

## COMPLAINT INVESTIGATION REPORT

v.

**Complaint 23.012C**

**Complaint Investigator: Rebekah J. Smith, Esq.**

**October 19, 2022**

### INVESTIGATION PROCEDURE

Complainant:

Respondent:

Student: \_\_\_\_\_, age \_\_\_\_\_, \_\_\_\_\_ Grade Student at \_\_\_\_\_ Elementary School in \_\_\_\_\_, Maine

The Department of Education received this complaint on August 17, 2022. A Draft Allegations Report was issued on August 23, 2022. A videoconference was also held on August 25, 2022. On August 30, 2022, an IEP Team meeting was held at which the Student was determined to be eligible for special education and an IEP was developed for the 2022-2023 school year. On August 31, 2022, the Due Process Office inquired of the Parent and her Advocate (\_\_\_\_\_, Whole Family Services Coach of \_\_\_\_\_ Maine Community Action Program) as to whether the Parent was withdrawing the complaint and cancelling the mediation in this matter. The Parent's Advocate responded the same day that the Student's IEP Team seemed prepared to accommodate the Student's needs, offer \_\_\_\_\_ services, openly discuss concerns, and find solutions and as such, the parties were not in need of a mediation at that time. (School District Exh. 200.) On September 2, 2022, the Parent's Advocate reported that the family would nevertheless like to proceed with the complaint investigation to address the allegations regarding the 2021-2022 school year. The School District's request to extend the deadline for its response was granted.

On September 20, 2022, \_\_\_\_\_ filed a response to the complaint and submitted 249 pages of documents labeled 001-249. On October 3, 2022, the School District filed supplemental documents labeled S-001 through S-029. The School District subsequently submitted an Occupational Therapy Evaluation Report, a Speech Language Evaluation Summary Email, and a Speech Language Evaluation. The Parent submitted a Timeline of Events created by the Parent's Advocate, identified as Parent Exhibit #1.

\_\_\_\_\_, Whole Family Services Coach from \_\_\_\_\_ Maine Community Action Program, served as an advocate for the Student's Mother. \_\_\_\_\_ is represented by Rachel Sears, 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. \_\_\_\_\_, Student’s Mother;
2. \_\_\_\_\_, Administrative Assistant to the Superintendent;
3. \_\_\_\_\_, School Strategist;
4. \_\_\_\_\_, Assistant Superintendent;
5. \_\_\_\_\_, Special Education Director;
6. \_\_\_\_\_, \_\_\_\_\_ Elementary School Principal;
7. \_\_\_\_\_, Interventionist;
8. \_\_\_\_\_, Special Education Director;
9. \_\_\_\_\_, Whole Family Services Coach, \_\_\_\_\_ Maine Community Action Program;
10. \_\_\_\_\_, Administrative Assistant at \_\_\_\_\_ Elementary School;
11. \_\_\_\_\_, Speech Pathologist; and
12. \_\_\_\_\_, \_\_\_\_\_ Teacher.

Attorney Sears was present for all interviews with current and former School District staff. Ms. \_\_\_\_\_ was present for the Student’s Mother’s interview.

### **PRELIMINARY STATEMENT**

The Student is \_\_\_\_\_ years old. \_\_\_\_\_ resides in \_\_\_\_\_ with \_\_\_\_\_ mother. The Student began attending \_\_\_\_\_ Elementary School in \_\_\_\_\_ beginning in the Fall of 2021 when entered \_\_\_\_\_. The Student had received special services, including an IEP, at previous Head Start Program in \_\_\_\_\_ before the family moved to Maine. \_\_\_\_\_ had been diagnosed with developmental delays in 2005, when \_\_\_\_\_ was eight months old. The Student’s Mother informed \_\_\_\_\_ Elementary School in the Fall of 2021, before the Student entered \_\_\_\_\_, that \_\_\_\_\_ had a prior diagnosis and had an IEP in place. The Student’s Mother requested that the Head Start Program in \_\_\_\_\_ send \_\_\_\_\_ Elementary School all of the Student’s previous assessments, IEPs and evaluations. The Head Start Program confirmed with the Student’s Mother in May of 2022 that all requested documents were sent to \_\_\_\_\_ Elementary School in October of 2021. In March of 2022, the Student’s Mother was informed that the Student’s IEP had expired. The Student’s Mother requested a referral for special education services and a First Step Meeting which took place on May 13, 2022. The Student’s Mother feels that \_\_\_\_\_ and \_\_\_\_\_ Elementary School failed to review the Student’s assessments and IEPs from the Head Start Program in \_\_\_\_\_ and failed to identify the Student as eligible for special education services during \_\_\_\_\_ year.

### **ALLEGATIONS**

1. In preparation for the 2021-2022 school year, \_\_\_\_\_ did not implement a procedure to ensure that the Student, a child in need of special education and related services was identified, located, and evaluated at public expense in violation of MUSER IV.2.A

(stating that each school district must maintain and implement policies and procedures to ensure that all children residing in the jurisdiction between the ages of 3 and 20 years who are in need of special education and related services are identified, located, and evaluated at public expense).

2. During the 2021-2022 school year, [redacted] did not conduct a full and individual initial evaluation of the Student to determine [redacted] eligibility for special education in violation of MUSER V.1.A(1) (stating that a school district shall conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability).
3. During the 2021-2022 school year, [redacted] did not provide the Student with special education and related services, including extended school year services, and as such has denied [redacted] a free appropriate public education in violation of MUSER I (stating that each school district must provide special education students with a free appropriate public education) and MUSER IX.3.A(1)(d) (stating that the elements of a student's IEP should include a statement of the special education and related services and supplementary aids and services to be provided to the student or on behalf of the student).

## **FACTUAL FINDINGS**

### **Documentary Record**

1. On August 23, 2016, when the Student was approximately eight months old, an early intervention evaluation was conducted on the Student through [redacted] County R-1 in [redacted]. (School District Exh. 004.) The Student demonstrated significant delays in gross motor skills, fine motor skills, receptive language skills, and social-emotional skills. (School District Exh. 004-005.) The Report concluded that the Student demonstrated a significant delay in cognitive skills compared to same-age peers. (School District Exh. 005.)
2. On November 28, 2018, [redacted] County R-1 began a reevaluation process of the Student because [redacted] early intervention services were scheduled to come to an end on [redacted] third birthday and an evaluation was necessary to determine if [redacted] was eligible for preschool based special education services. (School District Exh. 007.)
3. Also on November 28, 2018, [redacted] County R-1 filed an Evaluation Report. (School District Exh. 010.) The Student's overall speech intelligibility continued to be an area of concern. (School District Exh. 010.) The Student presented with a delay in [redacted] language and sound development which impacted [redacted] ability to express wants/needs, ask/answer questions, impeded [redacted] ability to share ideas in a classroom environment, and affected [redacted] participation and peer relationships. (School District Exh. 011.) In addition, the Student exhibited delays in the area of pre-academic skills. (School District Exh. 011.)

4. The Student's Mother reported during the evaluation that the Student had significant behavioral issues, including three to four tantrums daily when [redacted] did not get what [redacted] wants. (School District Exh. 012.) The evaluation found that the Student demonstrated a delay in [redacted] social/emotional skills in comparison to same age peers. (School District Exh. 013.)
5. On December 7, 2018, [redacted] County R-1, issued a Determination of Eligibility concluding that there was evidence indicating that patterns of learning were significantly different from age expectations across settings and that the Student had a disability as defined in the State Rules for the Administration of the Exceptional Children's Educational Act and was therefore eligible for special education. (School District Exh. 017.)
6. On December 7, 2018, [redacted] County R-1 filed a Student Profile Snapshot. (School District Exh. 022.) The Student's accommodations, necessary for [redacted] to access the general curriculum and make effective progress, included check for understanding; flexible setting; visual schedule; pairing preferred tasks with non-preferred; language expansion; visual tactile and auditory cues; gaining attention prior to instructions; task break down; and encouraging active participation. (School District Exh. 022.) The Student was eligible to receive direct language and academic services and consultative services by a speech-language pathologist. (School District Exh. 024.)
7. The Student's December 2018 IEP indicated that [redacted] was presenting with a delay in [redacted] language and sound developments as well as [redacted] pre-academic and social emotional skills. (School District Exh. 031.) The Student's IEP included ten hours per week of special education and related services. (School District Exh. 039.)
8. The Student's March 2020 IEP included special education services in support of the Student's delays in academics and classroom functioning to be provided by an early childhood special education teacher for 120 minutes per month. (School District Exh. 045.) In addition, the early childhood special education teacher would provide consultation services 20 minutes per month to support the classroom teacher's strategies, collaborate with other providers, or check in with the family. (School District Exh. 045.) A speech language pathologist would provide support 120 minutes per month for the Student's delays in receptive and expressive language and articulation. (School District Exh. 045.) The Student's March 2020 IEP expired in March 2021. (School District Exh. 045.) The Student did not have a behavioral plan. (School District Exh. 043.) [redacted] primary disability was identified as developmental delay. (School District Exh. 043.)
9. During the Student's March 2020 IEP Team meeting, it was noted that the Student could become a bit stubborn when [redacted] was directed away from [redacted] plan and [redacted] was not yet demonstrating the ability to subsidize numbers and recognize basic shapes. (School District Exh. 052.) The Student also struggled in literacy to answer questions. (School District Exh. 052.)

