

Complaint Investigation Report

██████████ v. RSU #29 / MSAD #29

January 14, 2020

Complaint # 20.046C

Complaint Investigator: Julia N. Pothen, Esq.

Date of Appointment: November 21, 2019

I. Identifying Information

Complainant: ██████████, Parent

██████████

Respondent: RSU #29 / MSAD #29
Ellen Halliday, Superintendent
65 South Street
Houlton, ME 04730

Sandy Flacke, Director of Special Services

Student: ██████████

DOB ██████████

II. Summary of Complaint Investigation Activities

On November 19, 2019 the Maine Department of Education received this complaint. The complaint investigator was appointed on November 21, 2019. Therefore, the current investigation covers the time period of November 19, 2018 to present. See MUSER XVI(4)(B)(3).

The complaint investigator received 158 pages of documents from RSU #29 / MSAD #29. The investigator also received 107 pages of additional documents from the complainant. Interviews were conducted with the Student's mother on December 23, 2019 and with the family's caseworker from A New Start on January 2, 2020. On January 3, 2019, the following school staff were interviewed: the Director of Special Services; the Principal; the Assistant Principal; the Student's Case Manager/Special Education Teacher; the Student's Guidance Counselor; and another Special Education Teacher for the Student. The Student's Juvenile Community Corrections Officer was

unavailable for an interview with the complaint investigator.¹ The complaint investigator reviewed all documents, information, and responses provided by the parties.

III. Preliminary Statement

The Student is 15 years old, and [REDACTED] is enrolled in the 9th grade at Houlton High School. The Student resides at home with [REDACTED] mother in [REDACTED], Maine. [REDACTED] is a part of Regional School Unit #29; therefore, RSU #29 is responsible for the Student's educational programming.

The Student qualifies for special education and related services based on the Other Health Impairment category. The Student has a variety of diagnoses that have an adverse impact on his education, including autism spectrum disorder, ADHD, major depressive disorder, and oppositional defiant disorder.

This complaint was filed by the Student's mother ("Parent") alleging that RSU #29 / MSAD #29 ("District") violated the Maine Unified Special Education Regulations ("MUSER"). After the receipt of the Parent's complaint, a Draft Allegations Letter was sent to the parties by the complaint investigator on November 25, 2019, alleging five violations of the MUSER. A telephonic Complaint Investigation Meeting was held on November 26, 2019. A revised Allegations Letter was sent to the parties by the complaint investigator on November 27, 2019, alleging six total violations of the MUSER.

IV. Allegations

The Parent alleged that the District has not provided the Student with a free appropriate public education ("FAPE") (see MUSER II(13); 34 CFR 300.101(a)) because of the following:

- A. The District did not implement the Student's existing IEP when the Student moved into the District from another State. MUSER IX(3)(B)(5)(ii). Specifically, the District did not provide services comparable to those described in the Student's IEP in Kansas, including, but not limited to, specially designed instruction in Math and English, independent living skills, and other supplementary aids and services in additional academic classes. Id.; see also, MUSER X(2)(A)(2).

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

B. The District did not allow the Student to return to school after October 23, 2019, and, therefore, the Student is not being educated in the least restrictive environment. MUSER I; MUSER X(2)(B); MUSER VI(2)(L); MUSER XVII(1)(E).

1. The District did not provide any educational services to the Student for approximately two weeks after October 23, 2019. MUSER I; MUSER XVII(D); 34 CFR 300.101(a).

2. Currently, the District is providing the Student with tutorial instruction and an abbreviated school day without regulatory compliance. MUSER X(2)(A)(4); MUSER VI(2)(L); MUSER IX(3)(B)(3).

C. The District did not develop an IEP that provides special education, related services, and supplementary aids and services sufficient to enable the Student to advance appropriately toward attaining annual goals, to be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities, and to be educated and participate in those activities with other children with disabilities and with non-disabled children. MUSER IX(3)(A)(1)(d); MUSER IX(3)(D). In particular, the IEP does not include independent living goals and services to meet the Student's individual needs. MUSER IX(3)(A)(1)(b); MUSER IX(3)(A)(1)(d).

D. The District did not provide written notice to the parents of the Student at least 7 days prior to a proposed change in the Student's educational placement. 34 CFR 300.503(a)(1); MUSER App. At 220.

E. The District did not properly obtain parental consent for proposed evaluation/s. MUSER V(1)(B)(3); MUSER V(3)(D); MUSER IX(3)(B)(5)(ii)(I); see also, 34 CFR 300.304-306. Additionally, the District did not comply with parental notification requirements regarding the proposed evaluation/s. MUSER IX(3)(B)(5)(ii)(I); 34 CFR 300.304; 34 CFR 300.503.

F. The District has not allowed the Student to remain in educational placement (stay-put") during the pendency of the State complaint investigation. MUSER XVI(20).

