

**COMPLAINT INVESTIGATION REPORT**  
**v. RSU/MSAD 29**  
**Complaint 20.067C**  
**Complaint Investigator: Rebekah J. Smith, Esq.**  
**April 14, 2020**

**INVESTIGATION PROCEDURE**

Complainant:

Respondent: RSU/MSAD 29 (“School District”)  
Ellen Schneider, Superintendent  
Sandy Flacke, Special Education Director  
65 South Street  
Houlton, Maine 04730

Student: (“Student”)

The Department of Education received this complaint on February 21, 2020. A Draft Allegations Report was issued on March 4, 2020. A telephonic conference was held on March 4, 2020. The School District submitted a response to the complaint on March 16, 2020. The Grandparent submitted Exhibits #1 and #2. The School District Submitted Exhibits A to N. In response to questions from the Investigator, the School District provided a transportation-related job posting, identified by the Investigator as School District Exhibit O. Both parties identified witnesses they requested be interviewed.

The Complaint Investigator reviewed all documents, information, and responses from the parties. An interview with the Grandparent and Tricia Bragan, Executive Director at A New Start and the Student’s Targeted Case Manager, was conducted on March 20, 2020. Interviews with the following School District staff members were conducted on March 20, 2020: Dr Sandy Flacke, Special Education Director; Renae Foley, Special Education Teacher/Case Manager, and Tim Tweedie, Principal at School. An interview with Derek Saucier, Education Coordinator at , was conducted on March 20, 2020. An interview with Paula Perkins, Director of , was conducted on March 26, 2020. All witnesses identified by the parties were interviewed other than Sean Weber, Clinical Coordinator at , who did not respond to the Investigator’s attempts to schedule an interview.

**PRELIMINARY STATEMENT**

The Student is years old. has been placed by RSU 29 at the in , where is an eighth-grade student. The Student resides with grandmother, who has adopted in , Maine.

## **ALLEGATIONS**

1. The School District failed to fully inform the Grandparent about the special purpose programs it identified as placements and related services, namely transportation, at the February 10, 2020, IEP meeting in which the Grandparent agreed to the Student's placement at \_\_\_\_\_ in violation of MUSER VI.2.I (IEP Team meeting serves as a communication vehicle between parents and school personnel and enables them, as equal participants, to make joint, informed decisions).
2. The School District failed to incorporate the Grandparent's withdrawal of consent to the \_\_\_\_\_ program after she visited the program, which occurred after the IEP meeting, as changes to the Written Notice of the meeting, in violation of MUSER VI.2.I (IEP Team should work toward consensus) and MUSER Appendix I (Written notice must include a summary of comments made by the parents).
3. The School District is denying the Student a free appropriate public education by its placement of the Student at \_\_\_\_\_, which is not the least restrictive environment, in violation of MUSER I (School district must provide a free appropriate public education), MUSER VI.2.J(4) (IEP Team must develop an IEP to provide the student with a free appropriate public education), and MUSER X.2.B (To the maximum extent appropriate, children with disabilities shall be educated with children who are not disabled, and special classes, separate schooling, or other removal of students with disabilities from the regular educational environment shall occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily).

## **FACTUAL FINDINGS**

1. In July 2016, the Student was adopted by \_\_\_\_\_ Grandparent. (School District Exh. C.)
2. In May 2017, the Student began attending \_\_\_\_\_ Treatment Program. (School District Exh. A.)
3. On September 11, 2018, Christine Fink, Ph.D., issued a neuropsychological evaluation of the Student. (School District Exh. A.) Dr. Fink assessed \_\_\_\_\_ with Attention-Deficit/Hyperactivity Disorder, Disruptive Mood Dysregulation Disorder, Posttraumatic Stress Disorder, Specific Learning Disorder in Reading, and Specific Learning Disorder in Written Expression. (School District Exh. A.) Dr. Fink found that the Student had general intellectual ability in the solid average range but had persistent difficulties with verbal fluency, auditory and sustained attention regulation, behavioral response inhibition, and motoric hyperactivity. (School District Exh. A.) She reported that emotional factors affected \_\_\_\_\_ mental flexibility and novel problem solving, with performance appearing age-appropriate when \_\_\_\_\_ was able to self-regulate. (School District Exh. A.) The Student was receiving a variety of mental health treatment services, including psychiatric medication management, individual therapy, Section 28 services, and case management, all of which Dr. Fink recommended be continued.

