or other needs. (Interview with .) Even the Student's feedings are ten minutes and are quick and simple. (Interview with .) If the Student left the classroom three times per day to get medications and feedings, because the Student gets one on

- one instruction, they could just pick up where they left off when the Student returned so the Student would not miss any instruction. (Interview with .)
92. Ms. thinks that the Student being out of school is impacting significantly. (Interview with .) The Student does not want to come to school anymore and is happy being at home. (Interview with .) The Student is not very interested in learning. (Interview with .) The Student needs a lot of socialization as well as life skills instruction. (Interview with .) The Student is now around adults all the time. (Interview with .) The Student is not always socially appropriate. (Interview with .) The Student uses language far beyond years and needs a lot of instruction when it comes to life skills. (Interview with .) One of Ms. 's goals has been to expand the Student's level of interest and help her realize that there is a world around that needs to be a part of. (Interview with .) Being at home moves the Student farther away from that goal. (Interview with .) The Student needs to be around people own age. (Interview with .) Although summer program has been recommended many times for the Student, the Student has not participated. (Interview with .) Ms. believes it may be difficult for the Student to transition back to school in the fall. (Interview with .)
93. , the Superintendent of the School District, noted that because Ms. just started this year, she did not have a relationship with the Parents, and then the Student's Father passed away. (Interview with .) Under the difficult circumstances, the School District sought various solutions to try to get the Student education whether in school or in the home. (Interview with .)
94. Mr. feels that the biggest issue is trying to get clear doctor's orders on what needs to be done for the Student and how it needs to be done. (Interview with .) 's nurse shortage was the crux of the issue. (Interview with .) The School District spent money on legal counsel's research into why DHHS was doing this and whether it was in writing, which it was determined not to be. (Interview with .)
95. Mr. believes that the School District still does not have the full doctor's orders. (Interview with .) Mr. is not sure what else they can do to get these orders and doesn't know any other way to resolve it without having everything that they need. (Interview with .)
96. Mr. feels as though he has a good relationship with the Parent. (Interview with .) Mr. feels as though when things shifted it made the Parent feel really uneasy and that they were doing something covertly even though the School District was just trying to follow the guidelines. (Interview with .) When the nursing services go through , they are in the Student's home so

- really gets to know them. (Interview with .) The Student does not get to know the school nurses very well. (Interview with .)
97. Mr. feels that the School District can meet the Student's needs. (Interview with .) He visited with the Parent after the last IEP meeting and asked about the doctor's orders. (Interview with .) The Parent said she didn't know what to do and that she had signed everything. (Interview with .) The Parent is dealing with the loss of her husband. (Interview with .)
98. Mr. does not see anything in the orders that requires the Student to have one-on-one nursing throughout the school day. (Interview with .) Mr. feels the Student needs approximately three hours of nursing services per day. (Interview with .) Mr. believes that having somebody there all of the time is probably not in the Student's best interests. (Interview with .)
99. , Regional Nurse Manager at , made it clear to the School District that there needed to be a nurse backup system. (Interview with .) Ms. observed that Nurse did not feel comfortable carrying out the orders. (Interview with .) Ms. found this odd because Nurse attended a training with the G-tube and how to give feeds and meds and she seemed to be fine with it for a while. (Interview with .)
100. Ms. found that the School District was fixated on how the orders were written. (Interview with .) The things they were asking to be in the orders were standard nursing practice. (Interview with .) The Student's primary care provider and gastroenterologist kept telling the School District that their requests were inconsistent with how medical orders were written. (Interview with .) The providers were trying diligently to work with the School District but could not answer their questions on how things were done. (Interview with .) Ms. repeatedly offered to help Nurse . (Interview with .) She feels that the Student did not need to be out of school. (Interview with .)
101. Ms. feels as though the Team was diverted from providing the nursing care the Student needed because the School Nurse did not want to administer the feeds or the meds to the Student. (Interview with .) The Student physically requires some skilled professional needs in terms of ileostomy bags, medications and fluids. (Interview with .) The Student also has needs behaviorally. (Interview with .) It is standard nursing practice to know how to use the MIC-KEY button and how to flush the tube; nurses had also taught the School Nurse to do it. (Interview with .) The Student cannot be left alone due to violent tendencies. (Interview with .)
102. Ms. opines that the Student has suffered from not being in school. (Interview with .) During the Student's remote learning sessions, half of