V. Factual Findings

1. The Student is 15 years old, and [REDACTED] is currently enrolled at Houlton High School. The Student resides with [REDACTED] mother in [REDACTED] Maine. RSU #29 is responsible for the Student's educational programming.
2. The Student has been diagnosed with autism spectrum disorder, ADHD, major depressive disorder, oppositional defiant disorder, and an unspecified learning disability.
3. As a result, the Student is eligible for special education under the Other Health Impairment Category.
4. The Student's most recent assessments, dated October 2017, indicate that [REDACTED] overall intellectual functioning as measured by the Weschler Intelligence Scale for Children – Fifth Edition (WISC-V) falls within the Very Low range (Full Scale IQ = 70; 2nd percentile). The Student was assessed in the 14th percentile for verbal comprehension index, the 42nd percentile for visual spatial index, and the 1st percentile for fluid reasoning index.
5. The Student was also administered the Autism Diagnostic Scale-2 (ADOS-2), which is a standardized assessment tool that collects information about an individual's social behavior and communication skills. The Student's Level of Autism score was 10, "suggesting he has a high level of autism compared to other children with this disorder." See Written Notice, dated September 6, 2019, from the Student's prior high school in Augusta, Kansas.
6. The Student moved to [REDACTED] Maine with his mother in mid-October 2019. He had been previously attending 9th grade at [REDACTED] High School in [REDACTED] Kansas. Prior to that, the Student had attended [REDACTED] Middle School in Kansas. Prior to that, the Student also attended [REDACTED] Middle School in Kansas.
7. After moving to Maine, the Parent enrolled the Student at Houlton High School on Thursday, October 17, 2019. The Parent signed releases, and the District immediately requested a copy of the Student's IEP from [REDACTED] prior high school in Kansas.

8. On Monday, October 21, 2019, the District received the Student's most recent IEP. The Special Services Director and the Guidance Counselor developed a schedule for the Student to begin school the next day at Houlton High on Tuesday, October 22, 2019.
9. The Student's IEP from [REDACTED] Education Services in Kansas indicated that the Student received special education services in Reading and Math, but [REDACTED] was educated with [REDACTED] non-disabled peers for the remainder of [REDACTED] courses. The Student's IEP indicated no emotional or behavioral needs, no communication or motor needs, and no written language or adaptive concerns.
10. The Student began classes on October 22, 2019. [REDACTED] only attended one day of school at Houlton High. During that one day, the Student's Case Manager/Special Education Teacher and another one of his Special Education teachers both noted that the Student was friendly, polite, and understandably nervous about being a new student. Neither of the Student's teachers noted any behavioral or social concerns, and neither of the Student's teachers made any unusual observations about the Student. Neither of the Student's teachers had a sufficient opportunity to assess the Student's individual academic and functional needs.
11. After dropping off the Student at Houlton High for his first day of school on October 22, 2019, the Parent met with the Principal. [REDACTED]
[REDACTED]
12. In an interview with the complaint investigator, the Principal described the Parent as open and forthright about the Student's prior history. [REDACTED]
[REDACTED] and the Student had never had any behavioral issues at school

in the past. The Principal told the complaint investigator that he was not concerned about the Student's safety in the school at that point.

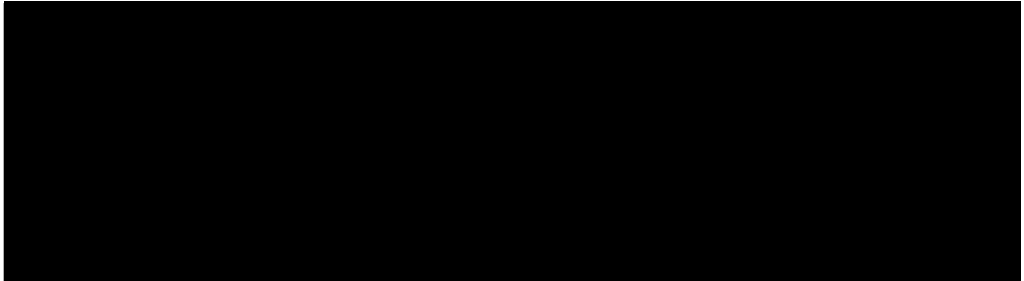
13. Shortly thereafter, a family member of the Parent contacted the Superintendent of RSU #29 to complain about the Student's enrollment at Houlton High School. The family member also had children attending Houlton High School, and she told the Superintendent that she would not continue sending her children to the school if the Student was allowed to remain enrolled. The family member believed that the Student posed a danger to [REDACTED] peers at the school.

