

**COMPLAINT INVESTIGATION REPORT**  
**v. Scarborough Public Schools**  
**Complaint 20.074C**  
**Complaint Investigator: Rebekah J. Smith, Esq.**  
**May 12, 2020**

**INVESTIGATION PROCEDURE**

Complainant: (“Parent”)

Respondent: Scarborough Public Schools (“School District”)  
Sanford Prince IV, Superintendent  
Alison Marchese, Special Education Director  
21 Quentin Drive  
Scarborough, Maine 04074

Student: , Date of Birth

The Department of Education received this complaint on March 16, 2020. A Draft Allegations Report was issued on March 23, 2020. Also on March 23, 2020, a telephonic conference was convened. In response to a submission from the Parent, an Amended Draft Allegations Report was issued on March 30, 2020. On April 2, 2020, the School District submitted Exhibits #1 to #9 as well as a response to the complaint. On April 3, 2020, the Parent submitted Exhibits #1 to #8. In addition, during the course of the investigation, the Investigator received the Student’s Amended Individualized Education Program (“IEP”) dated April 13, 2020; the Written Notice regarding the April 13, 2020, IEP amendment; and the notes of Amanda Brown, the Student’s Case Manager at , from the January 9 and February 27, 2020, IEP Team meetings. Both parties identified witnesses they requested be interviewed.

The Complaint Investigator reviewed all documents, information, and responses from the parties. Interviews with the following individuals were conducted on April 10, 2020: the Parent; Alison Marchese, Special Education Director for the School District; and Amanda Brown, Case Manager, . On April 21, 2020, Stephanie Brackett, PsyD, Director of Day Treatment Program, was interviewed. On May 4, 2020, a follow-up interview was conducted with Alison Marchese. All witnesses identified by the parties were interviewed other than David Emberley, Due Process Office Consultant, identified by the Parent, who was not a witness to any disputed fact in this investigation.

## **PRELIMINARY STATEMENT**

The Student is 13 years old. \_\_\_\_\_ is currently enrolled in seventh grade at \_\_\_\_\_ School, although \_\_\_\_\_ was just completing the transition to \_\_\_\_\_ School from \_\_\_\_\_ when the School District closed its schools due to the COVID-19 pandemic. The Student resides with \_\_\_\_\_ parents in \_\_\_\_\_, Maine.

## **ALLEGATIONS**

1. The School District held multiple meetings over the prior year that were labeled in Written Notices as IEP Team meetings but which did not include discussion of Extended School Year (“ESY”) services, in violation of MUSER IX.3.A(1)(d) (IEP must include statement of the related services and supplementary aids and services to be provided to the Student and a statement of the program modifications or supports for school personnel that will be provided for the Student) and MUSER IX.3.A(1)(g) (IEP must include projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of services and modifications).
2. The School District has not responded to the Parent’s January 14, 2020, request to amend the Written Notice of the January 9, 2020, IEP Team meeting regarding the discussion of placement options being considered in violation of MUSER Appendix I and 34 CFR § 300.503(2)(b)(1) (Written Notice should include the action regarding placement that the school district proposes), MUSER XIV.8.A (Parent who believes that information in a student’s educational record is inaccurate or misleading may request the participating agency that maintains the information to amend the information), MUSER XIV.8.B (School district must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request), and MUSER XIV.8.C (If school district decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing).
3. At the January 9, 2020, IEP Team meeting, the School District failed to fully inform the Parent about the placement options available to the Student, which prevented the Parent, a member of the Student’s IEP Team, from making an informed decision, 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 regarding the services needed to support the student’s involvement and participation in the general education environment and to achieve agreed-upon goals.)
4. The School District has not responded to the Parents’ January 15, 2020, request for clarification as to why the form excusing a staff member was altered by the addition of information regarding the reason for the excusal after it was signed by the Parent in violation of MUSER VI.2.E (Member of the IEP team is not required to attend an IEP Team meeting, in whole or in part, if the parent and the school district agree in writing that the attendance of such member is not necessary because the member’s area of curriculum or related services is not being modified or discussed) or MUSER VI.2.F (Member of the IEP Team may be excused from attending an IEP Team meeting, in

whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services if the parent, in writing, and the school district consent to the excusal and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting).

5. The School District decreased the Student's services in speech-language, occupational therapy, social work, and length of school day, without documentation, explanation, or consensus of the Student's IEP Team in the Student's IEP dated March 13, 2020, in violation of MUSER VI.2.I (IEP Team should work toward consensus), MUSER Appendix I and 34 CFR § 300.503(2)(b)(1) (Written Notice should include the action regarding the programming that the school district proposes), MUSER IX.3.C(4) (In making changes to a Student's IEP after the annual IEP meeting for a school year, the parents of a child with a disability and the school district may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the student's current IEP), and MUSER IX.3.C(6) (Changes to the IEP Team may be made either by the entire IEP Team or by amending the IEP rather by redrafting the entire IEP).
6. The School District refused to attend a family meeting of the Student's special purpose private school to discuss goals and benchmarks in the Student's IEP which caused a delay in observable goal progression because new goals could not be established without School District involvement and consent, in violation of MUSER IX.3.A(1)(b) (IEP must contain a statement of measurable annual goals including academic and functional goals), MUSER IX.3.A(1)(c) (IEP must contain a description of how the student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the Student is making toward meeting annual goals will be provided), MUSER IX.3.I(3) (Sending school district has the administrative responsibility for the education of a child with a disability who has been placed in an out-of-unit placement including revising the child's IEP as a result of any meetings), and MUSER IX.3.I(5) (Sending School District is responsible for participating in any meetings related to proposed changes in the student's IEP).
7. The School District altered the attendance page in the Written Notice of March 2, 2020, and the Written Notice of March 3, 2020, to reflect both Parents as being in attendance although one Parent was not present, in violation of MUSER Appendix I (Written Notice must contain names and titles of each member).
8. The School District issued an IEP for the Student dated March 12, 2020, which does not state the setting in which the Student will be instructed, other than stating the Student will not be educated in a regular education setting, and does not identify the 24% of time that the Student will spend with non-disabled peers, in violation of MUSER IX.3.A(1)(d) (IEP should include a statement of the special education and related services to be provided to the student), MUSER IX.3.A(1)(e) (IEP should include a description of the extent to which the student will not participate with non-disabled students in the regular class and in activities), and MUSER X.2.B (To the maximum extent appropriate, students with disabilities shall be educated with students 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 student is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily).