10. On March 10, 2020, County R-1 filed a Student Profile Snapshot. (School District Exh. 043.) The Student's accommodations included a check for understanding; preferential seating; visual schedule; and visual tactile aids. (School District Exh. 043.)
11. In the summer of 2020, the Student moved to Maine to live with family members. (School District Exh. 092; Parent Exh. #1.) Although County R-1 planned to provide remote services at the family's request beginning in November 2020, the Student was out of school for the 2020-2021 school year. (School District Exh. 068; Parent Exh. #1.)
12. By the summer of 2021, the Student's Mother joined the Student in Maine, living in , within (School District Exh. 092.)
13. In July 2021, the Student's mother contacted , Principal at Elementary School in where the Student was to begin in the fall. (School District Exh. 091-092.) Ms. relayed to staff members , Speech Pathologist, and , Special Education Teacher, that the Student was beginning with an IEP for speech. (School District Exh. 092.) Ms. explained that the Student's Mother had contacted her to request further evaluation of the Student due to concern that there was a lot more going on with the Student. (School District Exh. 092.) Ms. had informed the Student's Mother that did not conduct evaluations over the summer but they would keep a close eye on the Student when school started and contact the Student's Mother to set up an IEP if the Student was struggling. (School District Exh. 092.) Ms. concluded that she did not know if the file from had arrived yet. (School District Exh. 092.) Ms. responded that the Student would be having a 30 day transfer IEP Team meeting once the school year had begun, which could be used as a check-in time. (School District Exh. 91.)
14. On September 8, 2021, Ms. reminded Ms. about the Student and the fact that had an IEP in prior home state for speech. (School District Exh. 094.) She asked Ms. to check out the Student sooner rather than later to evaluate if required speech services. (School District Exh. 094.) She noted that they did not yet have the Student's prior IEP. (School District Exh. 094.) Ms. offered to help track down the Student's prior IEP. (School District Exh. 095.)
15. Later on September 8, 2021, Ms. informed , the Student's teacher, that the Student had received services from equivalent to CDS in Maine and Ms. hoped to speak to Ms. about the Student. (School District Exh. 093.)
16. On September 20, 2021, Ms. performed a Phonemic Awareness Baseline Skills Assessment on the Student. (School District Exh. 097.) The Student scored

- 2/10 in Rhyme Recognition, 0/10 in Rhyme Production, 0/10 in Onset Fluency, and 0/10 in Segmenting Words into Compound Words & Syllables. (School District Exh. 097-102.)
17. On September 28, 2021, an Incident Report was filed regarding a two-person escort that the Student received to be brought to a resource room setting after the Student escalated and was yelling, kicking the door, throwing chairs, and hitting. (School District Exh. 103-104.)
  18. On October 12, 2021, Ms. \_\_\_\_\_ wrote to School Strategist \_\_\_\_\_ and Ms. \_\_\_\_\_ asking if they could hold a staffing for the Student. (School District Exh. 248.) Later that day, Ms. \_\_\_\_\_ wrote and stated that she had met with Ms. \_\_\_\_\_ and they had a plan and were therefore comfortable holding off on a meeting. (School District Exh. 248.)
  19. On October 13, 2021, a Math Intervention form and a Math Support Referral Form were filed by Ms. \_\_\_\_\_ indicating that the Student displayed areas of concern in math including counting, subitizing, reading and/or writing numbers, and number recognition. (School District Exh. 105-107.)
  20. Also on October 13, 2021, a Literacy Intervention form and a Literacy Support Referral Form were filed by Ms. \_\_\_\_\_ indicating displayed areas of concern in literacy of letter identification, early print concepts, phonological awareness, and name writing. (School District Exh. 109-111.) The Student's Mother signed a consent form for the Student to receive literacy intervention services. (School District Exhibit 108.)
  21. On October 14, 2021, the Student's Mother emailed Ms. \_\_\_\_\_ attaching a document and asking her to print it and send it home with the Student so that the Student's Mother could access IEP from \_\_\_\_\_. (School District Exh. S-024-S-025.) Ms. \_\_\_\_\_ replied that she would send it home in the Student's folder. (School District Exh. S-024.) Ms. \_\_\_\_\_ also asked the Student's Mother to let her know when the paperwork was sent to \_\_\_\_\_ so that they could follow up. (School District Exh. S-024.) The Student's Mother sent an email to Ms. \_\_\_\_\_ later that evening and wrote that she had received a message from the \_\_\_\_\_ school stating that if the new school requested the IEP, they could get it for free but if she requested it, there would be a fee. (School District Exh. S-023.) Ms. \_\_\_\_\_ replied that she had contacted the \_\_\_\_\_ program and would hopefully have the information later that day. (School District Exh. S-023.)
  22. In mid-October 2021, \_\_\_\_\_ County R-1 provided \_\_\_\_\_ Elementary School with the Student's past assessments, IEPs, and evaluations. (Parent Exh. #1.)
  23. On October 18, 2021, Ms. \_\_\_\_\_, apparently in review of the Student's record from \_\_\_\_\_, wrote to Ms. \_\_\_\_\_ that she had discovered some references to behavioral/attentional issues in the classroom that could be similar to what Ms. \_\_\_\_\_

- was seeing. (School District Exh. 114.) The next morning, Ms. wrote again that the paperwork was in Ms. mailbox and Ms. asked if they should look at holding an IEP for the Student based on what she had reviewed. (School District Exh. 114.) Ms. responded that they should check with Ms. to see what she is seeing and if she has concerns. (School District Exh. 114.) Ms. also stated that if the Student had been on track and receiving services all along, reevaluation would be held in December 2021 so the timing worked well. (School District Exh. 114.) She stated that , the Director of Special Education for , had said to wait for the teacher to voice concerns about the Student's performance. (School District Exh. 114.) She noted that the Student would be due for a reevaluation in December 2021 if had been receiving services consistently rather than being out of school. (School District Exh. 114.)
24. On October 18, 2021, the Student became qualified for math and literacy intervention. (School District Exh. 174-182.)
25. On November 3, 2021, the Student's Mother emailed Ms. and requested a copy of the Student's IEP, which Ms. agreed to send by the end of the week. (School District Exh. 021.)
26. On November 16, 2021, Ms. conducted another Phonemic Awareness Baseline Skills Assessment was conducted on the Student. (School District Exh. 117.) The Student scored 7/10 in Rhyme Recognition, 3/10 in Onset Fluency, and 10/10 in Segmenting Words into Compound Words & Syllables. (School District Exh. 117-120.) The Student was also evaluated for ability to meet math benchmarks. (School District Exh. 115.) The Student skipped from 18 to 21 but could count a set of 10 objects, compare sets 0-5, compare numbers between 1 to 5, and draw and identify a circle. (School District Exh. 115-116.)
27. An undated Parent/Teacher Conference Note from the Fall of 2021 listed the Student as being a good friend and teacher's helper. (School District Exh. 126.) It stated that the Student was below grade level in reading and math and was receiving Title I support. (School District Exh. 126.)
28. On January 9, 2022, Ms. wrote to Ms. that she was looking for a blank page in a notebook and found the Student's name written down; she asked if the Student was someone she should have on her radar as she remembered the Student being discussed in the fall but did not remember anything after that and she wanted to be sure she had not missed anything. (School District Exh. 121.) Ms. replied that she had not missed or forgotten anything, that the Student had transferred from , that they had waited for IEP for a long time, and that the Student was receiving support from Ms. and things were going well. (School District Exh. 121.)
29. On March 1, 2022, the Student's Mother wrote to , who provided academic intervention at Elementary School, inquiring about getting the

- Student tested to see if [redacted] was on the autism spectrum and questioning whether the Student had a sensory disorder. (School District Exh. 241.) Ms. [redacted] then responded to the Student's Mother and told her the best place to start, if she had concerns about autism or a sensory disorder, would be with [redacted] pediatrician. (School District Exh. 240.)
30. In March of 2022, a Behavior RTI Plan was completed for the Student. (School District Exh. 125.) The Plan stated that the Student had a history of physical aggression and inappropriate language and that pacing the room was often a sign of impending difficult behavior. (School District Exh. 125.) When the Student escalated [redacted] would hit staff, kick staff, and swear. (School District Exh. 125.) Although the Student was not aggressive with peers, [redacted] would sometimes use unkind words, steal desirable items, and tell fabricated stories about things [redacted] has or would do in an effort to keep up with or "one up" [redacted] peers. (School District Exh. 125.) Target behaviors for the Student were noted to be self advocating for a break when necessary, following the group plan, and keeping a safe body. (School District Exh. 125.)
31. On March 14, 2022, a Literacy Assessment was performed in which the Student scored 12/14, compared to an 8+ score [redacted] received on November 27, 2021. (School District Exh. 122.)
32. On March 16, 2022, Ms. [redacted] emailed other school staff that the Student's behavior had been escalating in the last few weeks and [redacted] had been using unkind words with friends, using inappropriate words, leaving the classroom, and had recently started locking [redacted] in the bathroom. (School District Exh. 236-237.) Ms. [redacted] requested that they meet as a team to discuss what they could do to support the Student and create a plan, adding that the Student's Mother had requested that the Student be tested for autism, ADD, and ADHD and she would be walking her through the referral paperwork but until then, they needed a new plan. (School District Exh. 236-237.) A meeting was then scheduled for the following Friday with Ms. [redacted], Ms. [redacted], School Counselor [redacted], and Ms. [redacted]. (School District Exh. 236.)
33. On March 23, 2022, the Parent filed a Referral for Special Education on behalf of the Student. (School District Exh. 127.) The Parent identified the Student's areas of difficulty as sensory, ADD, ADHD, and Autism. (School District Exh. 127.)
34. On April 6, 2022, [redacted], an administrator of the School District's summer program for students who received interventions, wrote to Ms. [redacted] stating that the summer program did not have education techs to support students with high behavioral needs. (School District Exh. 228-229.) Ms. [redacted] asked Ms. [redacted] if the Student was generally able to self-regulate and what it looked like when [redacted] could not. (School District Exh. 228-229.)