14. [REDACTED]

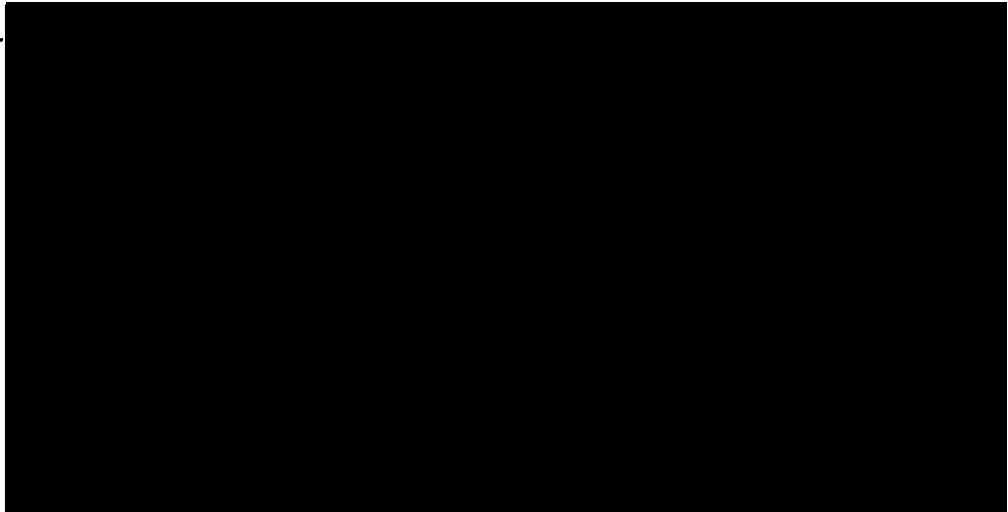
15. The next day, on October 23, 2019, while dropping off the Student at school, the Parent was informed that the Student could no longer attend school until arrangements could be made for a 1-1 escort for the Student between classes. The District argues that the Parent agreed to keep the Student home from school. The Parent explained to the complaint investigator that, while she tried to be polite and understanding about the school's decision, she was not given any other option but to keep her [REDACTED] home from school.

16. [REDACTED]

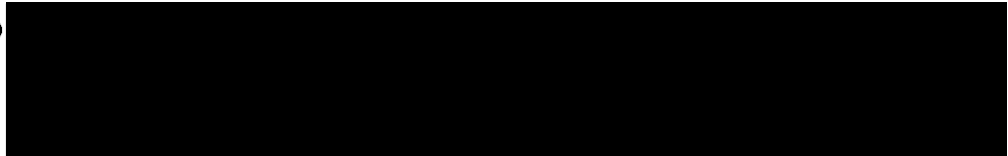
17. [REDACTED]



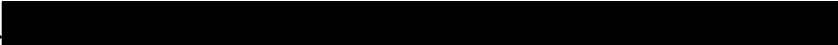
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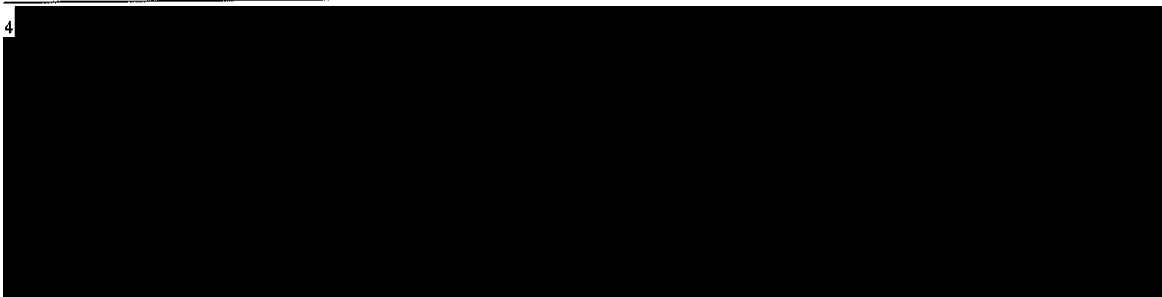


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 and the IEP meeting that took place on October 29, 2019, the Parent received no additional information about the availability of a 1-1 escort for the Student to attend classes at Houlton High School. During that time period, the Student continued to remain at home and continued to receive no educational services.

21. On October 29, 2019, the IEP team convened for a transition meeting. The Principal, the Assistant Principal, the Special Services Director, 

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██████████ two of the Student's Special Education teachers, the Parent, the family's caseworker, and the Student were present.