- the time there was no School District staff present. (Interview with .)
- Nothing in the Student's IEP has been provided in over a year. (Interview with .)
- The Student has regressed since being out of school. (Interview with .)
- has become more withdrawn. (Interview with .)
- The Student's challenging behaviors have increased and they now have a behavioral health specialist back in the home. (Interview with .)
- The Student was doing really well in the spring when was able to attend school consistently. (Interview with .)
- Now, however, the Student is not interacting with the nurses and does not want to do anything. (Interview with .)
- The Student loves to draw and color but is not even enjoying doing that. (Interview with .)
- Ms. opines that the Student may be suffering from depression due to lack of social interaction, therapies, and education as well as due to the loss of father. (Interview with .)
103. , the Student's Care Coordinator at , has been working with the Student since was three years old. (Interview with .)
- The Student has had full time medical care for entire educational career and the Student's IEP Team has never discussed anything less than full time nursing services. (Interview with .)
104. Ms. is confused by the School District's request for medical information. (Interview with .)
- The Student's primary care provider, gastroenterologist, and nutritionist gave the School District the necessary medication forms but the School District asked for more in depth orders. (Interview with .)
- The Student's providers tried to explain to the School District that much of what they were asking to be put in writing consisted of nursing skills that they could not write out in detail. (Interview with .)
- She noted that the School Nurse had done G-tube feedings and given medications to the Student before based on the orders in existence. (Interview with .)
105. Ms. observed that after the Student's IEP Team meeting in May, the School District agreed that they did not need anything else and did not need the orders anymore. (Interview with .)
- The School District simply needed an up-to-date medication form for which the Parent signed a release. (Interview with .)
- Nevertheless, Ms. does not know if the medication order issue that the School District has is really resolved. (Interview with .)
106. Ms. believes that the Student had not received a consistent education for some time. (Interview with .)
- She noted how much school the Student missed during the period when was going back and forth to home three times a day. (Interview with .)
- Ms. expressed concern that the Student's mental health needs make transitions very hard. (Interview with .)
107. Ms. noted that even if comes with the Student to school five days per week on a regular basis, there will likely be gaps. (Interview with .)
- She feels

- that the School District has no plan to manage the Student's education when cannot go to school with . (Interview with .) Ms. told the School District that they needed to have a plan to provide nursing services in the fall if could not be there five days per week; they talked about a per diem nurse. (Interview with .)
108. Ms. observed that the Parent has not obstructed the School District's ability to get what they need. (Interview with .) The Parent has never avoided or not responded to a request by the School District. (Interview with .)
109. Ms. opined that the Student has regressed a lot. (Interview with .) Previously, the Student was doing really well and HCT had been discharged because of progress, but now HTC as well as the counselor are back in the Student's home. (Interview with .) The Student is anxious all the time, is picking more and has definitely regressed. (Interview with .) Ms. observations are based on monthly meetings with the Parent and follow up with the nurses who provide services in the Student's home. (Interview with .) She notes that the Student's clinician was very concerned when he visited the home recently. (Interview with .) He reported on how significantly the Student had regressed in just a few months. (Interview with .)
110. , an RN with and one of its owners, opines that the Student requires a one-on-one nurse. (Interview with .) Ms. is concerned that the School District is dodging its responsibility, noting that it took the School District until May to hire a nurse. (Interview with .) She does not believe that the School Nurse can meet the Student's needs, which may arise without warning, while also being available to the rest of the students in the school. (Interview with .)
111. Ms. opines that the orders that the School District requested from the Student's medical providers were not typical of the types of orders a physician writes, which is limited to the dosage and frequency of a medication and how it is to be taken. (Interview with .) Instead, the School District was seeking that competencies, basic nursing skills, be written into orders. (Interview with .) provides hands-on competencies for its nurses that ensures that they know how to do these duties. (Interview with .) Ms. felt that Ms. tried to provide School District staff with any education they needed to fulfill those competencies but the School District was not amenable to learning from Ms. . (Interview with .) could give the school their own plan of care but the School District would still need to create its own. (Interview with .) Ms. believes that the Parent will not send the Student to school unless has a nurse specifically assigned to . (Interview with .) The Student is behaviorally challenging and not all nurses are able to provide with services. (Interview with .)