9. The School District failed to include supplementary aids, services, modifications, and/or supports in the Student's IEP dated March 12, 2020, in violation of MUSER IX.3.A(1)(a)(iii) (The term "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and includes, for children with disabilities who take alternative assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives), MUSER IX.3.A(1)(d) (IEP must include statement of the related services and supplementary aids and services to be provided to the student and a statement of the program modifications or supports for school personnel that will be provided for the student), and MUSER IX.3.A(1)(g) (IEP must include projected date for the beginning of the services and the anticipated frequency, location, and duration of the services and modifications).
10. The School District altered an educational record in its submission of documents regarding the Student during complaint investigation 20.033, in violation of MUSER XIV.3.A (Parents have right to response from school district to reasonable requests for explanations and interpretations of the records).
11. The School District altered the Student's day to 4.8 hours in the March 12, 2020, IEP, contrary to the Team agreement at the February 2, 2020, meeting, in violation of MUSER VI.2.I (IEP Team should work toward consensus) and MUSER VI.2.L(1)(e) (If the Team considers that an abbreviated school day is appropriate and necessary, the IEP Team must 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).
12. The School District disregarded the IEP Team consensus, the Parent's concern, and the transition timeline, by extending the transition timeline in the Student's March 12, 2020, IEP, in violation of MUSER VI.2.I (IEP Team should work toward consensus) and MUSER IX.3.B(3) (Each School District shall implement a child with a disability's IEP as soon as possible following the IEP meeting but no later than 30 days after the IEP Team's initial identification of the child as a child with a disability in need of special education and supportive services).

## **FACTUAL FINDINGS**

1. On February 13, 2018, the Student's IEP Team determined that [redacted] required a day treatment setting and placed [redacted] at the [redacted], a special purpose private school. (Parent Exh. #2.)
2. On February 16, 2018, a Written Notice was issued that identified Chris Rohde, a School District staff member, as the contact person. (Parent Exh. #2; Interview with Marchese; Interview with Parent.) At some subsequent date, the Written Notice was reprinted with a change to the name of the contact person, who became identified as Alison Marchese,

Special Education Director for the Scarborough School District, and the Written Notice was submitted to the Department of Education pursuant to complaint investigation 20.033C. (Parent Exh. #2; Interview with Marchese; Interview with Parent.)

3. On November 20, 2018, the Maine Department of Education (“Department”) issued a letter to \_\_\_\_\_ outlining findings from a recent review of IEPs for its students. (Parent Exh. #6.) In reviewing the Student’s file, the Department found that the results of the Student’s initial or most recent evaluations were not included in Section 4 and a statement of how \_\_\_\_\_ disability affected the Student’s involvement and program were not included in \_\_\_\_\_ IEP in Section 6. (Parent Exh. #6.) Although there was no immediate action required regarding the Student’s education, the Department required the School District to submit a statement indicating that School District staff had been trained in how to lead discussion of the Student’s involvement in the general education curriculum with the IEP Team and how to identify and reflect progress in the IEP. (Parent Exh. #6.)
4. On January 4, 2019, Mr. Rohde emailed the Parent to review the proposed changes to IEP resulting from the Department of Education findings letter, consisting of inclusion of the results of a 2016 evaluation in Section 4 and an amendment to Section 6 to include language regarding how the Student’s disability affected \_\_\_\_\_ involvement and progress in the general education curriculum. (Sch. Dist. Exh. #7.) Specifically, Mr. Rohde proposed the following language for Section 6: “[The Student] cannot access grade level material in the areas of reading comprehension, basic reading, math computation and problem solving and written expression due to cognitive and behavior deficits related to \_\_\_\_\_ diagnosis of autism which are of such a degree that they impede \_\_\_\_\_ ability to make progress in the general education curriculum.” (Sch. Dist. Exh. #7.)
5. The Parent responded that she felt that Mr. Rohde had been derelict in his duties and was inept at managing the Student’s IEP; she requested that he should not have any further contact with her or the Student or have any involvement in any aspect of the Student’s education. (Sch. Dist. Exh. #7.) The Parent requested that Ms. Marchese provide a written justification for the School District’s continued employment of Mr. Rohde. (Sch. Dist. Exh. #7.) She also indicated that until all sections of the IEP were addressed, she would not agree to any amendments to satisfy the Department’s required changes. (Sch. Dist. Exh. #7.)
6. On January 7, 2019, Ms. Marchese responded that the proposed changes to the IEP would be effective either upon the Parent’s agreement or by adoption at a subsequent IEP Team meeting. (Sch. Dist. Exh. #7.) The Parent responded that she felt the existing IEP met the State standards and she would not agree to the changes requested by the Department. (Sch. Dist. Exh. #7.)
7. The Parent met with the School District Superintendent at the time, Julie Kukenberger, to discuss the Parent’s concerns regarding the actions of School District staff, which included a conversation about the proposed changes to the Student’s IEP. (Parent Exh. #8.) The Parent was concerned that the proposed statement for Section 6 would be interpreted as a definitive statement of the Student’s abilities. (Parent Exh. #8.) She also

argued that the IEP as written met the statutory and regulatory guidelines and that the Department was overreaching to require an amendment. (Parent Exh. #8.) Although the Parent and the Superintendent reviewed the proposed language, no definitive agreement was reached. (Parent Exh. #8.) Ms. Marchese did not receive any information from Ms. Kukenberger indicating that an agreement had been reached regarding the proposed language for Section 6. (Interview with Marchese.)