35. On April 7, 2022, \_\_\_\_\_, an administrator of the School District’s summer program, emailed Ms. \_\_\_\_\_ to ask how often she checked in with the Student, what were triggering events for \_\_\_\_\_, what the response was for these behaviors and what systems were in place for them to be successful. (School District Exh. 226.) On April 8, 2022, Ms. \_\_\_\_\_ replied and stated she was worried about the “risk/reward” with the Student during the summer program; she explained that she had reached out to Ms. \_\_\_\_\_, who had the same concern, and Ms. \_\_\_\_\_ was in contact with other school staff about their concerns about the Student attending the summer program. (School District Exh. 226.)
36. Also on April 7, 2022, Ms. \_\_\_\_\_ emailed Ms. \_\_\_\_\_ that although she did not want to limit the Student’s learning opportunities she wondered if the lack of time to build relationships during the summer program might be detrimental to the Student’s potential learning. (School District Exh. 230.)
37. Also on April 7, 2022, Ms. \_\_\_\_\_ emailed Ms. \_\_\_\_\_ in response to her question, indicating that the Student had significant behavioral needs at the start of the year but the behaviors had declined in frequency with breaks and modeling. (School District Exh. 228.) She explained that the Student continued to have two scheduled breaks during which \_\_\_\_\_ took a walk with a support person and received instruction on “Zones.” (School District Exh. 228.) Ms. \_\_\_\_\_ explained that the Student was also allowed to ask for breaks, which could be a walk down to the bathroom or water fountain. (School District Exh. 228.) Ms. \_\_\_\_\_ noted that the Student’s behaviors could be significant and early indicators were using baby talk, using unkind words with friends, pacing around the room, and using foul language. (School District Exh. 228.) She reported that the Student had difficulty self-regulating and \_\_\_\_\_ behaviors could escalate quickly to include defiance, yelling, knocking over furniture and classroom tools, and being physically aggressive. (School District Exh. 228.) Ms. \_\_\_\_\_ concluded that the Student enjoyed being a teacher’s helper, \_\_\_\_\_ was caring and enjoyed helping friends, and \_\_\_\_\_ thrived on positive attention. (School District Exh. 228.)
38. Also on April 7, 2022, Ms. \_\_\_\_\_ replied to Ms. \_\_\_\_\_ that it sounded like the Student would need more behavioral support than the summer program could provide with limited staffing. (School District Exh. 228.) Ms. \_\_\_\_\_ then forwarded the email thread to Ms. \_\_\_\_\_ and stated that she was also concerned with the Student’s behavior during the summer program as it would be a new environment and a big transition for a limited period of time. (School District Exh. 228.)
39. On May 4, 2022 an Advance Written Notice of the IEP Team meeting was sent to the Student’s Mother, scheduling the meeting for May 13, 2022. (School District Exh. 133.)
40. On May 13, 2022, a “Step One” IEP Team meeting was held to review the Student’s referral and \_\_\_\_\_ eligibility for special education services. (School District Exh. 133.) The Team heard parent concerns and teacher updates indicating that although some

- strategies were in place, the Student was showing difficulties in the classroom around emotional regulation, sensory input, and social skills. (School District Exh. 136.) As a result, the Team agreed to conduct a psychological evaluation and reconvene once it was completed to determine the Student's eligibility for special education services. (School District Exh. 136.) The Team considered ordering an occupational therapy evaluation for the Student but rejected the option because the Team wanted to determine eligibility before proceeding with further evaluations. (School District Exh. 136.)
41. During the Step One meeting, the Student's Mother explained that the Student had had an IEP in the past but it had expired by the time the Student started school in (School District Exh. 136.) The Student's Mother reported that the Student had struggled for several years, did not have coping skills, could be aggressive towards adults and children, and could throw tantrums that included swearing, kicking, hitting, and screaming. (School District Exh. 136.) Ms. reported that she had seen lots of progress and growth in the Student since the beginning of the year, noting that one day at the start of the year the Student was unable to be safe in class and had to leave the room with another staff member. (School District Exh. 136.) Since that time, Ms. explained, the Student had received breaks and check-ins which had been beneficial. (School District Exh. 136.) The Student had grown academically but remained below where they would like to be at that point in the year. (School District Exh. 136.)
  42. Also during the Step One meeting, the Parent's Advocate requested that the Student be allowed to attend the summer program but school staff reported that they did not have enough staff to support the Student during the summer due to behaviors. (Parent Exh. #1.)
  43. During the Step One meeting, , School Strategist, reported that the Tier 2 supports that the Student was receiving were working. (School District Exh. 136.) She indicated that the Student was walking and talking during breaks to practice coping skills and how to calm down when things were not going well. (School District Exh. 136.) Ms. explained that the Student had recently been choosing a peer to come to breaks with and they practiced social skills. (School District Exh. 136.)
  44. On May 16, 2022 a Written Notice was filed following the IEP Team meeting summarizing the meeting. (School District Exh. 135.)
  45. On May 23, 2022, the Student scored a 12/14 on Print Concepts Literacy Assessment, compared to a 4/14 that had scored on September 20, 2021. (School District Exh 141.)
  46. On May 27, 2022, Ms. emailed Ms. explaining that while was escalated, the Student was calling her names and acting like was talking to someone else. (School District Exh. 215.) Even though they were alone in a room,

- the Student stated “you guys, I am going to break everything in here and I am also going to break Mrs. \_\_\_\_\_.” (School District Exh. 215.) Ms. \_\_\_\_\_ wrote that the Student was sweet 99% of the time, but when \_\_\_\_\_ flipped a switch \_\_\_\_\_ became a completely different person. (School District Exh. 214.)
47. On May 29, 2022, \_\_\_\_\_, a licensed psychological examiner, issued a Psychological Evaluation of the Student. (School District Exh. 148.) Ms. \_\_\_\_\_ explained that school staff working with the Student reported that because \_\_\_\_\_ did not arrive with documentation of a disability, \_\_\_\_\_ was initially placed in a classroom. (School District Exh. 149.) School staff indicated that it soon became apparent that the Student required support and check-ins and breaks had been offered as well as support on how to deal with \_\_\_\_\_ emotions. (School District Exh. 149.) \_\_\_\_\_ teacher reported significant behavioral growth over the year; Ms. \_\_\_\_\_ concluded that the Student was more capable of meeting \_\_\_\_\_ expectations than when \_\_\_\_\_ began the year. (School District Exh. 149.)
48. Ms. \_\_\_\_\_’s evaluation indicated that the Student’s intellectual testing suggested \_\_\_\_\_ was functioning in the very low to average range in most areas. (School District Exh. 152.) Ms. \_\_\_\_\_ noted that the Student could be hyperactive but was not consistently so and did not present with Attention Deficit Hyperactivity Disorder. (School District Exh. 152.) Behavior testing suggested that the Student was restless, impulsive, aggressive, argumentative, defiant, and threatening; \_\_\_\_\_ also had difficulty maintaining self-control and engaged in rule-breaking behaviors. (School District Exh. 151.) Ms. \_\_\_\_\_ also opined that the Student did not present with an Autism Spectrum Disorder. (School District Exh. 152.) Ms. \_\_\_\_\_ noted the Student’s experience with family turmoil and opined that \_\_\_\_\_ was experiencing an Adjustment Disorder, which the Student’s IEP Team could consider as a basis for identification as a student with an Emotional Disturbance. (School District Exh. 152.)
49. Ms. \_\_\_\_\_’s recommendations included a classroom environment that offered clear, consistent expectations; a behavior plan targeting one or two of the Student’s most challenging behaviors and offers \_\_\_\_\_ motivators for achieving goals and fostering \_\_\_\_\_ motivation to interact with others, receive positive attention, and please adults in \_\_\_\_\_ life; and separation from the setting if the Student is disruptive to the environment to allow \_\_\_\_\_ to calm down and process alternative behaviors that could have been used. (School District Exh. 153.) She noted that children who experience trauma may present as hyperactive, anxious, and unwilling to follow adult directions but allowing them limited choices could help them feel more in control of their environment. (School District Exh. 153.)
50. On June 3, 2022, an End of Year \_\_\_\_\_ Assessment found that although the Student started \_\_\_\_\_ with limited literacy experience, \_\_\_\_\_ had made gains with Title I support. (School District Exh. 156.) The Assessment noted that the Student was easily distracted and benefitted from small group instruction. (School District Exh. 156.)