22. A detailed and lengthy Written Notice from the IEP meeting indicates that the IEP team determined that the Student would not be allowed to attend classes at Houlton High School. Instead, the Student would begin receiving two hours of tutoring per day (10 hours per week) until all the educational records from Kansas were obtained and until testing could be completed. According to the Written Notice, the IEP team also agreed to conduct a Psychological-Risk Assessment and observation "only to complete the rest of his re-evaluation in May 2019."
23. Importantly, the IEP team on October 29, 2019 also concluded that, "the IEP team will reconvene at a later date to determine [the Student's] individual academic and functional needs, goals, classroom accommodations, need for ESY and transition plan after further information, testing results, and ██████████ previous school records from Kansas have been received. An IEP will be developed for [the Student] at this time." See Written Notice, dated 10/29/19.
24. The Written Notice from the October 29, 2019 IEP meeting reveals that the Student's IEP team did not make a decision to change the Student's placement to an abbreviated day and tutoring based on the Student's individual educational needs. To the contrary, the Written Notice repeatedly expresses the team's feeling that they did not have sufficient information about the Student's individual academic and functional needs to develop an IEP or make any further decisions about ██████████ programming. Instead, the only rationale offered in Written Notice by the IEP team for a change in the Student's placement to an abbreviated program and tutoring, a much more restrictive education setting, was the Student's potential risk to the school community.
25. The Written Notice also does not offer any detail about why the school administration's original plan from October 23, 2019 – to establish a 1-1 escort for the Student – was not carried out.
26. The next day, on October 30, 2019, the family's Caseworker emailed additional educational records from the Student's high school in Kansas to the Special Services Director. The Caseworker also informed the Special Services Director that she had spoken to the Student's former

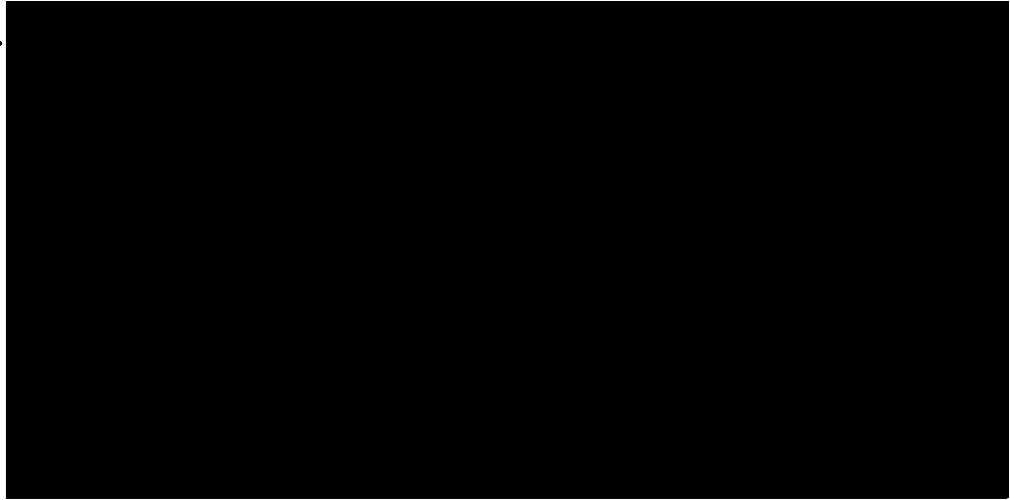
Principal and confirmed that the Student did not require an escort at [REDACTED] prior school. The Caseworker also inquired about when tutoring would begin.

27. On November 5, 2019, the Student began receiving tutoring at the Houlton Library.
28. On November 11, 2019, the family's Caseworker emailed the Special Services Director again, requesting that the Student receive more than 6 to 8 hours per week of tutoring. The Special Services Director replied on November 13, 2019, "That is a typical tutoring schedule. It is meant to support the student in work they can be doing at home as well as providing access to their special education goals."
29. On November 15, 2019, the Parent emailed the Special Services Director and the Principal as follows:

"I have concerns that [the Student's] Educational and functional needs are not being met. I was patient and understanding when the school wanted [REDACTED] to stay home for the first week while the school found a 1 on 1. However, that did not happen and then you wanted a risk assessment and as you know that was not completed. Based on [REDACTED] IEP this plan called for specially designed instruction in Math and English as well as the academics in [REDACTED] general ed content and life skills, with the amount of time [REDACTED] is receiving in tutoring I do not feel 6 hours of tutoring a week is sufficient for [REDACTED] to be progressing the same as his peers."

30. In her email, the Parent goes on to state again that the Student exhibited no behavioral issues in any of [REDACTED] three schools in Kansas. The Parent provided names of employees at [REDACTED] Middle School, [REDACTED] Middle School, and [REDACTED] High School in Kansas, all of whom could verify the lack of behavioral concerns. The Parent states, "I am requesting that the school make every effort to maintain [the Student] in a full day program using supplementary aids and services as the current placement does not address his full academic and functional needs. The team has also not developed a reentry plan for the child to return to a full-time school day." The Parent also requested an IEP meeting.
31. No further IEP team meeting was scheduled at that time.

32.



33. On November 19, 2019, the Parent filed the present complaint with the Maine Department of Education.

34. On November 20, 2019, the Parent revoked consent for a psychological risk assessment of the Student. In an interview with the complaint investigator, the Parent explained that the original consent form she signed at the IEP meeting on October 29, 2019 had been altered without her knowledge or permission. Specifically, the District had added the words “Risk Assessment” under the section designated for “Psychological evaluation” and crossed out a separate request for “Academic/developmental testing” on October 31, 2019.