(School District Exh. A.) Dr. Fink noted that should some of the progressions in behaviors persist, [redacted] could potentially require residential treatment. (School District Exh. A.) At that time, Dr. Fink indicated that the Student was not ready to return to public school but [redacted] remained a strong candidate for day treatment program services. (School District Exh. A.)

4. On November 20, 2018, a risk evaluation was conducted by Adeline McCarty, LCSW. (School District Exh. C.) The reason for the referral was an incident at school on October 29, 2018, in which the Student, after getting hit in the face with a basketball, became frustrated and began yelling and swearing. (School District Exh. C.) When the Student was being escorted to the support room to take a break, [redacted] bolted into another part of the school and became physically aggressive with staff, punching, kicking, and attempting to bite and pull hair. (School District Exh. C.) [redacted] also attempted to stab a staff member with a ruler. (School District Exh. C.) This event was the most recent in a series of events in which the Student was physically aggressive at school and at home. (School District Exh. C.)
5. Ms. McCarty noted the diagnoses assigned to the Student by Dr. Fink, including the risk of an emerging diagnosis of Conduct Disorder. (School District Exh. C.) Ms. McCarty concluded that the Student should be provided in-home services to eliminate the Student's aggressive behaviors towards [redacted] Grandparent, until [redacted] could be placed in a residential program, for which [redacted] had been approved. (School District Exh. C.) She recommended that the Student continue to be enrolled at [redacted] and not return to a public school setting until significant work could be done by the Student's IEP Team and residential service providers. (School District Exh. C.)
6. The Student began attending [redacted], a residential treatment program, in approximately March 2019. (School District Exh. N.)
7. The Student's IEP Team in MSAD 64 met on June 12, 2019, and created an IEP to begin on July 1, 2019. (School District Exh. E.) The IEP classified the student as eligible for special education services on the basis of an Emotional Disturbance. (School District Exh. E.) The Student continued [redacted] placement at [redacted]. (School District Exhs. E & G.)
8. The Student was generally successful at [redacted]. (Interview with Saucier.) The Student began the transition to return home from [redacted], to live with Grandmother, in February 2020. (School District Exh. F.)
9. On February 10, 2020, the Student's IEP Team in RSU 29, the School District into which the Student had transferred, met for the first time. (School District Exh. F.) Derek Saucier, the Education Coordinator at [redacted], reported that the Student still exhibited behaviors and functional needs that impeded [redacted] success in the regular education setting. (School District Exh. F.) The Student was looking forward to transition home. (School District Exh. F.) Mr. Saucier observed that the Student needed supports to remain in and participate in the classroom, especially if [redacted] felt the class was

not fun or worthwhile. (School District Exh. F.) He indicated that prior to learning exit date, the Student was on time more often and stayed in class a majority of the day and was doing well meeting teachers' expectations. (School District Exh. F.) Mr. Saucier stressed that the Student required consistency and clear, concise communication. (School District Exh. F.) The Student had been working on goals to increase compliance from 5 out of 10 to 8 out of 10 times. (School District Exh. F.) Mr. Saucier stated that the Student used cards or processed therapeutic and educational feedback but had difficulty accepting feedback and when was dysregulated, often screamed. (School District Exh. F.)

10. As the Student approached discharge date, however, became less compliant. (School District Exh. F; Interview with Saucier.) In the three weeks prior to discharge, the Student was out of class 50% of the time because left when needed to and was verbally aggressive one to two times per day. (School District Exh. F.) Mr. Saucier indicated that the Student did not have a safety plan or a behavior plan that could be transferred because the program at contained built-in expectations. (School District Exh. F.) Mr. Saucier recommended a special purpose private school to help the Student transition home from prior to entry into the public school setting. (School District Exh. F; Interview with Tweedie.) Mr. Saucier indicated that his primary concern was the Student's safety and the safety of others. (School District Exh. F.) Mr. Saucier specifically recommended a day treatment program for the Student while made the transition home, before returning to public school. (Interview with Saucier; School District Exh. F.) Mr. Saucier was primarily concerned with the Student's transition home. (Interview with Saucier.) Mr. Saucier would have kept the Student at for daytime programming if he could have during the Student's transition home, but is more than three hours away from the Student's home. (Interview with Saucier.) The Student's goals in day treatment would include academic progress, work completion, and progress regulating in academic and social settings, in order to ensure is ready to return to public school. (Interview with Saucier.)
11. The Student's IEP Team was concerned about the Student's ability to successfully return to public school immediately. (School District Exh. F.) The Grandparent expressed the belief that would need substantial support. (School District Exh. F.) Sandy Flacke, Ed.D., the School District's Special Education Director, expressed concern that the Student's behaviors would be difficult to support and that students within School were not typically self-contained. (School District Exh. F.) Tim Tweedie, Principal at Houlton Middle/High School, expressed concern that the School District did not have a contained area for the Student to utilize and referenced the Student's work refusal behavior, including walking out and not participating in classes, towards the end of time at , a more restrictive setting than public school. (School District Exh. F.)
12. The Grandparent noted that the Student wanted to attend school and knew that could not walk out. (School District Exh. F.) The Student's Biological Father ("Father") stated that the Student needed the social aspect of school. (School District Exh. F.) The

Grandparent requested the opportunity to visit the special purpose private schools that could be an option for the Student. (School District Exh. F.)