- offered to send their nurse to the Student's home and Ms. offered to go in and help train if that would help. (Interview with .)
112. In March, the team was picking up the Student, dropping off and was going back and forth three times per day. (Interview with .)
113. , RN, Health Care Manager at Pediatrics, has been providing coordination of care services for the Student over the years; last year she was not involved in late spring when the Parent reached out for support in getting the School District and the Student's medical providers to collaborate. (Interview with .)
114. Ms. found that Ms. was clear on what orders were needed and that she did not need skill sets written into the orders. (Interview with .) She and Ms. did a complete medication review during which a discrepancy was discovered in one of the Student's mental health medications, which resulted in an updated medication list. (Interview with .) The Parent has expressed concern to Ms. that the Student was not receiving any occupational therapy, speech therapy, or physical therapy despite multiple requests. (Interview with .)
115. Ms. attended the Student's IEP meeting on May 14 in an effort to bridge the collaboration between the School District and the Student's medical provider. (Interview with .) She felt it was a productive meeting where the Parent was heard and the discussion was collaborative. (Interview with .) At that time, represented that it could provide nursing services in school three days per week and it was actively interviewing for a nurse to fill the other two days. (Interview with .) It seemed that the only missing piece was Ms. getting updated information regarding one medication change, which she wanted to get directly from the prescriber. (Interview with .)
116. Ms. was surprised to learn in June that the Student remained out of school and the School District felt that it still needed orders. (Interview with .) Ms. felt that the School District was seeking orders that provided a play-by-play script for how to administer medications orally and through a G-tube, which is not how medical providers write orders because they cannot be responsible for ensuring that a nurse has those basic competencies. (Interview with .) She feels that the School District had all the information they needed to safely meet the Student's needs. (Interview with .) Dr. conducted the Student's well child visit a couple of months ago and included a dietician consultation during which the dietician filled out an orders form and returned it to the School District. (Interview with .) Ms. believes that the Student requires full-time nursing care at the present time more than ever. (Interview with .)

DETERMINATIONS AND ANALYSIS

1. The School District did not provide the Student with the nursing services included in August 2021 IEP in violation of MUSER IX.3.A(1)(d) and (g), which resulted in a denial of a free appropriate public education (“FAPE”) in violation of MUSER I (School district must provide FAPE). **VIOLATION FOUND; DENIAL OF FAPE.**

The Student’s IEP has included full-time nursing services since began pre-school education. Until the fall of 2021, the Student’s full-time nursing services were provided by an outside provider, . Under the Student’s IEPs, the nurse’s duties have included monitoring for unsafe behaviors, taking the Student for frequent bathroom breaks, providing the Student with frequent hydration and nourishment, monitoring the Student’s ileostomy bag, monitoring the Student’s gastronomy tube, and administration of medications. The Student’s accompanying Individual Health Plans included accommodations for unsafe behaviors, frequent bathroom breaks, frequent hydration, nourishment emergency overage, staff education, and a 504 plan. The nurse coverage protocol in the IHP identified school nurses to cover each day of the week, as well as a backup, in the event that the Student’s nurse could not be present. Although the Student’s grade year IHP was never finalized, there has been no change in conditions such that the services and accommodations in IEP and IHP merit significant change.