35. The District concedes that this Consent Form was altered after the Parent signed the form. However, the Special Services Director explained during an interview with the complaint investigator, that the Parent had agreed to a “Psychological Risk Assessment” orally during the IEP meeting, and the form was only altered after-the-fact to accurately reflect the intentions of the Parent.⁶

36. On November 20, 2019, the Special Services Director emailed the Parent with two possible proposals for changing the Student’s educational program and/or placement. First, the Special Services

⁶ The Parties have subsequently addressed and resolved the ongoing issue of parental consent during Mediation on December 16, 2019. The Mediation agreement states, “Ms. Andrews shall provide written consent for the District to proceed with a psychological evaluation, including a [redacted] risk assessment, and academic testing, on timelines established in the special education rules. The District shall schedule an IEP meeting to review the evaluations within 10 school days upon receipt of the completed evaluation or unless the parties agree on a different date.”

Director offered to send the Student to OTC, a full-day therapeutic special-purpose private school, and she explained that the Student could attend OTC prior to completing a risk assessment. Second, she offered the Parent to add social work services into the tutorial program 1-2 times per week.

37. On December 11, 2019, the IEP team reconvened to discuss the Student's progress in tutoring. As indicated by Written Notice, the only discussion during this meeting was about the Student's participation in tutoring, and the Director of Special Services explained to the complaint investigator that the express purpose of the December 11, 2019 meeting was to review the tutoring program. When the Student's Caseworker asked whether the IEP team could discuss the Student's "stay-put" rights, the Director of Special Services declined, stating that would be on the agenda and part of the discussion for the schedule Mediation session on Monday, December 16, 2019.

38. There was no discussion of a new IEP at the December 11, 2019 meeting, and there was no discussion about the additional educational documentation received from the Student's prior school in Kansas. However, two days later, on December 13, 2019, a draft IEP was sent to the Parent, proposing placement for the Student at OTC. This proposal was not presented for discussion at the IEP team meeting on December 11, 2019.

39. The Parties attended Mediation on December 16, 2019, and reached a partial agreement. Written Notice was sent on December 17, 2019 to amend the IEP in accordance with the Mediation Agreement (without a separate IEP Team Meeting). As stated by Written Notice, the only agreed-up change was the Parent's agreement to sign a new consent form for a psychological evaluation to include a [REDACTED] risk assessment, academic testing, and observation.

Other relevant facts are included in the determinations below.

VI. Determinations

- A. The District did not implement the Student's existing IEP when the Student moved into the District from another State. MUSER IX(3)(B)(5)(ii). Specifically, the District did not provide services comparable to those described in the Student's IEP

in Kansas, including, but not limited to, specially designed instruction in Math and English, independent living skills, and other supplementary aids and services in additional academic classes. Id.; see also, MUSER X(2)(A)(2). **NON-COMPLIANCE FOUND. DENIAL OF FAPE FOUND.**

The District concedes that the Student's existing IEP from Kansas was not implemented. Instead, the District argues that the IEP team unanimously agreed to change the Student's placement to tutoring on October 29, 2019, and as a result, an abbreviated day and tutoring was the last agreed-upon program for the Student.

In support of the District's position, the Written Notice, dated October 29, 2019, indicates that both the Parent and the family's case manager voiced no objection to the tutoring arrangement during the IEP transitional meeting. The Written Notice indicates that the IEP determined that the Student would begin receiving two hours of tutoring per day (10 hours per week) until all the educational records from Kansas were obtained and until testing could be completed.

However, this interpretation of the Written Notice ignores a number of essential facts. First, on October 23, 2019, the Parent had already been informed by the school administration at Houlton High School that the Student was not permitted to attend school (until a 1-1 escort for the student could be arranged). This decision was made by the School administration alone, and the Parent was not provided with any options for the Student's education. Although the Parent was cooperative, polite, and understanding about the District's desire to arrange a 1-1 escort for ██████████ between classes, the Parent did not 'agree' to this arrangement. The Student's exclusion from school was communicated to the Parent, and the Parent complied by taking ██████████ home with her.

Second, and most importantly, the Written Notice from the October 29, 2019 transitional IEP meeting indicates in great detail that the IEP team did not make a decision to change the Student's placement to an abbreviated day and tutoring based on the Student's unique, individual educational needs. To the contrary, the Written Notice repeatedly expresses the IEP team's feeling that they did not have sufficient information about the Student's individual academic and functional needs to develop a new IEP or make any further decisions about his programming. To this point, the Written Notice indicates, "the IEP team will reconvene at a later date to determine [the Student's] individual academic and functional needs, goals, classroom accommodations, need for ESY and transition plan after further information, testing results, and ██████████ previous school records from Kansas have been received. An IEP will be developed for [the Student] at this time." The two Special Education teachers who were present at the IEP meeting both expressed that they had no opportunity or ability to assess the Student's academic or functional skills or present levels. After all, the Student had only attended Houlton High for one day.