13. The IEP Team considered placement in the public school but rejected that option due to the Student's percentage of non-compliance and non-participation, verbal aggression, and the need to provide with a more supportive environment as transitioned home from . (School District Exh. F.) The Grandparent agreed at the meeting that a special purpose private school was the appropriate setting for the Student as transitioned home from . (Interview with Tweedie.) The IEP Team noted that attendance at a special purpose private school required transportation to and from school. (School District Exh. F.)
14. The IEP Team proposed amending the Student's IEP to provide specially designed instruction at a special purpose private school by a special education teacher in a special education classroom for 6 hours per day beginning February 24, 2020, the date that the Student was scheduled to be discharged from , pending intake at a special purpose private school. (School District Exh. F.) The IEP Team also proposed amending the IEP to include transportation services and a goal to address the Student's needs while being transported to and from school. (School District Exh. F.)
15. With regard to a specific placement, the Team primarily discussed , a special purpose private school in . (School District Exh. F.) Although Paula Perkins, the Director of , was invited to attend the meeting, a scheduling mix-up occurred and she was not able to attend. (Interview with Perkins.) The Student had attended when was approximately seven or eight years old. (Interview with Grandparent.) The Student's Grandparent and Father expressed concern that could not meet the Student's academic needs. (School District Exh. F.) The Student's Father noted that when the Student attended there were no classes, no homework, and no grades. (School District Exh. F.) The Grandparent expressed concern that the Student's social-emotional needs would not be met at . (School District Exh. F.) Dr. Flacke encouraged the family to tour . (School District Exh. F.) Dr. Flacke explained that would be given the Student's emotional-social goals to work on and would be required to follow the Student's IEP. (School District Exh. F.) Mr. Tweedie explained that RSU 29 would have responsibility to ensure that the Student had access to a social worker while at . (School District Exh. F.) The family and Tricia Bragan, the Student's Targeted Case Manager at A New Start, requested that the School District consider Kid's Peace as a placement for the Student. (School District Exh. F.) Dr. Flacke indicated that the School District would consider both and but it was up to the School District to make a final determination on the Student's placement. (School District Exh. F.)
16. On February 10 or 11, 2020, Dr. Flacke contacted to inquire whether they had any openings. (Interview with Flacke.) She also met with the Superintendent to discuss the Student's placement and the School District's ability to secure transportation to should the Student be placed there. (Interview with Perkins.) The School District subsequently advertised for a bus driver to transport the Student. (Interview with

Flacke.) is approximately an hour from the Student's home; , located in Millinocket, is approximately an hour and fifteen minutes from the Student's home. (Interview with Grandparent.) The School District has other students placed and as such already had transportation to secured. (Interview with Flacke.)