8. The School District determined that it did not want to fight with the Parent about the proposed changes and therefore never made them despite the Department's request that they be made. (Interview with Marchese.)
9. At some point while the Student attended \_\_\_\_\_, the Parent contacted Ms. Marchese to ask her to attend a quarterly family meeting at \_\_\_\_\_. (Interview with Parent.) When the Parent asked Stephanie Brackett, Psy.D., Director of the Day Treatment Program at \_\_\_\_\_, about having Ms. Marchese attend, Dr. Brackett explained that the meeting was intended to allow clinicians and teachers to provide updates to the family, although the family could invite whoever they wanted. (Interview with Brackett.) Although on occasion a case manager or a mental health provider would attend a family meeting at \_\_\_\_\_, it was rare for a special education director to attend. (Interview with Brackett.) Dr. Brackett tried to explain to the Parent that the family meetings were not part of the IEP process. (Interview with Brackett.) Dr. Brackett did not feel that Ms. Marchese's lack of attendance at a family meeting at \_\_\_\_\_ impacted the Student or \_\_\_\_\_ transition to \_\_\_\_\_ School in any way. (Interview with Brackett.) Ms. Marchese explained to the Parent, when the Parent requested that she attend the \_\_\_\_\_ family team meeting occurring the next day, that she had not been invited by \_\_\_\_\_. (Interview with Marchese.) Ms. Marchese does not attend family treatment team meetings. (Interview with Marchese.)
10. On September 26, 2019, the Student's IEP Team met. (Sch. Dist. Exh. #2.) The Team began to discuss the Student's transition to public school. (Sch. Dist. Exh. #2.) The Parent noted that because the Student was a seventh grader, the Team needed to be aware that the Student could face a transition into public school in seventh grade and then another transition into ninth grade for high school. (Sch. Dist. Exh. #2.) The Parent also mentioned other factors the Team should consider in planning for the Student's transition to the public school. (Sch. Dist. Exh. #2.) The Team indicated that the Student's program review meeting would be scheduled in January 2020 to begin transition planning discussions and ESY services. (Sch. Dist. Exh. #2.)
11. An IEP was developed for the period of September 27, 2019, through September 26, 2020. (Sch. Dist. Exh. #5.) It was determined that the Student continued to require a private school day treatment setting in order to access \_\_\_\_\_ education due to the intensity of \_\_\_\_\_ behavior needs at that time even though a transition was being considered. (Sch. Dist. Exh. #5.)
12. A Written Notice from this meeting, which identified the meeting as related to an annual review and other IEP program/placement changes and also related to \_\_\_\_\_

evaluation/reevaluation, was issued on September 30, 2019. (Sch. Dist. Exh. #2.) The Written Notice stated that the Student's IEP program would be reviewed at a January 2020 meeting, to include transition planning and ESY services. (Sch. Dist. Exh. #2.)

13. On December 5, 2019, the Student's IEP Team met again. (Sch. Dist. Exh. #2.) At that meeting, the Team determined that the Student had made behavioral progress and no longer required a day treatment program and thus the transition back to public school should begin. (Sch. Dist. Exh. #2.) The Student's math goals were amended since the Student had exceeded current math goals. (School Dist. Exh. #2.)
14. The Team planned for visits to the School District by the family and staff prior to the December school break so that the Team could meet in January to determine placement, after which School District staff would start observing the student at as part of the transition process. (Sch. Dist. Exh. #2.) The BCBA from suggested that one possibility could be a program at School. (Interview with Brackett.) The Team discussed some transition options such as a step-down program prior to the Student's return to public school. (Sch. Dist. Exh. #2.) The Team decided that staff would visit both middle school and high school Functional Life Skills programs in Scarborough prior to the December break. (Sch. Dist. Exh. #2.) The Parent asked for the transition process to begin immediately and include a thoughtful and thorough transition plan that included cross-training and a slow integration process to ensure that the Student was comfortable. (Sch. Dist. Exh. #2.) The Parent expressed understanding that a one-on-one educational technician would need to be hired to support the transition process. (Sch. Dist. Exh. #2.)
15. At the meeting, Ms. Marchese stated that she believed that the only program within the School District that would be appropriate for the Student would be the Functional Life Skills program. (Interview with Parent; Interview with Marchese; Interview with Brown.) The Parent was not in agreement with Ms. Marchese's assessment of which program would be the best fit for the Student. (Interview with Brown.)
16. The Written Notice for this meeting, which identified the meeting as related to an annual review and other IEP program/placement changes, was issued on December 6, 2019. (Sch. Dist. Exh. #2.)
17. The Student's IEP was amended to indicate that the Parent wished for transition planning back to the public school to begin immediately because the Student's interfering behaviors that required a day treatment program were no longer in effect. (Sch. Dist. Exh. #6.)
18. On December 16, 2019, Dr. Stephanie Brackett emailed Ms. Marchese to inquire about the lack of ESY dates in the Student's IEP. (Sch. Dist. Exh. #1.) The Parent then requested an amendment to the IEP to include ESY services. (Sch. Dist. Exh. #1.) Ms. Marchese responded that because the Team had not addressed ESY services and was in the midst of transition planning, she believed the Team needed to discuss ESY services before the IEP was amended, noting that the September 26, 2019, meeting included a

determination that the Team would review the Student's program and ESY services at the January 2020 meeting. (Sch. Dist. Exh. #1.) Dr. Brackett agreed with Ms. Marchese's statement that the Team did plan to discuss ESY at a later date and concurred that it made sense to do this at the January meeting. (Parent Exh. #3.)