Finally, the only rationale offered in Written Notice by the IEP team for a change in the Student's placement to an abbreviated school day and tutoring, a much more restrictive educational setting, was the Student's potential risk to the school community if the Student were to commit a crime. According to Written Notice, this concern about [REDACTED] consumed the majority of the discussion at the IEP team meeting.

A free appropriate public education ("FAPE") is an education "specially designed to meet the unique needs of the handicapped child, support by such services as are necessary to permit the child the benefit from the instruction." *Bd. Of Educ. Of Hendrick Hudson Central Sch. Dist., Westchester Cty v. Rowley*, 458 U.S. 176, 188-89 (1982). In *Andrew F. v. Douglas Cty. Scho. Dist.*, 137 S.Ct. 988 (2017), the Court emphasized that IEPs for children with disabilities must take into account the individual and "unique circumstances" of the child. *Id.* at 999 (citing *Rowley*, 458 U.S. at 207). IEPs must be reasonably calculated to enable the child to receive education benefits. *Id.*

The IEP team did not consider the unique, individual academic and functional needs of the Student on October 29, 2019. There was no explanation offered by the IEP team about why an abbreviated school day with tutoring services would better address the Student's needs than [REDACTED] IEP from Kansas, and there was no discussion of other educational options that might better meet the Student's needs in a less restrictive setting.

Although the District argues that the Parent agreed to the Student's change in placement, the context of the initial decision to exclude the Student from school and the two IEP team discussions on October 29, 2019 and December 11, 2019 suggest that the Parent was not meaningfully offered any other alternative aside from an abbreviated day and tutoring. The Parent's email to the Principal and the Special Services Director on November 15, 2019 suggests the same conclusion and also reveals the Parent's genuine belief that the Student's Kansas IEP was still in effect. The Parent apparently believed that, upon the completion of a risk assessment, the Student would be permitted to begin [REDACTED] educational program again, consistent with [REDACTED] IEP from Kansas.

The Parent wrote, "I have concerns that [the Student's] Educational and functional needs are not being met. I was patient and understanding when the school wanted [REDACTED] to stay home for the first week while the school found a 1 on 1. However, that did not happen and then you wanted a risk assessment and as you know that was not completed. Based on [REDACTED] IEP this plan called for specially designed instruction in Math

and English as well as the academics in his general ed content and life skills, with the amount of time [REDACTED] is receiving in tutoring I do not feel 6 hours of tutoring a week is sufficient for him to be progressing the same as [REDACTED] peers.”

In sum, the District did not implement the Student’s existing IEP when the Student moved into the District from another State. The IEP team’s decision to require an abbreviated day and a tutoring program was not based on the Student’s academic and functional needs. The District’s argument that the Parent agreed to an abbreviated day and tutoring as part of a meaningful discussion of her son’s unique academic and functional needs is not supported by the details in the Written Notice from October 29, 2019. As a result, the IEP team decision on October 29, 2019, whether it was unanimous or not, did not erase the District’s obligation to implement the Student’s existing IEP.

- B. The District did not allow the Student to return to school after October 23, 2019, and, therefore, the Student is not being educated in the least restrictive environment. MUSER I; MUSER X(2)(B); MUSER VI(2)(L); MUSER XVII(1)(E). **NON-COMPLIANCE FOUND. DENIAL OF FAPE FOUND.**

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

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

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

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

Children with disabilities are entitled to access a continuum of alternative placements that are available to meet a child’s special education needs. 34 CFR 300.551.

The placement decision must be based upon the child's IEP and must be as close as possible to the child's home. 34 CFR 300.552; MUSER X(2)(B).

After 1997 IDEA Amendments, parents always have a right to be part of the group of persons who make placement decisions about the child based on evaluation data and the placement options available. 34 CFR 300.552. However, parental preference can neither be the sole nor the predominant factor in a placement decision. See Letter to Burton, 17 EHLR 1182 (OSERS 1991).

- In limited circumstances,⁷ when an IEP team properly determines that an abbreviated school day is appropriate and necessary, the IEP Team must:
- (a) Address how the child will meet the system of learning results (which may include a core of standards in English language arts and mathematics for kindergarten through grade 12 established in common with other states), and receive full access to the general curriculum and services on the IEP, as determined by the individual child's need;
 - (b) Address how the child will participate in local and statewide assessments;
 - (c) Develop a revised IEP with a re-entry plan for the child to return to a full-time school day within a reasonable period of time, no longer than 45 calendar days; and,
 - (d) Delineate in the revised IEP with the re-entry plan the actions the SAU will take to assist the child to participate in a full day of school; and
 - (e) Document in the Written Notice the basis for the determination of an abbreviated school day and how the determination is based on the individual needs of the child.