17. On February 12, 2020, Ms. Bragan, the Grandparent, and the Student's biological parents toured . (Parent Exh. #1.) staff shared that the program contained 36 students, 30 with severe intellectual disabilities and six with emotional disturbance diagnoses. (Parent Exh. #1.) Ms. Perkins, who in addition to being the Director of is the teacher in the 6<sup>th</sup> to 8<sup>th</sup> grade middle school classroom, perceived that the family was skeptical about when they visited. (Interview with Perkins.)
18. On February 13, 2020, the Student's Grandmother informed Dr. Flacke by email that she was not in agreement that the Student should be placed at . (School District Exh. H.) Ms. Bragan assisted the Grandparent in writing the email. (Parent Exh. #1.) The Grandparent expressed a belief that Dr. Flacke had not contacted and that the School District had not fully considered as a placement option for the Student. (School District Exh. H.) The Grandparent requested another IEP meeting to which could be invited. (School District Exh. H.)
19. On February 14, 2020, Dr. Flacke spoke to the Grandparent and indicated that RSU 29 would reimburse the family if they were able to transport the Student to . (Interview with Flacke.) Dr. Flacke did not feel it would be safe to send the Student in a car with a single driver, particularly given that had not experienced bus transport on a daily basis while was placed at . (Interview with Flacke.) The family indicated they were not able to transport the Student to . (Interview with Flacke.) Dr. Flacke also explored the closest point at which a bus from could pick up the Student. (Interview with Flacke.) Dr. Flacke is unaware as to whether had an opening because she never got that far in the process. (Interview with Flacke.)
20. The same day, Dr. Flacke followed up with a letter to the Grandparent. (School District Exh. I.) She stated that RSU 29 had referred the Student to and the Student could begin attending as soon as completed the intake process. (School District Exh. I.) Dr. Flacke acknowledged the Grandparent's preference for and indicated that RSU 29 was willing to make a referral for the Student to but noted that RSU 29 did not have transportation available to at that time. (School District Exh. I.) She reiterated that if a spot were available at , RSU 29 would reimburse the family for mileage if they were willing to transport the Student until the School District could arrange transportation. (School District Exh. I.) Dr. Flacke emphasized that RSU 29 was ready to provide a special purpose private school placement for the Student the day after February break ended, which was February 24, given that continued programming was important for the Student. (School District Exh. I.)
21. Also on February 14, 2020, the Student began transitioning home from . (Parent Exh. #1.)

22. On February 19, 2020, Ms. Bragan emailed School District staff members to reiterate that the Grandparent did not agree with the Student's placement at [REDACTED]. (School District Exh. J.) Ms. Bragan expressed a belief that Dr. Flacke had not called [REDACTED] to determine if a placement was available. (School District Exh. J.) She expressed concern that Dr. Flacke had told the Grandparent that [REDACTED] was the only option because RSU 29 had a contract with [REDACTED]. (School District Exh. J.) She noted that the Grandparent and the Student's Biological Parents had visited [REDACTED] and were adamant that it would not be a beneficial placement for [REDACTED] (School District Exh. J.) Ms. Bragan expressed a belief that if the School District had honestly presented the transportation problem with [REDACTED] at the February 10, 2020, IEP Team meeting, the family would have pursued more supports to allow the Student to be placed directly in the public school. (School District Exh. J.)
23. On February 19, 2020, the School District posted positions for bus drivers and a monitor. (School District Exh. O; Interview with Flacke.) The School District had a standing job posting for substitute bus drivers. (Interview with Flacke.) The District has experienced a severe shortage of bus drivers throughout the year, necessitating measures such as a school principal driving teams to sporting events. (Interview with Tweedie; Interview with Flacke.)
24. On February 20, 2020, the Grandparent emailed Dr. Flacke to request that the Student's IEP be amended to indicate that the Grandparent did not agree with the Student's placement at [REDACTED]. (School District Exh. K.) Ms. Bragan met with the Grandparent to support her in drafting the email. (Parent Exh. #1.) The Grandparent requested that the School District offer alternative educational services to the Student starting the following week because placement at [REDACTED] was not acceptable. (School District Exh. K.)
25. In light of the Grandparent's request for a change in placement and an amendment to the Written Notice of the February 10, 2020, meeting, another IEP Team meeting was scheduled. (Interview with Flacke.)
26. The Student was fully discharged from [REDACTED] on February 23, 2020. (Parent Exh. #1.)
27. On February 24, 2020, the School District issued an IEP for the Student, which was an amendment to the June 26, 2019, IEP generated by MSAD 64. (School District Exh. G.) The IEP noted the November 2018 risk evaluation of Ms. McCarthy, which stated the Student was quick to anger and to respond with aggression towards anyone who was close to [REDACTED] and which placed [REDACTED] level of risk at medium, recommending supports both at home and in school to avert further harm to the Student and others. (School District Exh. G.) It also noted Ms. McCarthy's statement that the Student's triggers had been identified as doing what [REDACTED] wanted when [REDACTED] wanted, hearing the word no, having to do something [REDACTED] didn't want to do, and feeling threatened when hearing negative comments about [REDACTED] biological parents, resulting in her assessment that the potential for [REDACTED]

aggressive responses when faced with triggers in causing harm to \_\_\_\_\_ or others was high. (School District Exh. G.)