19. On January 8, 2020, Dr. Brackett emailed the Parent to indicate that \_\_\_\_\_ staff had observed the Functional Life Skills classrooms at \_\_\_\_\_ School and \_\_\_\_\_ School and felt that, regardless of which school the Student was placed at, a hybrid of both the Academic Life Skills and Functional Life Skills classrooms would be the best fit for the Student and would be doable with a one-to-one educational technician. (Parent Exh. #3.)
20. \_\_\_\_\_ staff did not feel deterred from viewing or considering any of the programs within Scarborough School District in planning the Student's transition to public school. (Interview with Brackett.)
21. On January 9, 2020, the Student's IEP Team met again to further plan the Student's transition to public school. (Sch. Dist. Exh. #2.) \_\_\_\_\_ and Scarborough School District staff shared program recommendations following multiple observations at \_\_\_\_\_ School and \_\_\_\_\_ School by \_\_\_\_\_ staff and observation of the Student at \_\_\_\_\_ by Scarborough School District staff. (Sch. Dist. Exh. #2.) Although it was initially thought that Functional Life Skills programming would be the most appropriate setting, the Team felt that the Student might need a hybrid program approach that included a strong academic component and addressed functional/social/communication needs. (Sch. Dist. Exh. #2; Amanda Brown January 9, 2020, IEP Team Meeting Notes.) The Team concluded that academic instruction and peer opportunities for the Student were better matched within the Academic Life Skills program but hands-on programming would be more suitable in the Functional Life Skills program. (Sch. Dist. Exh. #2.) The Academic Life Skills classroom would be considered the Student's home base and the Academic Life Skills classroom teacher would be case manager. (Sch. Dist. Exh. #2.) The Parent shared suggestions for a successful transition. (Sch. Dist. Exh. #2.)
22. The Team indicated that the Student was not aware of the transition and the first step would be a "field trip" to \_\_\_\_\_ School with a tour led by the Academic Life Skills classroom teacher. (Sch. Dist. Exh. #2.) The focus during the Student's initial visits was creating connections with teachers. (Sch. Dist. Exh. #2.) Once an educational technician had been hired, and the speech therapist, occupational therapist, and social work staff had observed the Student, other staff and activities would be introduced. (Sch. Dist. Exh. #2.) Alison Ginn, \_\_\_\_\_ Behavior Specialist, would oversee the transition. (Sch. Dist. Exh. #2.) The Team agreed to meet after February break to review the Student's transition. (Sch. Dist. Exh. #2.)
23. The Team agreed that the Student qualified for ESY services, the location and level of which would be determined after the Student's transition. (Sch. Dist. Exh. #2.) The Team was concerned about the transition timeline and the introduction of new staff and



how it might impact the ESY setting. (Sch. Dist. Exh. #2.) The Team suggested that if the transition moved along quickly and the Student was no longer connected with \_\_\_\_\_, then ESY services would take place in Scarborough but that if the transition timeline was slower, ESY could be held at \_\_\_\_\_. (Sch. Dist. Exh. #2.) It was determined that the Team would continue to monitor the situation and make a location determination for ESY services in the spring. (Sch. Dist. Exh. #2.)

24. During the meeting, the Parent expressed concern that the School District had indicated at the prior meeting that Functional Life Skills classrooms were the only option for the Student. (Sch. Dist. Exh. #2.) The Team reviewed that the purpose of having multiple observations was to find the right fit for the Student and that once all options had been explored, it was determined that the Functional Life Skills classroom was not the best match for providing the Student with programming in all areas. (Sch. Dist. Exh. #2.)
25. The Team agreed to meet again after February break to review the Student's transition programming. (Sch. Dist. Exh. #2.) The meeting notice indicated that the occupational therapist was out on leave and did not attend the meeting. (Sch. Dist. Exh. #2.) At the meeting, the Parent signed a "Documentation for Excusal of IEP/IFSP Team Member Whose Curriculum Area is Being Discussed" regarding the absence of Devon Goyet, occupational therapist. (Sch. Dist. Exh. #5.) After the Parent signed the form, but while still in the meeting, Ms. Marchese wrote "Did not discuss OT services." (Sch. Dist. Exh. #5; Interview with Parent; Interview with Marchese.) The Parent received a copy of the form that day or the next day and noticed that Ms. Marchese had written on it after the Parent signed it. (Interview with Parent.)
26. The Written Notice from the January 9, 2020 meeting, issued on January 10, 2020, identified the meeting as related to an annual review and other IEP program/placement changes. (Sch. Dist. Exh. #2.) It also noted that the Parent had signed the excusal form regarding the occupational therapist's absence. (Sch. Dist. Exh. #2.)
27. On January 14, 2020, the Parent requested by email that the Written Notice be amended to accurately reflect the classroom setting agreed to by the Team. (Sch. Dist. Exh. #4.) The same day, Ms. Marchese responded that she was unclear what change the Parent was requesting. (Sch. Dist. Exh. #4.) On January 15, 2020, the Parent explained by email that she felt that the reference to the initial indication that the Functional Life Skills program would be the only appropriate setting for the Student conflicted with a statement that \_\_\_\_\_ staff were observing placement options at both \_\_\_\_\_ School and \_\_\_\_\_ School. (Sch. Dist. Exh. #4.) She also added a request for an explanation of why the occupational therapist excusal form had been written on after she signed it. (Sch. Dist. Exh. #4.) On January 16, 2020, Ms. Marchese responded that she felt the Written Notice accurately reflected the Student's transition back to the public school and \_\_\_\_\_ placement in the Academic Life Skills program at \_\_\_\_\_ School. (Sch. Dist. Exh. #4.) Ms. Marchese overlooked the Parent's question regarding the excusal form because of the way it showed up on the email chain, right above an autogenerated line regarding the date and time of the prior response, and thus did not respond to that particular inquiry. (Interview with Marchese; Sch. Dist. Exh. #4.)