51. The Student's third trimester report card indicated that was attaining or developing grade-level writing skills, language skills, and math skills. (School District Exh. 171.) was also attaining work habit and social skills. (School District Exh. 171-172.)
52. Ms. issued an Intervention Progress Report at the end of the third trimester of the Student's year indicating that the Student could automatically read 10 out of 32 high frequency words and ability to blend letter sounds of unfamiliar consonant-vowel-consonant words was improving. (School District Exh. 176.) Ms. noted that although the Student's reading level was slightly lower than it had been in March, the texts at current level had few words so a few errors had a larger impact. (School District Exh. 176.) In math, it was noted that the Student could count up to 100 and backwards from 10, struggled with adding and subtracting using objects. (School District Exh. 176.) Ms. recommended that the Student continue with reading and math intervention in grade. (School District Exh. 176.)
53. An IEP meeting was scheduled for June 14, 2022, to review Ms. 's evaluation and determine the Student's eligibility for special education services. (School District Exh. 154.) Due to a fire at the school, the meeting was postponed several months. (School District Exh. 163.)
54. On August 23, 2022, the Student's Psychological Evaluation was amended to reflect that the Student's records from previous placement had become available in cumulative file at school. (School District Exh. 165.) Ms. reported that the Student's records from County, , supported the Student's Mother's reporting. (School District Exh. 165.) The Student had been deemed eligible for special education services in December 2018 under the designation of Developmental Delay. (School District Exh. 166.) Ms. noted that the Student's most recent IEP, implemented in March 2020, identified needs as including early childhood special education services and speech/language therapy. (School District Exh. 166.)
55. On August 30, 2022, an IEP meeting was held to review the Student's psychological evaluation and determine eligibility for special education. (School District Exh. 186.) The Team determined that the Student qualified for an IEP as a student with a disability under an Emotional Disturbance. (School District Exh. 187.) The Team determined that the Student's IEP should include specially designed instruction for behavior support of 15 minute twice a day in the special education setting and 60 minutes of counseling per week. (School District Exh. 187.) Accommodations were included in the Student's IEP including first/then language, breaks as needed, sensory accommodations, chewy necklace, and a positive behavior support plan. (School District Exh. 187.) The Team also determined a Speech and Language Evaluation and classroom observation, as well as an Occupational Therapy Evaluation and classroom observation, would be completed. (School District Exh. 187.)

56. In a smaller group meeting after the IEP meeting, the Student's Mother expressed concern about the amount of time that the Student should have been receiving speech services during \_\_\_\_\_ year because \_\_\_\_\_ was not reevaluated when the \_\_\_\_\_ IEP paperwork arrived in October. (School District Exh. 190.) Ms. \_\_\_\_\_ informed the Student's Mother that they could complete the speech testing right away and add this service on to the Student's IEP if the need was still present. (School District Exh. 190.)
57. On September 6, 2022, a Written Notice was issued summarizing the IEP Team meeting. (School District Exh. 186.)
58. On August 30, 2022, Ms. \_\_\_\_\_ emailed Ms. \_\_\_\_\_ asking if there was any way she could do the speech evaluation faster than 45 days for the Student, since the Student's Mother was very anxious to get \_\_\_\_\_ into speech because she was worried the Student missed a whole year of speech that \_\_\_\_\_ would have received in \_\_\_\_\_. (School District Exh. 197.) On September 1, 2022, Ms. \_\_\_\_\_ replied that as soon as tests came in, she would test the Student as quickly as she could. (School District Exh. 197.)
59. On September 9, 2022, Ms. \_\_\_\_\_ sent Ms. \_\_\_\_\_ an email asking if she had ever performed a speech assessment, even if informal, on the Student. (School District Exh. 205.) Ms. \_\_\_\_\_ replied that Ms. \_\_\_\_\_ emailed her and asked her if she could test the Student but she was still waiting on the tests that were ordered. (School District Exh. 205.) On September 11, 2022, Ms. \_\_\_\_\_ double-checked with Ms. \_\_\_\_\_ to confirm that she had never checked the Student regarding speech and had not performed any screening after receiving the IEP. (School District Exh. 205.) Ms. \_\_\_\_\_ replied that Mr. \_\_\_\_\_ had instructed her not to do anything with the Student because the IEP had expired and they would wait and see if the Student's teacher voiced any concerns and if so, the process would begin then. (School District Exh. 205.) Ms. \_\_\_\_\_ concluded that because Ms. \_\_\_\_\_ never mentioned any concerns, she had not screened the Student. (School District Exh. 205.)
60. On October 4, 2022, \_\_\_\_\_, MSOTR/L, issued an Occupational Therapy Evaluation Report regarding the Student. (Occupational Therapy Evaluation Report of October 4, 2022.) The report concluded that the Student presented with strengths in the areas of upper limb coordination, especially with two handed ball skills, had an age-appropriate grasp on pencil and scissors and used \_\_\_\_\_ helper hand well to stabilize the paper, and also had good recall of numbers one through nine. (Occupational Therapy Evaluation Report.) The report found that the Student also presented with below average skills in the area of fine motor precision, fine motor integration, fine motor control, and manual dexterity which are noted to affect handwriting. (Occupational Therapy Evaluation Report.) Specifically, demonstrated difficulty with the legibility of \_\_\_\_\_ handwriting, and in the areas of recall, orientation, letter placement, size and formation. (Occupational Therapy Evaluation Report.) The Student demonstrated low core strength for \_\_\_\_\_ age which could also affect the development of fine motor skills. (Occupational Therapy

Evaluation Report.) Based on the results of the teacher checklist, Ms. [redacted] concluded that the Student's tactile processing and emotional responses to sensory input were also affecting [redacted] ability to attend and participate in classroom activities. (Occupational Therapy Evaluation Report.) The report recommended providing the Student with hand-strengthening activities often such as spray bottles, play doh with or without tools, clay, or stress balls to squeeze and to strengthen the upper body, wheelbarrow walking, crab walking and hanging/using monkey bars; encouraging the Student to participate in fine motor and visual motor integration tasks that help improve [redacted] skills such as dot to dots, mazes, and any arts and crafts that include coloring, which helps increase endurance, and cutting with scissors; practice learning the difference between uppercase and lowercase letters to help with the automatic recall when [redacted] is writing to decrease frustration for handwriting tasks; and using a multisensory approach by having the Student write letters in different textures such as sand, shaving cream, or rice on a cookie sheet, using [redacted] finger if [redacted] is comfortable with that. (Occupational Therapy Evaluation Report.)

61. Also on October 4, 2022, Ms. [redacted] wrote to Ms. [redacted] asking her what assessment tools she used, whether the Student's scores were all in the average range, and whether she would recommend the Student for speech services. (Speech-Language Evaluation Summary Email of October 4, 2022.) Ms. [redacted] replied that she had given the Student two tests. (Speech-Language Evaluation Summary Email.) The first was the Clinical Evaluation of Language Fundamentals-5, Screening Test. (Speech-Language Evaluation Summary Email.) The Student had a score of 13 points on the screening test, which was at criterion. (Speech-Language Evaluation Summary Email.) The second test was the Arizona Articulation and Phonology Scale-4, assessing the Student's production of speech sounds in words and in sentences. (Speech-Language Evaluation Summary Email.) The Student's scores were considered within normal limits. (Speech-Language Evaluation Summary Email.) Ms. [redacted] explained that the Student exhibited some minor grammatical errors (inconsistently substituting "her" for "she" in sentences), but this type of error would not be enough to qualify [redacted] for services. (Speech-Language Evaluation Summary Email.) Ms. [redacted] recommended that all adults interacting with the Student model the correct form to be used. (Speech-Language Evaluation Summary Email.) Ms. [redacted] also noted that the Student inconsistently substituted a few sounds; the recommendation again was for adults to model the correct production. (Speech-Language Evaluation Summary Email.) Ms. [redacted] opined that the Student did not exhibit a moderate to severe delay, which would be necessary to qualify for speech/language services. (Speech-Language Evaluation Summary Email.)
62. On October 10, 2022, Ms. [redacted] issued a Speech Language Evaluation for the Student. (Speech Language Evaluation of October 10, 2022.) The evaluation concluded that the student exhibited age-appropriate speech and language skills and no longer showed delays. (Speech Language Evaluation.)