28. The IEP set functional goals of increased compliance through the assistance of a one-on-one support, increased attendance in class, and decreased verbal or physical aggression. (School District Exh. G.) The IEP included a placement at a special purpose private school due to the Student's behavioral deficits but did not identify the specific program. (School District Exh. G.)
29. Also on February 24, 2020, Dr. Flacke emailed the Grandparent to indicate receipt of the complaint in this matter, filed that day, and note that during the complaint process RSU 29 was required to implement the last IEP placement that was agreed upon in a Team meeting, which she considered to be the full day program at \_\_\_\_\_ rather than an alternative tutorial program. (School District Exh. L.) She also noted that the Department of Education was not generally supportive of tutorial programming for students with high needs and she did not feel a shortened day with an alternative education model was in the best interests of the Student when a full-day option was available. (School District Exh. L.)
30. The Student and the Grandparent visited \_\_\_\_\_ on February 24, 2020. (Parent Exh. #1.) Both seemed open to the Student's attendance at \_\_\_\_\_. (Interview with Perkins.) Ms. Bragan emailed Dr. Flacke and Ms. Perkins to indicate that the Student was willing to try the placement as an interim placement until the next IEP meeting, which was scheduled for the following week. (School District Exh. M.) Ms. Bragan indicated that due to appointments the Student had on Tuesday and Wednesday, February 25 and 26, \_\_\_\_\_ would start attending \_\_\_\_\_ on Thursday, February 27. (School District Exh. M.) Ms. Perkins responded that she had visited with the Student during \_\_\_\_\_ visit, \_\_\_\_\_ had met some of classmates, and \_\_\_\_\_ remembered with fondness some of \_\_\_\_\_ prior activities at \_\_\_\_\_. (School District Exh. M.)
31. Following a snow day on February 27, the Student began attending eighth grade in the \_\_\_\_\_ middle school classroom on February 28, 2020. (School District Exh. N; Interview with Perkins.)
32. On March 4, 2020, the Student's IEP Team met again to review the Grandmother's disagreement with the Student's placement at \_\_\_\_\_. (School District Exh N.) Prior to the meeting, Dr. Flacke, who has worked in the School District only since August 2019, had contacted area special education directors to confirm her understanding that students with profiles similar to the Student's were successfully placed at \_\_\_\_\_. (Interview with Flacke.)
33. The Written Notice from the March 4, 2020, meeting indicated that the Team reached consensus that the Student should continue \_\_\_\_\_ programming at a special purpose private school, with \_\_\_\_\_ placement to be reviewed in 30 days. (School District Exh. N.) As of the meeting, the Student had attended \_\_\_\_\_ for three days. (School District Exh. N.) Ms. Perkins reported that she was still getting to know the Student and collecting baseline



data, noting that initial information indicated that [redacted] was below grade level academically. (School District Exh. N.) The Team agreed that the Student needed to continue to work on work completion and class participation. (School District Exh. N.)

34. The Student's Father indicated that the Student was not ready to return to public school while at [redacted] and it was noted that [redacted] had not recommended that the Student transition directly to public school at the time of [redacted] discharge. (School District Exh. N.) Ms. Bragan stated that the family did not know at the prior meeting that there were barriers to the Student's attendance at [redacted] and if they had known that, they would have requested that [redacted] be placed at the public school which they viewed as a more favorable placement because the Student would have access to peers in the mainstream. (School District Exh. N.) The Team reviewed the findings from the prior meeting based on Mr. Saucier's report. (School District Exh. N.) Team members noted that in the public school setting, the Student would be expected to attend all of [redacted] classes and not be verbally aggressive. (School District Exh. N.) The Team agreed that the goal was for the Student to have the skills [redacted] needed to enter the public school and be successful. (School District Exh. N.) The Team also discussed the middle school transition room, a place where students could access functional or academic support, process quietly, or access coping skills. (School District Exh. N.) It was noted that the classroom had a long-term substitute teacher and that generally students in that classroom attended regular education classes, received specially designed instruction in math and/or language arts, had check in/check out and break opportunities, but they were not in a self-contained classroom. (School District Exh. N.) Students in the middle school transition program are supported by educational technicians both in the regular education setting and in the special education classroom. (School District Exh. N.)

35. Ms. Perkins explained that [redacted] and [redacted] were similar programs for children with significant behaviors. (School District Exh. N; Interview with Perkins.) Caitlin Richards of [redacted], who also attended the March 4, 2020, meeting, opined that it sounded like the Student was on a great track. (School District Exh. N.) She indicated that [redacted] had a broad range of kids with some behaviors that were more severe and the family's concern that the Student could adopt negative behaviors by mimicking other students at [redacted] would be applicable to [redacted] as well. (School District Exh. N; Interview with Perkins.) [redacted] maintains an applied behavior analyst on staff and Ms. Perkins has extensive experience and training in behavioral support. (Interview with Perkins.) Assistant Principal Tweedie indicated that students often attended [redacted] or [redacted] to transition out of residential placements, with the goal of returning the Student to public school successfully, noting that the Student had not attended public school for a few years. (School District Exh. N.) School District staff noted that transportation to [redacted] was a barrier due to a lack of bus drivers in the School District, noting that the District had advertised for drivers but was unable to fill positions. (School District Exh. N.)