28. The Student's IEP Team met again on February 27, 2020. (Sch. Dist. Exh. #2.) The Student's IEP was amended to add social work service, social work/speech co-treatment, occupational therapy, and behavioral specialist consultation. (Sch. Dist. Exh. #2.) In addition, an accommodation of a home/school communication log was added to the Student's IEP. (Sch. Dist. Exh. #2.) It was noted that the Student would be with general education peers for lunch, Wellness, Art and RISE (an advisory period). (Sch. Dist. Exh. #2.)
29. The Team finalized the determination that the Student was eligible for ESY services, which would consist of six weeks of service. (Sch. Dist. Exh. #2.) Each week would include 14 hours of specially designed instruction, one hour of occupational therapy, one hour of speech therapy, and 30 minutes of behavior consultation and specialized transportation. (Sch. Dist. Exh. #2.)
30. The Team noted that \_\_\_\_\_ staff and \_\_\_\_\_ School staff had continued with their visits and consultations as planned and that Scarborough was fully staffed and ready to implement the final steps of the transition plan. (Sch. Dist. Exh. #2.) The Parent noted that she felt that the last day with \_\_\_\_\_ staff being present with the Student at \_\_\_\_\_ School should not fall on a Friday. (School Distr. Exh. #2.) The reason the Parent made this request was due to concern that the Student would not transition well if \_\_\_\_\_ returned to school on a Monday and \_\_\_\_\_ staff were not present. (Sch. Dist. Exh. #2.) The initial transition plan called for \_\_\_\_\_ staff to end their support on Friday, March 13, but the schedule was adjusted to accelerate departure to address the Parent's request. (Sch. Dist. Exh. #2.) After discussion of the transportation department's request to pick up the student at 2:15 p.m. each day instead of the regular school day end time of 2:25 p.m., the Team determined that the Student did not require a shortened school day and verified that the Student's day would be 8:00 a.m. to 2:25 p.m. (Sch. Dist. Exh. #2; Interview with Marchese.) This represented an increase of 2 hours and 25 minutes over the Student's time per week at \_\_\_\_\_. (Interview with Marchese.)
31. The Written Notice from this meeting, which was identified as being related to an annual review and related to other IEP program/placement changes, was issued on March 2, 2020. (Sch. Dist. Exh. #2.) The Written Notice indicated that Team members "attending the meeting or informed of the changes to the plan" included both of the Student's Parents although only the Student's Mother attended the Team meeting. (Sch. Dist. Exh. #2; Interview with Parent.)
32. The Student's transition plan, as updated on February 28, 2020, called for a two-week transition period beginning on Monday March 2, 2020, which was the first day that the Student attended a partial day at \_\_\_\_\_ School. (Sch. Dist. Exh. #9.) The transition plan called for the Student to spend increasing amounts of \_\_\_\_\_ day at \_\_\_\_\_ School, with the \_\_\_\_\_ educational technician beginning to fade back while the \_\_\_\_\_ School educational technician began to take the lead. (Sch. Dist. Exh. #9.) It included regular check-ins to assess how the Student was doing

with the transition. (Sch. Dist. Exh. #9.) The final day of the transition was scheduled to be Friday, March 13, which was to be a full day for the Student at School without staff present. (Sch. Dist. Exh. #9.)

33. On March 3, 2020, an Amended Written Notice was issued which clarified that the Student's IEP was being amended to support transition to School with the inclusion of 30 minutes per week of each of social work services, social work/speech co-treatment, and behavior specialist consultation; 60 minutes per week of speech therapy; 90 minutes per week of occupational therapy; 24 hours weekly of specially designed instruction; and twice daily specialized transportation. (Sch. Dist. Exh. #2.)
34. On March 11, 2020, Susan Teel, the Academic Life Skills classroom teacher at School, informed the Parent that the Student was settling in well and learning new schedule. (Sch. Dist. Exh. #8.) Ms. Teel explained that due to the resignation of one of the School District's educational technicians, staff would remain with the Student at School, and continue training school staff, until Monday, March 16, instead of concluding on Thursday, March 12. (Sch. Dist. Exh. #8.) The same day, the Parent responded that she was not comfortable with the Student returning to School at all given the change in the transition schedule. (Sch. Dist. Exh. #8.) The Parent felt that the information provided was insufficient and inconsistent with the planned transition schedule. (Sch. Dist. Exh. #8.) She accused the School District of being dishonest either then or previously during transition meetings and requested that an IEP Team meeting be scheduled immediately. (Sch. Dist. Exh. #8.) Ms. Teel responded that the educational technician who resigned had obtained a position as a BCBA at another school, which was unexpected and unplanned. (Sch. Dist. Exh. #8.) She reported that the School District had two great educational technicians working with the Student and the transition had been going well. (Sch. Dist. Exh. #8.) Ms. Teel added that the School District wanted to stay a bit longer to show the Student's programs to the educational technician who had just started working with the Student, which would add two days to the transition schedule. (Sch. Dist. Exh. #8.) Ms. Marchese added that the School District felt that having stay for additional time would help staff complete the transition successfully but that in response to the Parent's request that the staff not complete their work with the Student at School on a Friday, the School District staff asked to stay on for two additional days, through Monday, March 16, instead of just one, which would have ended their involvement on Friday, March 13. (Sch. Dist. Exh. #8; Interview with Marchese.) She noted that the educational technician who resigned was the individual who had worked with the Student at , not the individual who was already employed by the School District. (Sch. Dist. Exh. #8.) Ms. Marchese noted that the change would not interrupt the Student's transition, explaining that they had shifted an educational technician from elsewhere in the District to work with the Student. (Sch. Dist. Exh. #8.) Finally, she offered to meet with the Parent to review the staffing adjustment. (Sch. Dist. Exh. #8.)