## **Interview with Student's Mother**

63. The Student's Mother feels that the IEP for the Student for the 2022-2023 school year will provide [redacted] with a free appropriate public education. (Interview with Student's Mother.)
64. The Student's Mother recalled telling [redacted] staff about the Student's [redacted] IEP when she registered [redacted] in June or August of 2021. (Interview with Student's Mother.) In October 2021, the Student's Mother was told that [redacted] had received the IEP from [redacted]. (Interview with Student's Mother.) The Student's Mother feels that nothing happened when [redacted] received the IEP and she does not recall being told anything. (Interview with Student's Mother.) The Student's Mother does not recall being told that the School District had decided to see how it went before creating a new IEP. (Interview with Student's Mother.) She never talked with [redacted], [redacted] s Special Education Director, about the IEP that they received in October and why they were not having an IEP meeting. (Interview with Student's Mother.) The first time she spoke to Mr. [redacted] was at the First Step Meeting in May 2022. (Interview with Student's Mother.)
65. The Student's Mother was aware of the Student's behavior plan and that [redacted] was receiving pull out instruction for academics. (Interview with Student's Mother.)
66. The Student's Mother thought the Student's needs were being met all year long and was upset when she learned in the spring of 2022 that the Student was not receiving speech or occupational therapy and [redacted] behavioral needs were not being met. (Interview with Student's Mother.) The Student's Mother was told that the IEP was expired when she raised her concerns in the spring of 2022. (Interview with Student's Mother.)
67. The Student's teacher advocated for summer programming during the summer of 2022 for the Student. (Interview with Student's Mother.) At the May 2022 IEP meeting, school staff said they could not staff the Student in the summer program even though the Student had not had any outbursts in a while and even though Ms. [redacted] told her that the Student qualified for the summer program. (Interview with Student's Mother.) The Assistant Superintendent called the Student's Mother and told her that because of the Student's behaviors, they were withdrawing [redacted] from the summer program. (Interview with Student's Mother.)
68. As far as the Student's Mother knows, her [redacted] seems to be doing okay behaviorally right now because the school has not called or emailed her. (Interview with Student's Mother.) Nevertheless, the Student is still having issues that the Student's Mother feels is due to the fact the Student did not receive appropriate services during the 2021-2022 school year. (Interview with Student's Mother.)

**Interview with \_\_\_\_\_, Whole Family Services Coach, \_\_\_\_\_ Maine  
Community Action Program**

69. \_\_\_\_\_ is the Family’s Whole Family Services Coach through Maine Community Action Program. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ feels that if the Student had been able to access occupational therapy and speech therapy during \_\_\_\_\_ year it would have helped prevent the academic delay the Student is experiencing. (Interview with \_\_\_\_\_.)
70. Ms. \_\_\_\_\_ explained that she and the Student’s Mother were frustrated that the School District did not include the Student in the summer program after informing the Student’s Mother that \_\_\_\_\_ qualified. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ opined that if the Student had had an IEP in place, \_\_\_\_\_ could have attended the summer program with support. (Interview with \_\_\_\_\_.)
71. Ms. \_\_\_\_\_ reported that when she opened a case with the Family in April 2022, the Student’s Mother believed that the Student had an IEP and was receiving special education services. (Interview with \_\_\_\_\_.) The Student’s Mother was not aware until Ms. \_\_\_\_\_ requested the \_\_\_\_\_ paperwork from the School District that the Student had been diagnosed with a speech delay in \_\_\_\_\_. (Interview with \_\_\_\_\_.)

**Interview with \_\_\_\_\_, \_\_\_\_\_ Elementary School Principal**

72. \_\_\_\_\_ is the Principal of \_\_\_\_\_ Elementary School. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ reported that when the Student entered school last year as a \_\_\_\_\_, the Student’s Mother wrote a letter that was lost in the fire. (Interview with \_\_\_\_\_.) The Student’s Mother had written that the Student and brother had moved to Maine ahead of her, that she would also be moving to Maine with a new baby, and that she had a lot of family concerns. (Interview with \_\_\_\_\_.) She also discussed previous difficulties that the Student had had and explained that \_\_\_\_\_ had had an IEP in the past. (Interview with \_\_\_\_\_.) The Student’s Mother reported that the Student had struggled with behavioral support and regulation in Head Start and early childhood programs. (Interview with \_\_\_\_\_.) She reported that the Student’s tantrums were pretty hard. (Interview with \_\_\_\_\_.) The Student’s Mother wanted them to know about her concerns ahead of time so that they could support the Student. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ felt the letter was more geared to behavioral concerns; she does not remember the Student’s Mother raising any speech concerns. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ forwarded the letter to other school staff. (Interview with \_\_\_\_\_.)
73. The School District had a difficult time getting the Student’s IEP from \_\_\_\_\_. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_’s secretary made multiple efforts to reach the Student’s program in \_\_\_\_\_. (Interview with \_\_\_\_\_.) She sent out multiple



- requests for records that did not result in the IEP being forwarded. (Interview with .)
74. In early October, the Student's Mother made contact with someone in who could send them the IEP. (Interview with .) They did receive the IEP in mid-October. (Interview with .) The Student's IEP was more complex but it had also lapsed for a period of time because was not enrolled. (Interview with .) When they received it that fall, Ms. reviewed it and discussed it with Mr. . (Interview with .) By that time, the Student had shown some difficulty with behavior. (Interview with .) There was one significant tantrum where ended up in a special education classroom without other students so that could de-escalate. (Interview with .) The Student was screaming, swearing, and using colorful language. (Interview with .) It took a while for the Student to de-escalate. (Interview with .)
75. They looked into starting the Student on RTI, a Tier II service, because Tier I interventions had not been enough. (Interview with .) Ms. began working with Ms. until Ms. was up and running and then Ms. worked with the Student directly. (Interview with .)
76. When Ms. got the IEP in October, she checked in with Mr. who told her that as long as the Student's Mother was on board with the RTI plan and the teacher did not have additional speech concerns, they did not need to hold an IEP meeting at that point. (Interview with .) The Student's Mother was very happy with what they were doing and there were several correspondences with the principal and the teacher that she was happy. (Interview with .) Ms. does not know if anyone asked the Student's Mother if she wanted to hold an IEP meeting or not. (Interview with .)
77. Both the Student's teacher and the interventionist for academics did not have any speech concerns with the Student. (Interview with .) The Student came into with some pretty low academics so had Title I support from Ms. for literacy and math 20 to 30 minutes a day, 4 to 5 times a week. (Interview with .)
78. School staff were pretty successful in managing the Student's behaviors for the majority of the year. (Interview with .) They identified precursors so Ms. could call for support when the Student was gearing up, such as when reverted to baby talk or was wandering around the classroom. (Interview with .)
79. One day in the spring of 2022, Ms. was out for the day, which was hard for the Student, so Ms. tried to give the Student a couple of breaks. (Interview with .) At the end of the day, the Student escalated in a way they had not seen in a long time. (Interview with .) The Student got emotionally stuck in the hallway and was screaming and swearing and kicked a staff member in the shins.

(Interview with .) They were able to de-escalate the Student and get on the bus. (Interview with .)

80. Ms. sees the Student almost every day. (Interview with .) The Student seems happy to be there. (Interview with .) When comes to school, thing is to give everybody a hug. (Interview with .) is doing well in the classroom. (Interview with .) The Student is receiving behavior support from the special education team pursuant to IEP. (Interview with .) Ms. has had a good working relationship with the Student's Mother and hopes that this helps it continue. (Interview with )

### **Interview with , Former Special Education Director**

81. is the Former Special Education Director of .<sup>1</sup> (Interview with .) In the fall of 2021, Mr. spoke with Ms. and Ms. about the Student. (Interview with .) The Student's Mother reported that the Student had had an IEP in but Mr. did not think that the School District had received a copy. (Interview with .) Mr. does not recall when or if they got the IEP and he does not remember reviewing the Student's IEP. (Interview with .) He recalls a conversation with Ms. regarding the Student and he was under the impression that the IEP was just for speech services because the Student's Mother had indicated there was an IEP in place just for speech services. (Interview with .)
82. Mr. felt that the question was if anything else came up, what should they do. (Interview with .) They determined that if the IEP was for speech only, they would work through RTI for the other areas. (Interview with .) The Student was in but there was not enough there for special education based on what was known at that time. (Interview with .) He knew the Student was getting interventions. (Interview with .)
83. Mr. had no other interaction with the Student's case until spring 2022 when he was invited to the Student's IEP meeting. (Interview with .) He had spoken to the Student's Mother, who had a lot of frustration because she felt that the ball was dropped somewhere and that her child should have had services all year and have had an IEP. (Interview with .) He knew the IEP Team was getting together to discuss the Student's needs and that an evaluation was ordered. (Interview with .) Then there was a fire at the school and he called the Student's Mother to cancel the meeting. (Interview with .) Mr. moved to another school district in July 2022. (Interview with .)
84. Mr. was aware that the Student was getting some interventions in but was not aware of whether progress was being made. (Interview with )

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<sup>1</sup> Because Mr. was no longer an employee of at the time of his interview and because the Student's Mother did not sign a release for the School District to provide him with the Student's records, he did not have access to them at the time of his interview. (Interview with .)

.) He explained that if the School District had received an IEP from that included speech language services, they would want to immediately implement those services. (Interview with .) If the IEP had been expired, whether the School District implemented it would depend on how long it had been expired; at that point they might want to call a meeting and decide on testing and to hear the Student's Mother's concerns. (Interview with .) Alternatively, the School District would have had a conversation with the Student's Mother and let her know that they had an expired IEP but had some other interventions that they typically try with students and would like to try those out first. (Interview with .) If the Student's Mother was very concerned, then maybe they would have had the First Step Meeting regardless. (Interview with .) Mr. does not know if anyone had a conversation with the Student's Mother about how the School District was going to handle the Student's IEP. (Interview with .)

85. Mr. explained that if the IEP did come in, it would have gone to Elementary School. (Interview with .) Each school in the School District has a screening process in place where files that come in are reviewed by teachers and special education teachers. (Interview with .) Mr. might not necessarily get the IEP in those circumstances. (Interview with )

**Interview with , Speech Pathologist**

86. is the Speech Pathologist at Elementary School. (Interview with .) During the summer of 2021, Ms. sent Ms. and other school staff members an email that the Student was coming from and described the concerns. (Interview with .) They were looking for an IEP but it took a while to get. (Interview with .) When it came in, Ms. asked Ms. to review the packet of information that had been sent to them. (Interview with .) Ms. looked through the IEP and Written Notice, jotted down notes and then gave it back to Ms. to give her an idea of what they were looking for and what services had been provided to the Student. (Interview with .)