When began to falter in its ability to provide full-day nursing services every day in October 2021, the School District began an effort to provide the required nursing services on the days that did not have a nurse available, but did not have those services fully in place until May 2022 when Ms. was hired. By the end of Ms.’s tenure, it had become clear that one medication order had the incorrect dosage and needed to be corrected but otherwise it appeared the School District had what it needed to move forward with services. Ms. visited the Student’s home and met with the Parent. She spoke with the Student’s medical providers and felt confident she could provide what the Student needed at school. Ms. drafted an IHP to reflect the School District’s requirements as well as the Parent’s preferences.

The School District’s failure to provide nursing services on the days on which could not attend school with the Student from October 2021 through Ms.

’s creation of an IHP for the 2021-2022 school year in May 2022 violated MUSER IX.3.A(1)(d) and (g) and resulted in a denial of FAPE to the Student in violation of MUSER I. It is noted that when Ms. met with the Parent in May 2021, the Parent indicated that she was not going to send the Student back to school that year. At this point, near the end of the school year, the denial of FAPE ended because the Parent declined to send the Student to school despite the presence of Ms. to provide nursing services at least part time during the school day.

2. The School District has not provided the Student with a free appropriate public education (“FAPE”) during the 2021-2022 school year when, because it could not provide the nursing services included in the Student’s IEP, it removed to a partial remote learning

program in violation of MUSER I and MUSER IX.3.A(1)(d) and (g). The School District has also not provided the Student with a FAPE during the 2021-2022 school year when, because it could not provide the nursing services included in the Student's IEP, it placed on an abbreviated school day program in violation of MUSER VI.2.L. Neither the remote learning program or the abbreviated school day program educated the Student in the least restrictive environment for the Student in violation of MUSER X.2.B.

As reflected in the Written Notice regarding the October 27, 2021, meeting, the School District rejected the possibility that the School Nurse could provide the nursing services laid out in the Student's IEP because it was clear that she could not be available for the length of time needed each day. Given that, the Parent had no choice but to access a remote option for learning when an nurse could not attend school with the Student because the School District had not provided an alternative to the private duty nursing care to meet the Student's needs as identified in IEP.

In November and December 2021, the Student was not able to attend school for several weeks due to illness in the family and Father's death. During that time, the School District provided remote instruction to the Student. By February 2022, the School District accepted that it would need to provide the Student's nursing services when was not available and the School Nurse began to shadow the nurse to prepare for performing those duties. This process was interrupted when the School Nurse went on leave due to unforeseen circumstances and the School District began a search for coverage for the School Nurse.

In March 2022, the School District posted a job opening. At the March 31, 2022, IEP Team meeting, the School District explained to the Parent that the School Nurse was out on leave and "no other nurse" was available when the Student was in school. It was agreed that the Student would attend school only from 8 to 10 on the days when nurse was able to come to school. The Written Notice from the meeting also stated that the School District was waiting for medical orders to facilitate delivery of nursing services by the School Nurse or additional nurse hired by the School District. As indicated by several medical professionals involved in this matter, the School District's insistence on medical orders that went beyond the typical information to include detailed information related to the skills required frustrated and delayed the process. By the time Nurse got involved, she was able to sort out what was needed and draft an IHP for the Student by the end of the school year, although it appeared that one mental health medication still required clarification by way of a medical order.

The Student began to attend school but was limited to two hours per day. In April 2022, the Student's school day was extended six hours with home delivery offered during the day for the Student's medication and feeding, during a period in which there was no School Nurse in the building. This amount of transit and disruption did not work well for the Student, however, and it was ended quickly. By late April 2022, the School District was providing in home tutoring services ten hours per week but the Student was no longer attending school at all. Early in May 2022, Ms. began as the part time

temporary nurse but she was ready to be with the Student five days a week once the medical orders had been completed.