35. Dr. Brackett then emailed the Parent, expressing frustration with the timing of the educational technician's departure, but noting that the two educational technicians from reported that the Student had been doing really well with the transition and felt was progressing well through the thoughtful transition process. (Parent Exh. #3.) The educational technicians also reported that the new School District educational technician did well taking the lead from the staff. (Parent Exh. #3.) Dr. Brackett recommended continuing forward with the transition and allowing School the additional days to overlap with staff to assist their new educational technician. (Parent Exh. #3.) She also requested that the Parent share any additional suggestions for the transition change. (Parent Exh. #3.)
36. Although staff did not perceive a clinical need to not end their support of the Student on a Friday, they agreed to Ms. Marchese's request to add two additional days instead of one to the transition plan to accommodate the Parent's request. (Interview with Brackett.) During the transition period, in addition to the staff who were attending School with the Student, staff were in regular email communication with School District staff. (Interview with Brackett.)
37. On March 12, 2020, the Student's IEP was amended to reflect that the Parent was in agreement with the Student's transition back to School. (Sch. Dist. Exh. #6.) The Student's goals were revised. (Sch. Dist. Exh. #6.) It was noted that the Student would receive specially designed instruction and related services due to the nature and severity of autism and that the instruction could not be provided in the regular education setting but instead required a more restrictive setting. (Sch. Dist. Exh. #6.)
38. The last day of in-person school in the Scarborough School District was Friday, March 13, after which schools in the district were not open due to the COVID-19 pandemic. (Interview with Marchese.) volunteered to provide the Student with work packets for the Student since staff had more knowledge of the Student. (Interview with Marchese.) The School District has also prepared packets for the Student from the Academic Life Skills classroom in addition to providing occupational therapy packets. (Interview with Marchese.) The School District has generated a remote learning plan for the Student; although the Parent indicated was not interested in utilizing the plan, the Student has been completing and submitting the work provided by the School District. (Interview with Marchese.)
39. On April 13, 2020, the School District issued an amended IEP and a Written Notice. (Written Notice dated April 13, 2020; IEP Amendment dated April 13, 2020.) The amendment corrected a calculation error in the percentage of time that the Student was spending with non-disabled peers, changing it from 24% to 15%. (Written Notice dated April 13, 2020; IEP Amendment dated April 13, 2020.) Given the 1,945 minutes per week of school time, 1,650 of which were scheduled to be in special education services, the Student was with non-disabled peers 295 minutes, or 15% of the time. (Written Notice dated April 13, 2020.) The Written Notice reiterated the same amounts of

specially designed instruction and related services that were established in the March 12, 2020, IEP. (Written Notice dated April 13, 2020.)

## **DETERMINATIONS**

1. The IEP Team's discussion of ESY at multiple meetings during the course of the Student's transition to \_\_\_\_\_ School, with the final determination of specific ESY services being made in February 2020 did not violate MUSER IX.3.A(1)(d) or MUSER IX.3.A(1)(g).

The Parent contends that the School District was required to discuss ESY services at each IEP Team meeting. The School District believes that ESY services need only to be discussed annually, not at every IEP Team meeting.

MUSER IX.3.A(1)(d) requires that a Student's IEP include a statement of the special education and related services to be provided to the Student. The IEP must also include the projected date for the beginning of services and modifications as well as the anticipated frequency, location, and duration of those services and modifications, pursuant to MUSER IX.3.A(1)(g). Furthermore, MUSER VI.2.J requires a student's IEP Team to review at least annually the Student's IEP.

Beginning in September 2019, the Student's IEP Team began to discuss the Student's possible transition to public school. The Written Notice from the September 30, 2019, IEP Team meeting expressly stated that the Student's program, including transition and ESY services, would be reviewed at a January 2020 meeting. The Student's December 2019 meeting focused on the Student's placement and transition into the public school and did not discuss ESY services, which were already in place in the Student's existing IEP. When Dr. Brackett inquired about the lack of detail regarding ESY in the Student's IEP, Ms. Marchese responded that the Team was in the midst of transition planning and would address the specifics of ESY services, consistent with its determination in September 2019 that a program review meeting would occur in January 2020, which would include discussion of ESY services along with continued transition planning.

In January 2020, the Team determined that the Student continued to be eligible for ESY services, the location and level of which would be specified after the Student completed transition to the public school. In February 2020, the Team addressed the specific level of ESY, which it determined would be six weeks of service, with each week consisting of 14 hours of specially designed instruction, one hour of occupational therapy, one hour of speech therapy, and 30 minutes of behavior consultation and would be provided within a special education setting. Team members were in agreement with this determination.