**Interview with , Teacher**

87. was the Student's teacher at Elementary School. (Interview with .) Ms. was notified by the office that the Student's Mother had sent a letter regarding the Student's experience at pre-K in . (Interview with .) Ms. read the letter which discussed the behaviors that the Student demonstrated. (Interview with .) Ms. was in contact with the Student's Mother to talk about this with her. (Interview with .)

88. When first started, the Student was very engaged. (Interview with .) After that, the Student started to display some of the behaviors that the

- Student's Mother had discussed. (Interview with .) The Student's Mother had also stated that the Student had an IEP and she talked to the office to see if they had that on record and they did not. (Interview with ) Between the office and the Student's Mother, they reached out to the program for a copy of the Student's IEP. (Interview with .) It took a very long time to get it. (Interview with .) The Student's Mother sent her some papers to print that she needed to sign and send to in order to get the file. (Interview with .)
89. The Student was experiencing some challenges in day. (Interview with .) The Student would yell, use unkind words, be defiant and would knock things over. (Interview with .) Ms. was in contact with Ms. , who was also assessing the Student academically. (Interview with .) Ms. was setting up a plan for the Student. (Interview with .) The plan was to give the Student breaks because behavior indicated that needed a break. (Interview with .) In the morning, the Student became errand runner who ran paperwork to the office as a break. (Interview with .) The Student and Ms. would walk the hall and do something in Ms. 's office. (Interview with .)
90. In October 2021, Ms. was in contact with the Student's Mother who gave permission for the Student to get Title I in math and literacy. (Interview with .) Title I services started mid-October. (Interview with .) It was a small group in a pull out service. (Interview with .) The Student received Title I services in reading and math four days a week with Ms. . (Interview with .)
91. The Student also spent time with Ms. five days a week and made improvements in behavior. (Interview with .) The Student was making gains in academic skills and in self-control. (Interview with .) Ms. felt it was working great by winter break. (Interview with .) The Student would also ask to go for a walk with Ms. if needed a break. (Interview with .) All of this was working. (Interview with .)
92. By the time the Student finished , was reading at mid-level. (Interview with .) The Student was showing significant strengths in reading but not necessarily putting it all together. (Interview with ) The Student also showed gains in math, which is strength, and in self- control. (Interview with .) The Student was spending the majority of day in the classroom. (Interview with .)
93. Ms. felt that the Student was making progress behaviorally throughout the year. (Interview with .) The Student was able to verbalize how and why was feeling. (Interview with .) The Student was able to resolve conflicts with friends. (Interview with .) The Student was able to let her know if needed a break. (Interview with .) The Student was proud of for making those

- gains. (Interview with .) The Student was also able to successfully navigate school for three days in a tent out on a field at a strange school at the end of the year due to the fire that had occurred. (Interview with .)
94. Ms. was not asked to review the Student's speech skills. (Interview with .) Students and staff wore masks for most of the Student's year. (Interview with .) Ms. did not notice any articulation or communication issues. (Interview with .)
95. With regard to the summer 2022 program, Ms. said she was going to suggest that the Student be part of the summer program so could receive services for literacy and math. (Interview with .) Ms. received an email from someone running the summer program asking about the Student's behavioral issues. (Interview with .) The Student is very relational and needs a deep relationship to ground behavior. (Interview with .) Ms. was concerned about what the Student's behavior would be like in that program because was not familiar with the environment and the people. (Interview with .) Nevertheless, Ms. feels that the summer program would have been beneficial to the Student. (Interview with .)
96. Ms. feels that the Student had progressed significantly in . (Interview with .) The strategies that they put in place were appropriate and successful and they are looking forward to having those pieces in place for the Student this year. (Interview with .) The Student seems happy and looks like is adjusting to returning to school. (Interview with .)

**Interview with , School Strategist**

97. , Elementary School Strategist, began working with the Student in October 2021. (Interview with .) Ms. contacted her regarding the Student's behavior in the classroom such as roaming in the room, choice language, and work refusal. (Interview with .) Because they utilize the least restrictive plan first, they gave the Student some walking breaks and time out of the classroom, which helped. (Interview with .) This started to alleviate some of issues but it was clear that needed Tier II support. (Interview with .) They started taking the Student for two 15-minute breaks per day, as well as when asked. (Interview with .) This helped the Student work on social emotional skills, peer interactions, and skills to help be successful in the classroom (Interview with .) Some of the breaks were one on one and then they worked up to peer play. (Interview with .) They also used a peer role model during one of the working breaks. (Interview with .) By the end of the year, the Student knew when needed a break and could advocate for that . (Interview with .)
98. The Student could go weeks without needing anything extra on top of two breaks and then would hit a spot and there would be a rise in need but nothing that was

not typical to all students. (Interview with .) Ms. feels that the Student's behavioral needs were lessening near the end of the year. (Interview with .) Ms. and Ms. would rejoice in the gains that the Student had made. (Interview with .) When the Student's Mother requested the IEP meeting in the spring of 2022, Ms. felt that it was a bit of a bummer because she thought the Student was doing great and on track. (Interview with .) At that time, Ms. did not know that the Student had had an IEP prior to enrolling in (Interview with .) Ms. found out about the prior IEP at the First Step Meeting. (Interview with .)

99. Although the Student's behavior plan began with walking breaks at the end of October, they did not begin to put the plan in writing until January. (Interview with .) In March, the plan was finalized when they felt comfortable putting it in writing. (Interview with .) Throughout the year, the Student increased ability to self-regulate and stay in the classroom. (Interview with .)

100. Ms. is not working with the Student this year because is not in Special Education. (Interview with .) Ms. was really happy with the progress that the Student was making. (Interview with .) She had no concerns about speech development and feels that the minor articulation issues she observed were typical for students. (Interview with .)

#### **Interview with , Interventionist**

101. provides RTI services at Elementary School. (Interview with .) During the first or second week of October 2022, Ms. , Interventionist, was asked to assess the Student. (Interview with .) Ms. spoke with Ms. and told her that the Student qualified for RTI. (Interview with .) Ms. recalls that there may have been mention of an IEP that expired and they were trying to get a copy of it since the Student had just moved from . (Interview with .) They were missing documents and Ms. was told to just move forward as normal. (Interview with .)

102. In mid-October Ms. started working with the Student in literacy on things like letter ID, understanding how a book works, letter sounds, rhyming, etc. (Interview with .) They did some math concepts as well and the Student stayed with her throughout the year. (Interview with .) The Student made good gains but not to the point that was ready for dismissal. (Interview with )

103. During the first trimester, Ms. worked with the Student twenty minutes a day, five days a week on literacy. (Interview with .) During the second and third trimesters, Ms. worked with the Student twenty minutes a day, three days a week on literacy because the Student was making gains on literacy. (Interview with .) Math was the Student's strength and they worked together on math

- twenty minutes a day, five days a week all year. (Interview with .) All the Student's sessions were in a small group setting. (Interview with .) The math and reading groups were two or three students. (Interview with .)
104. Ms. never saw the IEP. (Interview with .) When she did her assessments at the start of the year, she never noticed anything about the Student's speech that was not developmentally appropriate. (Interview with .)
105. The Student's Mother never indicated to Ms. that she wanted the prior IEP to be implemented or that she had speech concerns. (Interview with )
106. Ms. experienced some incidents with the Student when got upset and took materials or said did not want to do what was planned and brushed the papers to the floor. (Interview with .) At times, Ms. felt like the Student thought what they were asking to do was hard and that was why would get upset so Ms. would change the approach. (Interview with .) On one occasion, the Student did throw things on the floor and was roaming the room so Ms. called for help from Ms. because she had extra students and needed to work with them. (Interview with ) Ms. managed the Student's behaviors by asking if there was something she could do to help and tried to distract . (Interview with .) Ms. would stop the lesson and give space but it was a really small space. (Interview with .)
107. If Ms. went to get the Student in the classroom, she would give a minute if was having difficulty and would not force to come out at that time and the Student could come to her room when was ready. (Interview with .) This did not happen often. (Interview with .)
108. The Student loves hugging, interacting, and getting close. (Interview with .) When Ms. substituted in her classroom, she would notice that the Student had things in hands that didn't seem to be and would find out later that they belonged to some other child. (Interview with .) Occasionally she would find with someone else's bag in the hallway. (Interview with .) The Student was appropriate at lunch and recess. (Interview with .) Ms. overall loves the Student and they still give each other a hug when they see each other in the halls. (Interview with ) Ms. knows that the Student struggles at home and at school. (Interview with .)
109. Ms. was not specifically looking for speech concerns at the screening. (Interview with .) If a student was having trouble with sounds, she would write a note about speech and talk about it with the teacher and she had not written that down about this Student. (Interview with .)
110. During the second trimester Parent/Teacher Conference, Ms. spoke to the Student's Mother at great length. (Interview with .) The Student's Mother asked about the summer program. (Interview with .) Ms. told the

Student's Mother that invitations were going to be sent out shortly. (Interview with .) When the Student's Mother did not get an invitation, Ms. said she would look into it and she received an email back stating that students who had any behavior challenges were not invited to the program. (Interview with .) Ms. pushed for the Student to be allowed to attend, given that the Student's Mother specifically asked if this program was happening and she had told her it was. (Interview with .) She was told the decision was made due to lack of staffing for students with behavioral challenges. (Interview with .)