MUSER VI(2)(L).

Additionally, tutorial instruction is not to be used to replace specialized instruction to students with disabilities. See MUSER VI(2)(L). The Department issued guidance about tutoring on November 17, 2017: "When students are out of school because of discipline, an abbreviated school day, or medical reasons, tutoring may be provided as a short-term measure to ensure that students receive instruction. Tutoring is not specially designed instruction. Schools should make every effort, including re-entry plans and proposals for definitive placements, to ensure that students with disabilities are enrolled and attending school." *Tutoring for students who receive special education*, available at <https://mainedoenews.net/2017/11/15/tutoring-for-students-who-receive-special-education/>.

⁷ As MUSER VI(2)(L) notes, "It is the full expectation that children with disabilities will attend school the equivalent amount of time per day as children without disabilities in the same school and/or school program."

Additionally, the IDEA only contemplates an “interim alternative education setting” after a child has been disciplined or after a child faces a medical issue. See 34 CFR 300.530; 34 CFR 300.531; MUSER XVIII(1)(B, G); MUSER XVII(2). In this case, the District did not offer an abbreviated day and tutoring to the Student because of disciplinary or a medical reason.

The Student is not being educated in the Least Restrictive Environment, and the Student’s placement was not determined based upon [REDACTED] IEP. In [REDACTED] school in Kansas, the Student received special education services in Reading and Math, but [REDACTED] was educated with [REDACTED] non-disabled peers for the remainder of [REDACTED] courses. The Student’s IEP indicated no emotional or behavioral needs, no communication or motor needs, and no written language or adaptive concerns.

In violation of the District’s regulatory obligations, the District did not provide any educational services to the Student for approximately two weeks, starting on October 23, 2019. See MUSER I; MUSER XVII(D); 34 CFR 300.101(a). The Student is now being educated through tutoring up to two hours per day, in isolation, with none of [REDACTED] peers in violation of MUSER X(2)(A)(4); MUSER VI(2)(L); MUSER IX(3)(B)(3). This dramatic shift in the Student’s LRE is was not tied to the Student’s individual academic and functional needs. The IEP’s team’s decision to change the Student’s placement to an abbreviated day program with tutoring does not comport with special education law and regulations.

- C. The District did not develop an IEP that provides special education, related services, and supplementary aids and services sufficient to enable the Student to advance appropriately toward attaining [REDACTED] annual goals, to be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities, and to be educated and participate in those activities with other children with disabilities and with non-disabled children. MUSER IX(3)(A)(1)(d); MUSER IX(3)(D). In particular, the IEP does not include independent living goals and services to meet the Student’s individual needs. MUSER IX(3)(A)(1)(b); MUSER IX(3)(A)(1)(d). **NON-COMPLIANCE FOUND. DENIAL OF FAPE FOUND.**

Andrew F. v. Douglas Cty. Sch. Dist., 137 S. Ct. 988 (2017) held that each child’s educational program must be appropriately ambitious in light of the child’s unique circumstances. *Id.* at 999. The Student’s IEP team has held two meetings since [REDACTED] transfer to Houlton High School in mid-October, but neither of those meetings addressed the adequacy of the Student’s IEP. The Written Notice from October 29, 2019 indicated that “the IEP Team will reconvene at a later date to determine [the Student’s] individual academic and functional needs, goals, and classroom accommodations, need for ESY and transition plan after further information, testing results, and [REDACTED] previous school records

from Kansas have been received. An IEP will be developed for [the Student] at this time.”

However, this discussion never occurred. During the December 11, 2019 IEP team meeting, there was no conversation about the Student’s individual needs beyond whether or not his tutoring program was progressing well. When the family’s Caseworker inquired about other placement options for the Student, referencing the Student’s “stay-put” rights, the Caseworker was told that that discussion would not happen during the December 11, 2019 IEP meeting because there was a due process Mediation scheduled for December 16, 2019. Therefore, the IEP team meeting on December 11, 2019 was held exclusively to discuss the Student’s tutoring program, not to develop an IEP that would enable the Student to advance towards his individual academic goals.

The District has not complied with the laws and regulations regarding this allegation.

- D. The District did not provide written notice to the parents of the Student at least 7 days prior to a proposed change in the Student’s educational placement. 34 CFR 300.503(a)(1); MUSER App. at 220. **NON-COMPLIANCE FOUND.**

The IDEA requires advanced written notice any time a District proposes to change the educational placement of a child. See 34 CFR 300.503(a)(1). Maine requires that parents be informed “at least 7 days prior” to a change in placement. See MUSER App. at 220.