The Student's IEP as generated in September 2019 and amended in December 2019 listed ESY as a special education service but did not specify the level of service. The Student was noted in January 2020 to be continue to be eligible for ESY. In March 2020 the Student's IEP was amended to specify that the Student would receive ESY

services for 14 hours per week from July 6, 2020, to August 13, 2020, a period of six weeks. Even though the Written Notices of these meetings identified them as annual meetings, at each meeting, the Team discussed a plan to meet again to move forward in planning the Student's transition and information was added at each meeting.

There was no violation of MUSER IX.3.A or MUSER VI.1.J by the IEP Team's failure to make specific determinations regarding the amount of the Student's ESY services at its September 2019 and December 2019 meetings, its confirmation of eligibility and initial discussion of ESY services in January 2020, and its final determination of ESY services in February 2020, which were reflected in the Student's IEP as amended on March 12, 2020.

2. The School District's refusal to amend the Written Notice of the January 9, 2020, IEP Team meeting following the Parent's January 14, 2020, request for amendment of the discussion regarding placement options being considered did not violate MUSER Appendix I, 34 CFR § 300.503(2)(b)(1), MUSER XIV.8.A, or MUSER XIV.8.B, but did violate MUSER XIV.8.C by failing to advise the Parent of the right to a hearing.

MUSER Appendix I and 34 CFR § 300.503(2)(b)(1) require that a Written Notice must include the school district's proposed action regarding placement. MUSER XIV.8.A authorizes a parent who believes that information in a student's educational record is inaccurate or misleading to request that a school district amend the information. MUSER XIV.8.B indicates that a school district must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. Finally, MUSER XIV.8.C requires that if a school district refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

The Parent alleges that Ms. Marchese's initial suggestion that the only program within the School District that would be suitable for the Student was the Functional Life Skills program at the middle school was inappropriate because Ms. Marchese knew that the Parent would not be comfortable with that recommendation because of the lead teacher in that classroom. The Parent maintains that the expanded possibilities for the Student's placement within Scarborough Public Schools came from \_\_\_\_\_ staff, who came up with the idea of considering the high school programs, which she contends the School District staff should have suggested. The Parent also contends that the Written Notice from the January 9, 2020, meeting should be amended to include discussion of a program at the high school, which was refused by the School District. She also expresses concern that the Student's transition was rushed.

Dr. Brackett's notes from the January 9, 2020, meeting indicated that there was a "thorough discussion of all options" within \_\_\_\_\_ School and \_\_\_\_\_ School. Witnesses agreed that the IEP Team had a thorough review, including site visits and observation of the Student, of all possibilities for placement within the District. Ultimately, the Team selected a hybrid program for the Student that placed \_\_\_\_\_ with a home base in the Academic Life Skills Program while also obtaining instruction in the

Functional Life Skills program. Ms. Marchese agreed that one goal for the Student was to return to interaction with verbal students, an opportunity that the Functional Life Skills program would not have provided.

It is clear that the School District sanctioned and participated in a comprehensive evaluation of all options and was open to input from staff and the Parent regarding an appropriate in-district placement for the Student, as evidenced by the ultimate individualized placement spanning two programs in the middle school. All IEP Team members agreed with the Team's ultimate determination of an appropriate public school placement for the Student. Although she responded quickly to the Parent's request for an amendment to the Written Notice from the January 9, 2020, meeting seeking clarification of the Parent's request, Ms. Marchese did not amend the Written Notice because she felt the notes accurately reflected the discussion. Nevertheless, Ms. Marchese's responsive email did not include information on how the Parent could request a hearing.

Because the Written Notice provided an accurate description of the discussion, the School District did not violate MUSER Appendix I, 34 CFR § 300.503(2)(b)(1), MUSER XIV.8.A, or MUSER XIV.8.B by refusing to amend it. Furthermore, the School District provided a response to the Parent refusing her request within a reasonable time consistent with MUSER XIV.8.B. Nevertheless, the School District failed to provide the Parent with information regarding her right to a hearing, which constituted a violation of MUSER XIV.8.C, which denied the Parent of knowledge necessary to request a due process hearing. See, e.g., El Paso School District v. Richard R., 567 F. Supp.2d 918 (W.D. Tex. 2008).

3. At the January 9, 2020, IEP Team meeting, the School District did not fail to fully inform the Parent about the placement options available to the Student, and therefore did not prevent the Parent, as a member of the Student's IEP Team, from making an informed decision. As such, the School District did not violate MUSER VI.2.I.

MUSER VI.2.I states that the IEP Team meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding the services needed to support the student's involvement and participation in the general education environment and to achieve agreed-upon goals.

As indicated in the discussion of Issue #2, although Ms. Marchese indicated an opinion in December 2019 that a Functional Life Skills program would be appropriate for the Student, a thorough and collaborative evaluation of all possible programs, conducted by School District and staff, followed. staff did not feel that School District staff were hesitant to consider all options for the Student. Simply because staff may have generated additional options for consideration does not render the School District staff's initial suggestions inappropriate or the IEP Team evaluation process invalid. Furthermore, the program ultimately selected was a hybrid specially designed for the Student, agreed upon by all members of the Student's IEP Team, which

is a further indication that the School District did not attempt to force the Student into any particular program or predetermine placement but instead engaged in a thorough and thoughtful evaluation of the possibilities for the Student within the School District.

4. The School District did not violate MUSER VI.2.E or MUSER VI.2.F by adding a notation to an IEP Member excusal form in the Parent's presence at an IEP Team meeting.