Even though at times the Parent initiated a pull back on time spent at school due to her discomfort with the lack of stable nursing services dedicated to the Student at school, ultimately the School District was responsible to provide the Student with a full school day and complete implementation of IEP. Although the School District was able to provide direct instruction in the Student's home for the final weeks of the school year, the reductions in school services that took place throughout this period violated MUSER I, MUSER IX.3.A(1)(d) and (g), MUSER VI.2.L, and MUSER X.2.B, and resulted in a denial of FAPE to the Student in violation of MUSER I for much of the 2021-2022 school year.

3. The School District altered the Student's IEP in October 2021 and February 2022 by reducing nursing services due to its inability to provide such services rather than based on the needs of the Student in violation of MUSER IX.3.A(d) (IEP must include a statement of special education and related services and supplementary aids and services that will be provided for the child to advance appropriately toward attaining annual goals, to be involved and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and non-disabled children in the activities described in this subparagraph).

In November 2021, the School District determined that the School Nurse could not provide the nursing services identified in the Student's IEP when [redacted] could not be present given the School Nurse's responsibilities to other students in the building. At that IEP Team meeting, there was no discussion of whether the nursing services should be reduced, but rather acceptance that the services identified in the Student's IEP over the prior several years remained appropriate but could not be met by the School District.

The School District's subsequent determination to reduce the amount of nursing services in the Student's IEP was not based on any determinations from a medical provider but appears instead to be derived from the difficulty of providing such services. Although School District staff report not seeing any documentation that the Student requires full-time nursing services, full-time nursing services had been included in the Student's IEP without question throughout the Student's education. In addition, many individuals involved felt that the Student required full-time nursing services. Furthermore, nothing about [redacted] condition has altered such that nursing services are less necessary. As such, the School District violated MUSER IX.3.A(d) by reducing the number of hours of nursing services in the Student's IEP resulting in a denial of FAPE in violation of MUSER I.

4. The Department of Education has not violated its responsibility to ensure that the School District was providing the Student with FAPE and should take over the education of the Student and the provision of [redacted] special education services pursuant to MUSER I (The

Department of Education is designated as the State Educational Agency responsible for carrying out the State's obligations under the federal IDEA).

Although the above determinations do include the denial of FAPE, the Department of Education is not charged with taking over the education of each Student who has been denied a FAPE. Instead, the Department is charged with overseeing the implementation of a Corrective Action Plan pursuant to MUSER XIV.4.A(3)(c) when a Student has been denied FAPE. As such, the Department of Education was not required to take over the provision of special education services to the Student.

CORRECTIVE ACTION TO BE COMPLETED BY THE RESPONDENT

The Student was denied FAPE for approximately seven months, from October 2021 through mid-May 2022. Multiple witnesses identified the difficulties that have accrued due to the Student's long-term significant absence from school. As Ms. [redacted] in particular noted, it will be difficult for the Student to return to school. She anticipates that the Student will exhibit challenging behaviors in light of [redacted] preference to remain at home over attend school. Ms.

[redacted] noted the Student's reduced interest in learning, lack of social interaction with peers, and lack of interest in activities [redacted] used to prefer. The IEP Team will need to closely follow and support the Student's reentry to school in light of these concerns.

The following corrective actions are ordered:

1. The Student's full-time nursing services should be restored in [redacted] IEP until such time as there is sufficient justification from the Student's medical providers to reduce such services. The Student's IEP Team should meet as soon as possible to ensure that the Student's nursing services can be provided by [redacted] and/or the School District, which holds the ultimate responsibility for their provision if [redacted] is not able to do so.
2. The Student should return to school full-time in the fall of 2022 with complete implementation of [redacted] IEP. The Student's IEP Team should meet as soon as possible

to determine what transitional services will be necessary to allow the Student to successfully return to school.

3. The Student's IEP Team should meet by the end of September 2022 to determine what compensatory education is appropriate to address the denial of FAPE during the 2021-2022 school year.