36. The Team considered whether a placement at [redacted] School would be appropriate but rejected the option because of concern about the Student's readiness to transition to public school. (School District Exh. N.) The IEP Team also considered

alternative instruction, which Ms. Bragan felt could be a good fit for the Student if returned to public school. (School District Exh. N.) The Team rejected alternative instruction such as a tutor in the public school setting because the Student was not ready to return to public school yet. (School District Exh. N.) The Team agreed that having a program in which the Student was not yet with non-disabled peers constituted the least restrictive environment for learning. (School District Exh. N.)

37. The family shared that the Student was glad to be attending school although the Grandparent indicated that the Student was concerned that was not going to get an education at . (School District Exh. N.) Ms. Richards, of , noted that the Student had previously attempted a transition back to public school from but had struggled even with the support of a one-on-one educational technician. (School District Exh. N.) The family indicated that the Student had shown regression in behavior at home, such as whining and baby talk, and maturity decreased after attending for a few days. (School District Exh. N.) Ms. Perkins reported that whining and baby talk were not behaviors that the Student's peers at would have exhibited. (School District Exh. N.) She noted that the Student had made a 9<sup>th</sup> grade friend at school, with whom was engaging with at free time and eating with at lunchtime. (School District Exh. N.) Ms. Perkins explained that the Student was in an older classroom than during previous attendance at , when was in the elementary classroom. (School District Exh. N.) She noted that staff would not tolerate immature behaviors and they model behavior the Student will need to exhibit to return to public school; she encouraged the family to trust to work towards that goal. (School District Exh. N.) Ms. Perkins also committed to providing the family with regular progress updates in the correspondence book that went home with the Student from . (School District Exh. N.) The School District has transitioned three students back from into public schools in the District over the past school year. (Interview with Flacke.)
38. The Team agreed to meet again in 30 days to review the Student's progress at ; if the data supported a return to public school at that time, a transition plan would be created. (School District Exh. N.) Dr. Flacke noted that the data might show that the Student needed additional time to work on skill deficits and building the time is able to engage in academics, compliant behavior, and appropriate verbal comments. (School District Exh. N.)
39. As of the date that and School closed due to the current pandemic, March 13, 2020, RSU 29 continued to seek a social worker to provide the social work services in the Student's IEP. (Interview with Grandparent; Interview with Flacke.) The School District was responsible for securing the provider while provided space at school for the service to be delivered. (Interview with Perkins.)
40. Until the time at which the School District transitioned to remote school in response to the pandemic, the School District continued to be willing to place the Student at if a placement were possible although the District remained unable to provide transportation. (Interview with Flacke.) The School District was willing to make the placement despite skepticism that a second transition to a different special purpose

private school would be beneficial to the Student. (Interview with Flacke.) The School District always takes family concerns and request into consideration. (Interview with Tweedie.)

41. The School District's goal is to return the Student to public school as soon as is ready. (Interview with Flacke; Interview with Tweedie.) Dr. Flacke anticipated that if schools had remained open, would have reported fairly soon that the Student was ready to transition into the 8<sup>th</sup> grade at School. (Interview with Flacke.) She felt it was in the Student's best interests to ensure transition home was successful and then begin the process of transitioning back to public school in a manner in which was likely to succeed. (Interview with Flacke.) Dr. Flacke and Ms. Perkins speak frequently about the progress of the Student and other RSU 29 students attending . (Interview with Flacke.)
42. The Student had attended approximately two weeks of school at the time that closed. (Interview with Perkins.) was doing well. (Interview with Perkins.) primary off-task behavior had been silliness. (Interview with Perkins.) behavior was being logged by one-on-one support and behavior logs were reviewed daily by Ms. Perkins. (Interview with Perkins.) To the extent that the Student exhibited regressive behavior at home, such as baby talk or rolling around on the floor, was not modeling behavior of other students in the middle school classroom. (Interview with Perkins.)
43. Although she felt that the Student would have been overwhelmed with a transition to public school directly from , Ms. Perkins forecast that the Student was well on way to getting a recommendation from that begin a 30-day transition to public school. (Interview with Perkins.) The recommendation would have included a positive behavior support plan. (Interview with Perkins.) Ms. Perkins was unsure if the Student would require a one-on-one support in public school but would likely require additional emotional support during the transition (Interview with Perkins.)
44. has provided the Student with remote education since it closed. (Interview with Perkins.) The Student is engaged and is completing the work. (Interview with Perkins.)