The District argues that all parties understood at the IEP team meeting on October 29, 2019 that the change in placement would take place immediately. However, the District did not ask the Parent to waive her right to seven days advanced written notice. The Maine DOE Required Forms and Procedural Manual “Seven Day Waiver Form” was not provided to the Parent, and there was no documentation in the Written Notice from the October 29, 2019 meeting that the Parent was asked to waive her right to seven days advanced written notice. Rather, the Parent was apparently convinced that, until a risk assessment was completed, the Student was not permitted to return to school.

The District has not complied with law or regulation regarding this allegation.

- E. The District did not properly obtain parental consent for proposed evaluation/s. MUSER V(1)(B)(3); MUSER V(3)(D); MUSER IX(3)(B)(5)(ii)(I); see also, 34 CFR 300.304-306. Additionally, the District did not comply with parental notification requirements regarding the proposed evaluation/s. MUSER IX(3)(B)(5)(ii)(I); 34 CFR 300.304; 34 CFR 300.503. **NO DETERMINATION MADE.**

MUSER V(1)(B)(3) and MUSER (V)(3)(D) both require the District to obtain informed, written consent from a child’s parent before conducting an evaluation. Informed written consent undoubtedly requires that a party seeking consent will refrain

from altering a previously-signed consent form without permission and notice to the consenting party. Nevertheless, in the present case, no evaluation was conducted on the basis of the Parent's altered consent form. Additionally, the Parent agreed during Mediation on December 16, 2019 to sign a new consent form for a number of evaluations, including a psychological evaluation with a risk assessment. Therefore, no determination is made with respect to this alleged violation of MUSER.

F. The District has not allowed the Student to remain in [REDACTED] educational placement (stay-put") during the pendency of the State complaint investigation. MUSER XVI(20). **NON-COMPLIANCE FOUND. DENIAL OF FAPE FOUND.**

MUSER XVI(20) sets forth: During the pendency of any...state complaint investigation request...unless the Department or SAU and the parent of the child agree otherwise, the child involved in the hearing request must remain in his or her current educational placement." As interpreted by *Verhoeven v. Brunswick Sch. Comm.*, 207 F.3d 1 (1999), the school district must continue to implement the last placement "that the parents and the educational authority agreed to be appropriate." *Id.* at 10.

In the present complaint, the District removed the Student from school on October 23, 2019. Initially, the Student's return to school was conditioned upon the District's acquisition of a 1-1 escort. However, an IEP transitional meeting took place on October 29, 2019. Rather than discussing the Student's educational needs and formulating an appropriate IEP based upon the Student's IEP from Kansas, the IEP team effectively informed the Parent at the October 29, 2019 transitional meeting that the Student could not return to school without a risk assessment. The only services offered to the Parent at that point were an abbreviated schedule with 2 hours of tutoring per day. However, no agreement was reached that an abbreviated day with tutoring was an appropriate means to meet the Student's needs. In fact, according to Written Notice, dated October 29, 2019, no team member even made an argument that an abbreviated day with tutoring was designed to meet the Student's unique academic and functional needs. Instead, the IEP team concluded that further information was needed to create an IEP for the Student and an abbreviated day with tutoring would be a temporary stop-gap until more information could be gathered about the Student's safety in the school.

The request for a State complaint investigation was filed on November 20, 2019. The Student's stay-put should have been the last-agreed upon IEP, which is the Student's IEP from [REDACTED] High School in Kansas. The District has not complied with the Student's regulatory "stay-put" rights.

VII. CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

1. **Within one week of receipt of this Report**, the District shall return the Student to [REDACTED] educational placement within the District where the Student will remain until further action by the IEP team.

The District must implement the Student's special education and related services that are listed on the Student's last agreed upon IEP from [REDACTED], Kansas.

2. A compensatory services plan must be developed by the District in conjunction with the Parent by **February 15, 2020**.

The compensatory service plan must consider all aspects of the Student's Kansas IEP, the findings in this Report, and the Student's current educational, functional, and behavioral needs. The plan must include the following elements for compensatory SDI and each related service for missed SDI and services from October 23, 2019 to the date the Student returned to the District:

- (a) The agreed-upon number of hours for SDI and each related service;
- (b) The agreed-upon timeframe for delivery;
- (c) The agreed-upon time and place of delivery;
- (d) The certified and licensed providers as chosen by the District.

3. If the District and parent do not come to an agreement about what compensatory services are owed, each party must submit a compensatory services plan with the elements above to the Department by **February 15, 2020**. The Department will review the two proposed compensatory services plans and create the final plan in order to ensure the provision of FAPE to the Student.

4. The District must provide an in-person training to all special education directors, coordinators, and others who write IEPs about the following laws and regulations

- Stay put during pendency of a dispute. MUSER XVI(20)(A).
- Tutorial Instruction. MUSER X(2)(A)(4).
- Least Restrictive Environment. MUSER X(B).

Training must occur by **March 16, 2020**. The District must send the sign in sheet, with names and titles of participants, to the Department by **March 16, 2020**.

Dated: January 14, 2020