111. Ms. ended up working with students during the summer program; she was very disappointed that the Student was not there. (Interview with .)

**Interview with , Administrative Assistant at Elementary**

112. is the Administrative Assistant at Elementary School. (Interview with .) In her role, Ms. speaks with parents frequently. (Interview with .) Ms. has spoken to the Student's Mother often. (Interview with .) When the Student's Mother filled out the records request from the Student's program in , Ms. faxed the request but never heard back. (Interview with .) Ms. then scanned and emailed a copy of the request to the program but still never heard back. (Interview with .) She then called the program. (Interview with .)

113. At one point the Student's Mother reached out and said she was still trying to get the paperwork and that if the School District could get it instead, she would not have to pay for it. (Interview with .) In early October of 2021, the Student's Mother forwarded a voicemail to Ms.'s email and she made a phone call to the school. (Interview with .)

114. Sometime in mid-October 2021, 65-70 pages of records from the Student's program came in through email. (Interview with .) When they came in, she made a copy and gave it to the Student's Mother. (Interview with .) The school's copy would have gone into the Student's academic file. (Interview with .) Ms. saw the paperwork because when it came in, they had a conversation about the documents being so lengthy and Ms. had asked her what to do with it. (Interview with .) The Student's teacher may have peeked through it and Ms. may have looked through it because she was already working with the Student. (Interview with .)

115. Ms. was not aware of any conversation with the Student's Mother about what the School District was going to do now that they had the documents. (Interview with .)



**Interview with \_\_\_\_\_, Administrative Assistant to the Superintendent**

116. \_\_\_\_\_, the Administrative Assistant to the Superintendent, first had contact with the Student's Mother in March 2022. (Interview with \_\_\_\_\_.) The Student's Mother called their office inquiring about how to get her \_\_\_\_\_ tested. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ then spoke to Mr. \_\_\_\_\_, which she would do in any similar situation. (Interview with \_\_\_\_\_.)
117. Ms. \_\_\_\_\_ showed Ms. \_\_\_\_\_ an expired IEP for the Student. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ told Mr. \_\_\_\_\_ and he told her to contact Mr. \_\_\_\_\_ for more information, who reiterated that the IEP had expired and that the Student was receiving intervention services. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ went back to Mr. \_\_\_\_\_ and his instruction was that the Student's Mother was asking for a referral and that the teacher should help the Student's Mother with a referral at the upcoming parent teacher conference. (Interview with \_\_\_\_\_.) The Student's Mother's referral was received in their office and Mr. \_\_\_\_\_ asked Ms. \_\_\_\_\_ to contact the IEP coordinator to set up the First Step Meeting. (Interview with \_\_\_\_\_.)
118. Ms. \_\_\_\_\_ did hear from the Student's Mother again around April break and she was inquiring again about when the meeting would happen. (Interview with \_\_\_\_\_.) She asked the IEP Coordinator to get in touch with the Student's Mother. (Interview with \_\_\_\_\_.)
119. The Student's Mother called her a third time shortly after the second call and said she still had not heard about the meeting. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ referred the question to Mr. \_\_\_\_\_ and asked him to follow up with the IEP Coordinator. (Interview with \_\_\_\_\_.)

**Interview with \_\_\_\_\_, Assistant Superintendent**

120. \_\_\_\_\_, Assistant Superintendent of \_\_\_\_\_ believes that taking the summer program was mentioned to the Student's family as a possibility in error. (Interview with \_\_\_\_\_.) The Student had some needs for breaks and other accommodations that they would have been happy to make if they had the staff capacity but they did not. (Interview with \_\_\_\_\_.) There were other students who were not invited to the program because they needed similar accommodations. (Interview with \_\_\_\_\_.) They did not want to invite anyone who would be a poor fit. (Interview with \_\_\_\_\_.) The program was intended to make Students feel successful and confident. (Interview with \_\_\_\_\_.) It came to her attention that there was some concern around overpromising something that might not be a good fit. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ said that she would call the Student's Mother and explain what the program looked like. (Interview with \_\_\_\_\_.) The Student's Mother agreed that the program did not seem like a good fit for the Student. (Interview with \_\_\_\_\_.) The Student's Mother seemed to feel okay about that explanation. (Interview with \_\_\_\_\_.) If the Student's Mother had felt differently during the phone call, the School District might

have had to look differently at the situation. (Interview with .) Ms. didn't hear any more about it until the Complaint. (Interview with .)

**Interview with , Special Education Director**

121. is the current Special Education Director for having begun her position on August 1, 2022. (Interview with .)
122. Ms. was not aware that the Student's Mother thought they had failed the Student in until she saw the complaint in this matter. (Interview with .) Once she got the Complaint, she called the Student's Mother to review her concerns about and they had a lengthy conversation. (Interview with .) They talked about the Student's rough summer and emotional dysregulation. (Interview with .) Ms. reassured the Student's Mother that the IEP Team would review her concerns. (Interview with .) Ms. reassured her that she could reach her at the office and gave the Student's Mother her cell phone number. (Interview with .) They reassured the Student's Mother that if there were missed services, they would make them up. (Interview with .)
123. Ms. spoke to Ms. to ensure that all IEP paperwork related to the Student would be copied to her. (Interview with .) Ms. feels like they have a good plan for grade and a good relationship with the Student's Mother. (Interview with .)

**DETERMINATIONS**

1. In preparation for the 2021-2022 school year, did not implement a procedure to ensure that the Student, a child in need of special education and related services was identified, located, and evaluated at public expense in violation of MUSER IV.2.A. **VIOLATION FOUND.**
2. During the 2021-2022 school year, did not conduct a full and individual initial evaluation of the Student to determine eligibility for special education in violation of MUSER V.1.A(1). **NO VIOLATION FOUND.**
3. During the 2021-2022 school year, did not provide the Student with special education and related services, including extended school year services, and as such has denied a free appropriate public education in violation of MUSER I (stating that each school district must provide special education students with a free appropriate public education) and MUSER IX.3.A(1)(d) (stating that the elements of a student's IEP should include a statement of the special education and related services and supplementary aids and services to be provided to the student or on behalf of the student. **NO VIOLATION FOUND.**

## ANALYSIS OF DETERMINATION #1

MUSER IV.2.A states that a school district “must maintain and implement policies and procedures to ensure that all children residing in the jurisdiction between the ages of 3 and 20 years . . . who are in need of special education and related services, even though they are advancing from grade to grade, are identified, located and evaluated at public expense.” In addition, MUSER IV.2.E states that each school district must “develop a written policy . . . regarding referral to the IEP Team.”

The Student’s prior IEP in \_\_\_\_\_, which deemed \_\_\_\_\_ eligible for services due to a developmental delay, was generated in March 2020. The Student received accommodations as well as 120 minutes per month of special education services to address delays in academics and classroom functioning to be provided by a special education teacher. That special education teacher also consulted with the family or the Student’s other teachers and providers for 20 minutes per month. Finally, the Student was receiving speech-language services for 120 minutes per month to address \_\_\_\_\_ delays in receptive and expressive language and articulation. The Student’s IEP expired on March 2021, at a time when the Student was not receiving any public education.

In July 2021, a few months after the Student’s IEP had expired, the Student’s Mother informed the Principal of \_\_\_\_\_ Elementary School, Ms. \_\_\_\_\_, that the Student would be attending \_\_\_\_\_ in the fall and that \_\_\_\_\_ had had an IEP in \_\_\_\_\_. The Student’s Mother indicated that the Student had been receiving speech language services through \_\_\_\_\_ IEP. The Student’s Mother further requested additional evaluation of the Student because she felt there was more going on with \_\_\_\_\_. Although Ms. \_\_\_\_\_ recalled that the Student’s Mother raised primarily behavior concerns, the documentary record indicates that Ms. \_\_\_\_\_ spoke with other school staff about both speech services and behavioral concerns.

Ms. \_\_\_\_\_ relayed this information to Ms. \_\_\_\_\_, \_\_\_\_\_ Elementary School’s Speech Pathologist, as well as to the Special Education Teacher and also explained that she had told the Student’s Mother that the School District did not conduct evaluations over the summer. She also relayed that she had told the Student’s Mother that they would set up an IEP in the fall if the Student was struggling. Ms. \_\_\_\_\_ responded that the Student would be due for a 30 day transfer IEP Team meeting after school had started, which could be used as a check-in time.

In early September 2021, Ms. \_\_\_\_\_ reminded Ms. \_\_\_\_\_ that the Student had had an IEP for speech language delays. Ms. \_\_\_\_\_ then assessed the Student’s speech language skills on September 20, 2021. The Student did not perform well, receiving three scores of 0 and one score of 2 out of 10. The results of this assessment do not appear to have triggered any further action and the School District did not set up an IEP although Ms. \_\_\_\_\_ had informed the Student’s Mother they would do so if the Student were struggling or as Ms. \_\_\_\_\_ had noted would be appropriate for a Student transferring in with an IEP.