## **DETERMINATIONS**

1. The School District did not violate MUSER VI.2.I by failing to fully inform the Grandparent about the special purpose programs it identified as placements and related services, namely transportation, at the February 10, 2020, IEP Team meeting in which the Grandparent agreed to the student's placement at .

The Grandparent believes that the School District did not fairly consider as a possible special purpose private school placement for the Student at the initial IEP Team meeting on February 10, 2020, despite the family's stated preference for over . The Grandparent feels she would have objected to the placement at any special purpose private school and instead advocated for placement within the public school if she had known that the

School District was not seriously considering the family's request for a placement at . The Grandparent believes that the School District did not seriously consider as a placement because it was going to have difficulty transporting the Student to .

At the February 10, 2020, meeting, the Student's IEP Team, including the family, agreed that the Student needed placement at a special purpose private school, consistent with the recommendation of . Mr. Saucier, at the meeting and in his interview, made clear that a day treatment program was recommended for the Student as transitioned home. Mr. Saucier stated that his primary concern was the Student's safety and the safety of others. As Mr. Saucier noted, would have kept the Student for day programming during transition home if had lived closer. Although the Student had been successful at , exhibited a significant amount of work avoidance and verbal aggression as return to home approached. By the end of time at , the Student was participating in only about 50% of school day. The Student's functional IEP goals were to increase instances of compliance, increase attendance in class, and decrease verbal and physical aggression, all of which can be addressed at .

Given the Team's agreement that a special purpose private school was necessary, at least as a transition program for the Student, Dr. Flacke discussed primarily as a placement option. Ms. Perkins was invited to the meeting but was unable to attend. Although Dr. Flacke focused on as a potential placement, she remained open to other options. When the family raised as a possibility, either that day or the next, Dr. Flacke contacted on the day of or the day after the February 10 meeting to determine if a placement was possible and explore transportation options. She also spoke to the RSU 29 Superintendent about the Student's placement and the ability of the School District to transport to if were placed there, given the School District's difficulty finding bus drivers in general. On February 13, 2020, the Grandparent informed Dr. Flacke that she was not in favor of a placement at . The next day, Dr. Flacke offered the Student a placement at , if a spot were open, with reimbursement for transportation. Dr. Flacke also communicated with to determine if any other transportation options, such as providing the transport entirely or transporting the Student to somewhere closer to home. On February 19, 2020, the School District advertised for driver and monitor positions in order to allow for transportation of Student to , without success.

The Grandparent suggests that Dr. Flacke should have been more transparent when was first discussed that transportation to would be challenging for the School District. Dr. Flacke responds that she was not entirely sure of the transportation situation for as of the February 10, 2020, IEP Team meeting. After the meeting, the School District fully explored the transportation possibilities related to . From the meeting notes and interviews, it is clear that even if the School District had explicitly stated at the February 10, 2020, meeting that transportation could be a barrier to a placement at , the IEP Team would not have reversed course, in contravention of the recommendation of the Education Director at , to place the Student in a special purpose private school rather than at School.

MUSER VI.2.I requires that an IEP Team meeting serve as a communication vehicle between parents and school personnel and enable them, as equal participants, to make joint, informed decisions. The School District's convening of two IEP Team meetings and its internal and external communication during the placement decision-making process, to the family as well as to the potential special purpose private school placement, allowed the family to serve as an equal participant in the IEP Team process and the placement determination. As such, no violation occurred.

2. The School District's refusal to alter the Written Notice of the February 10, 2020, IEP Team meeting to incorporate the Grandparent's withdrawal of consent to the program after she visited the IEP Team meeting did not violate MUSER VI.2.I and MUSER Appendix I.

The Grandparent feels that the School District should have amended the Written Notice from the February 10, 2020, IEP Team meeting<sup>1</sup> to reflect that although she agreed to the Student's placement at a special purpose private school at the meeting, she did not agree to specially after she visited it on February 12, 2020.

RSU 29 was not required to amend the Written Notice to reflect events that occurred after the meeting. A second IEP Team meeting was held on March 4, 2020. The Written Notice from that IEP Team meeting reflects the family's position on at that time. The Written Notice shows a thorough exploration of the family's concerns regarding a placement at as compared to a placement at .

MUSER VI.2.I requires the IEP Team to work toward consensus and MUSER Appendix I requires that the Written Notice from an IEP Team meeting notice include a summary of comments made by the parents. The School District did not violate MUSER VI.2.I or MUSER Appendix I by refusing to amend the Written Notice of the February 10, 2020, meeting to reflect changes in the Grandparent's position after the meeting. The School District addressed the Grandparent's change of position by convening a second IEP Team meeting on March 4, 2020, and issuing a Written Notice from that meeting.

3. The School District did not deny the Student a free appropriate public education by its placement of the Student at , which was the least restrictive environment appropriate for at this time. As such, no violations of MUSER I, MUSER VI.2.J(4), or MUSER X.2.B occurred.

MUSER X.2.B requires that to the maximum extent appropriate, children with disabilities must be educated with children who are not disabled, and special classes, separate schooling, or other removal of students with disabilities from the regular educational environment shall occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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<sup>1</sup> The Grandparent's request for an amendment to the IEP is considered a request to amend the Written Notice from the IEP Team meeting of February 10, 2020, since that is where the IEP Team's discussion regarding the Student's placement is memorialized.

At the February 10, 2020, IEP meeting, the family concurred with the recommendation of that the Student attend a day treatment program as a transition to return to public school while was acclimating to return home. Nevertheless, the Grandparent believes that is designed primarily for children with severe intellectual disabilities and autism. She is concerned that the Student will adopt regressive behaviors exhibited by peers and that is not equipped to address behavioral and emotional issues in the moment that they occur, although she believes that is equipped to do so. She expresses concern that the Student does not believe will receive an appropriate education at . The Grandparent also believes that will review the Student's readiness for public school primarily on an annual basis. The Grandparent would have preferred that the Student transition directly to the public school from , even though that was not the recommendation of .<sup>2</sup>

Again at the March 4, 2020, IEP Team meeting, the family seemed to concur that the Student required a special purpose private school placement. At that meeting, Ms. Richards of and Ms. Perkins of explained that both programs contain students with significant behavior issues resulting from severe intellectual disabilities and emotional disturbance disabilities. Ms. Richards indicated her concurrence that the Student's placement at was appropriate, noting that provided similar programming to . has an applied behavioral analyst on staff and Ms. Perkins has significant experience and training with regard to behavior management. Further, RSU 29 and were in the process of putting in place the Student's social work service when both schools closed. Ms. Perkins explained that the family's observation of a few incidents of regressive behavior at home were not likely to be attributable to mimicking of peers at since the behaviors described would not be allowed in OTC's middle school classroom. Moreover, Ms. Perkins noted that the Student had made a special connection with an older student.

There was significant concern about the Student's return directly to public school after approximately a year in residential treatment and several years outside the public school setting. At the February 10, 2020, meeting, Mr. Saucier reported that his primary concern about the Student's transition to a new school setting was the Student's safety and the safety of others. explained that the Student did not have a safety plan or behavior plan that could be transferred with because the program at included built in expectations. According to School District staff and staff, the Student's placement at was intended to facilitate ultimate transfer to public school and ensure ability to do so safely and with success. Moreover, alternative instruction, in the form of individual tutoring, would not have been an appropriate environment for the Student as it would have shortened day and removed from all contact with peers. Nor would placement in the School transition classroom been appropriate as an immediate placement after the Student's discharge from given the safety, work-avoidance, and verbal aggression concerns identified by staff.

Finally, the Student is doing very well at . only challenging behaviors during the approximately two weeks that attended in person were off task silliness. Dr. Flacke and

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<sup>2</sup> In her February 13, 2020, email to Dr. Flacke, the Grandparent indicated that the Student's therapist at did not feel that would be successful at . Sean Weber, the Clinical Coordinator at , could not be reached for an interview and did not attend either the February or the March 2020 IEP Team meeting.

Ms. Perkins communicate regularly and Ms. Perkins had offered to provide the family with regular updates on the Student's progress. Prior to the closure of schools, the Student was being evaluated on an ongoing basis to assess readiness to return to public school and the IEP Team had agreed on a meeting 30 days after the March 4 meeting to review progress. Ms. Perkins believes that after 30 days at the Student would have been ready for a recommendation that begin the transition to public school. Given the school closures, she recommends that the Student return to when schools reopen and the process of gauging ability to successfully transition to middle school resume.

As such, the School District did not deny the Student a free appropriate public education by its placement of the Student at , which was the least restrictive environment appropriate for the Student as of February 10, 2020, and thus did not violate MUSER I, MUSER VI.2.J(4), or MUSER X.2.B.

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

Because no violations were found, there is no corrective action that must be completed by the School District.