By October 12, 2021, Ms. \_\_\_\_\_ had asked school staff to participate in a staffing meeting regarding the Student. No meeting was held, however, because Ms. \_\_\_\_\_ and Ms. \_\_\_\_\_ spoke and made a plan to address the Student’s problematic behaviors. On October 13,

2021, the student was referred for RTI in Math and Literacy due to areas of concern in basic skills. By October 18, 2021, the School District was in receipt of the Student's IEP from . After reviewing it, Ms. wrote some notes for Ms. and also emailed her that behavioral issues in the classroom were identified in the Student's file. Ms. asked if an IEP Team meeting should be scheduled. Ms. responded that they should check with Ms. to see if she had concerns but then also replied that Mr. , then the Special Education Director, had told her to wait to see if Ms. had concerns about the Student's performance. Ms. further noted that if the Student had continued to receive services, which was likely had remained in school, review would be due in December 2021.

By this time, although no speech-language deficits had been identified for the Student, the School District was in possession of prior IEP that also identified as a Student with a development disability who had been receiving special education direct instruction as well as speech therapy services and teacher had identified math and literacy deficits and behavioral concerns.

The School District did not communicate with the Student's Mother as to what their analysis of the Student's IEP consisted of or the results of such review nor did it convene an IEP Team meeting as Ms. had suggested might be appropriate. Mr. 's instruction to Ms. to wait to see if Ms. voiced concerns was inconsistent with Ms. 's previously voiced Mr. 's concerns about the Student's academic performance and behavior.

The School District continued to provide the Student with RTI in math and literacy, as a result of which the Student gains, and also to provide behavioral services, which resulted in a final Behavioral RTI Plan in March 2022.

On March 1, 2022, the Student's Mother asked Ms. about getting the Student evaluated for certain diagnoses and Ms. directed the Student's Mother to pediatrician. On March 16, 2022, upon a request from the Student's Mother to Ms. for an evaluation for certain diagnoses, Ms. assisted the Student's Mother in filling out a special education referral form. It is unclear why the same request to Ms. in the summer of 2021 and to Ms. a few weeks earlier did not result in a Parent referral to special education but did result in a referral when directed to Ms. .

Following a psychological evaluation of the Student at the end of year, was determined to be eligible for special education services as a student with an Emotional Disturbance on August 30, 2022. is receiving specially designed instruction in behavior support and counseling as well as accommodations. A subsequent occupational therapy evaluation concluded that the Student had below average skills in many areas that were impacting ability to attend and participate in classroom activities although a speech language evaluation found no delays in speech and language skills.

Once the School District received the Student's IEP and reviewed it, it should have called a Team meeting given that the Parent had called several months earlier requesting

evaluations of the Student and alerting the School District to the Student's out-of-state IEP. Even though the IEP had been expired for several months, there was no indication that an IEP was not in place as of the fall of 2022 due to any reason other than the Student being out of school while transitioned to Maine and resided with family members while waiting for mother to join in Maine. The School District was aware, as evidenced in Ms. 's July 2021 emails, that the Student had experienced difficult circumstances during time out of school and thus could safely assume that the need for special education services had not dissipated. Mr. 's instruction to Ms. , as she relayed to Ms. , was to wait to see if Ms. expressed concern even though Ms. had already expressed concern about many areas of the Student's performance and abilities and the Parent had already requested further evaluation.

The School District argues even if it had a child find duty, it met its duty by utilizing pre-referral strategies and providing early intervention services by staff prior to referrals into the special education system. Nevertheless, the School District did not conduct an evaluation of the Student's developmental delays identified in IEP other than a speech assessment nor did it provide services comparable to those described in the Student's IEP. Nor did the School District contact the Student's Mother, who continued under the misapprehension once the Student's IEP was provided that was receiving services consistent with prior IEP until very late in the school year, to communicate that the School District was not going to provide such services. Further, the School District did not convene an IEP eligibility meeting until March 2022, which was done upon the Parent's request to Ms. to have the Student further evaluated. As such, the School District violated its obligation under MUSER IV.2.A to maintain a policy to identify all students in the School District eligible for special education services.

Although the School District argues that it was not required to refer the Student to special education but instead was required to provide general education interventions for students who were not "progressing toward meeting the content standards of the parameters for essential instruction" at MUSER III.1., under the circumstances of the present matter, the Student should have been referred for a determination of special education eligibility.

The School District also cites MUSER IX.3.B(5) as potentially applicable, arguing that even if this provision were applied, the School District was not in violation. MUSER IX.3.B(5) states that if a school district "has reason to believe the child has previously been identified as a child with a disability by another SAU, in state or out of state, child find is not necessary." That provision is entitled "IEPs for Children Who Transfer from Another State" and states that the new school district "must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous SAU), until the new SAU conducts an evaluation and develops, adopts and implements a new IEP." This provision, however, only applies when a student has an IEP in effect and the student enrolls in a new school in the same school year, neither of which was the case in the present matter. As such, the School District was not in violation of MUSER IX.3.B.(5).

## **ANALYSIS OF DETERMINATION #2**

MUSER V.1.A(1) states that a school district shall conduct a full and individual initial evaluation before the initial provision of special education and related services to a child with a disability. Although the School District failed initially to meet its child find obligation, by the start of the Student's \_\_\_\_\_ grade year, the Student had received a psychological evaluation resulting in \_\_\_\_\_ identification as a student eligible for special education services, with additional evaluations completed in the fall of 2022. As such, the School District met its obligation under MUSER V.1(A)(1) to conduct a full evaluation prior to providing the Student with special education services in the fall of 2022.

## **ANALYSIS OF DETERMINATION #3**

MUSER I states that each school district must provide special education students with a free appropriate public education. MUSER IX.3.A(1)(d) states that the elements of a student's IEP should include a statement of the special education and related services and supplementary aids and services to be provided to the student or on behalf of the student. Determination #1 addresses the School District's failure to provide the Student with special education and related services during \_\_\_\_\_ year.

What remains at issue is the School District's determination not to include the Student in the summer 2022 program for students who were receiving interventions. School staff who worked with the Student communicated with school staff running the program to share concerns about the Student's need to create relationships that would support \_\_\_\_\_ behavior which would have been difficult to do given the short length of the program. Moreover, it was not known at that time that determinations about student eligibility were being made and that Ms. \_\_\_\_\_, with whom the Student had a relationship, would be part of the staff at the summer program. Furthermore, it is not clear that the Student would have been eligible for the summer 2022 program if \_\_\_\_\_ had been identified as eligible for special education at that time. The program was not an ESY program and the Student's need for ESY, had \_\_\_\_\_ been receiving special education, would have been determined by \_\_\_\_\_ IEP Team in relation to \_\_\_\_\_ specific needs.

As such, the School District's failure to include the Student in the summer 2022 program for students receiving interventions did not constitute a separate MUSER violation.

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

Following the IEP Team's determination of the Student's eligibility on August 30, 2022, \_\_\_\_\_ began to receive specially designed instruction for behavior support of 30 minutes a day in the special education setting and 60 minutes of counseling per week. The recently completed occupational therapy evaluation further indicated the Student would need occupational therapy services as well.

When a student is deprived of a FAPE, \_\_\_\_\_ is entitled to "such relief as the court deems is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii). Compensatory educational services are one form of

remedy, the nature and extent of which vary depending on the facts of each particular situation. Pihl v. Massachusetts Dep't of Educ., 9 F.3d 184 (1<sup>st</sup> Cir. 1993). Although an IEP need only provide some benefit, “compensatory awards must do more – they must compensate.” Reid v. District of Columbia, 401 F.3d 516, 525 (D.C. Cir. 2005). An award of compensatory education “should aim to place disabled children in the same position they would have occupied but for the school district’s violations of IDEA.” Reid, 401 F.3d at 518; see also MSAD #22, 43 IDELR 268 (Me. SEA 2005) (stating that the typical compensatory education award is an award of “services in an amount sufficient to make up for the past educational deficiencies”). Compensatory education need not be an hour-for-hour replacement of lost time or opportunity; instead, a compensatory education award should be designed to “ensure that the student is appropriately educated within the meaning of the IDEA.” Parents of Student W. v. Puyallup Sch. Dist. #3, 31 F.3d 1489, 1497 (9<sup>th</sup> Cir. 1994); see also Reid, 401 F.3d at 523 (rejecting a “cookie-cutter approach” that “runs counter to both the ‘broad discretion’ afforded by IDEA’s remedial provision and the substantive FAPE standard that provision is meant to enforce”). An award of compensatory education should be fact-specific, depending on the child’s needs. Reid, 401 F.3d 516 at 524; Pihl, 9 F.3d at 188 n.8.

The Student’s IEP Team should meet and determine an amount of compensatory education that the Student should receive to make up for the special education and related services \_\_\_\_\_ did not receive during the 2021-2022 school year as a result of not being referred to determine \_\_\_\_\_ special education eligibility, although the Team may take into account the behavior support and RTI the Student did receive during \_\_\_\_\_ school year.

In addition, within 30 days, the School District should provide the Department of Education with a copy of its written child find policy that comports with MUSER IV.2.E requiring a policy that regards referral of students to an IEP Team, in particular a parent referral, as governed by MUSER IV.2.E(3), stating that parents may request a full and individual evaluation for possible special education eligibility at any time during the implementation of general education interventions for the student.