MUSER VI.2.E states that a member of the IEP team is not required to attend an IEP Team meeting, in whole or in part, if the parent and the school district agree in writing that the attendance of such member is not necessary because the member's area of curriculum or related services is not being modified or discussed. MUSER VI.2.F states that a member of the IEP Team may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services if the parent, in writing, and the school district consent to the excusal and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

The Parent did not express concern about excusing the Team member on January 15, 2020, or being asked to sign the excusal form at the meeting, but is concerned that Ms. Marchese wrote on the form after she signed it. During her interview, Ms. Marchese explained that she had overlooked the Parent's January 15, 2020, request for an explanation as to why information was written on the form after she signed it, until this complaint investigation process began. Ms. Marchese recalled adding the hand-written note to the form during the IEP Team meeting, but could not recall if she added it after the Parent signed the form.

It is unclear why the form excusing a member whose curriculum area was being discussed was used, as opposed to the form excusing a member whose curriculum area was not being discussed. Ms. Marchese's addition of the note "Did not discuss OT services" clarified that although the form used during the meeting indicated that the curriculum area was discussed, in fact it had not been. Her notation on the form as to a fact that is not disputed did not violate MUSER VI.2.E or MUSER VI.2.F. Although no violation of MUSER occurred, a better practice would have been to expressly alert the Parent and get her agreement to the hand-written note being added to the form after the Parent had signed it.

5. The School District did not decrease the Student's services in speech-language, occupational therapy, or social work, or the length of the school day, without documentation, explanation, or consensus of the Student's IEP Team in the Student's IEP dated March 13, 2020. As such, no violation of MUSER VI.2.I, MUSER Appendix I, 34 CFR § 300.503(2)(b)(1), MUSER IX.3.C(4), or MUSER IX.3.C(6) occurred.



MUSER VI.2.I indicates that an IEP Team should work toward consensus. MUSER Appendix I and 34 CFR § 300.503(2)(b)(1) dictate that a Written Notice should include the action regarding programming that the school district proposes. MUSER IX.3.C(4) states that in making changes to a Student's IEP after the annual IEP meeting for a school year, the parents of a child with a disability and the school district may agree not to convene an IEP meeting for the purposes of making such changes and instead may develop a written document to amend or modify the student's current IEP. Finally, MUSER IX.3.C(6) states that changes to the IEP may be made either by the entire IEP Team or by amending the IEP rather than redrafting the entire IEP.

At the IEP Team meeting on February 27, 2020, the Team agreed to the services that the Student would receive as well as the amount of specially designed instruction. The IEP amendment generated on March 12, 2020, reflected the service levels that the Student would receive.

The Parent alleges that the School District changed the purpose of the Written Notice issued on March 2, 2020, when it issued its March 3, 2020, amendment. The March 3 amended Written Notice added language clarifying the amount of services the Student would receive in total in specially designed instruction and related services. The Parent alleges that the School District cut the Student's services by the amendment by 50% from those listed in the prior IEP. During her interview, the Parent also expressed concern that the School District should not have included the seven hours of compensatory services that needed to be added to the Student's services due to the speech therapist at [redacted] being on maternity leave.

In her interview, Ms. Marchese noted that while the Student was at [redacted], 100% of [redacted] time was spent in specially designed instruction but that when [redacted] returned to the public school, one of the goals was to increase [redacted] time with non-disabled peers, which took place necessarily outside of time spent in specially designed instruction. The Student's schedule at [redacted] School was reviewed and discussed by the IEP Team, and the entire Team, including the Parent, was in agreement with the schedule of services and instruction laid out in the Student's IEP. The Amendment to the Written Notice simply reiterated the agreed-upon service levels.

In terms of the additional seven hour of compensatory speech therapy services that needed to be added to the Student's IEP due to leave being taken by the speech therapist, the Written Notice of the February 27, 2020, IEP Team meeting indicated that the Team had agreed to this approach.

As such, no violation of MUSER VI.2.I, MUSER Appendix I, 34 CFR § 300.503(2)(b)(1), MUSER IX.3.C(4), or MUSER IX.3.C(6) occurred.

6. The School District's failure to attend the Student's family team meeting at [redacted] did not cause a delay in the Student's progress toward goals or the Student's transition into the public school. As such, no violation of MUSER IX.3.A(1)(b), MUSER IX.3.A(1)(c), MUSER IX.3.I(3), or MUSER IX.3.I(5) occurred.

MUSER IX.3.A(1)(b) requires that a student's IEP must contain a statement of measurable annual goals including academic and functional goals. MUSER IX.3.A(1)(c) requires that a student's IEP must contain a description of how the student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting annual goals will be provided. MUSER IX.3.I(3) mandates that a sending school district has the administrative responsibility for the education of a child with a disability who has been placed in an out-of-unit placement. MUSER IX.3.I(5) makes the sending school district responsible for participating in any meetings related to proposed changes in the Student's IEP.

The Parent maintains that Ms. Marchese's failure to attend a family team meeting at [redacted] was in violation of the November 2018 letter from the Department of Education to the School District, which required it to submit a statement indicating that [redacted] and School District staff had been trained in leading discussion of how the Student's disability affected [redacted] involvement and progress in the general education curriculum. The Parent alleges that there were issues that could not be addressed because Ms. Marchese refused to attend the meeting. The Parent states that Ms. Marchese indicated that School District staff did not attend family meetings as a general rule and that if the Student's goals needed to be modified, the Team would address that at an IEP meeting. The Parent alleges that the Student's transition was slowed by the delay in amending the Student's goals caused by Ms. Marchese's refusal to attend a family meeting.

As Dr. Brackett described, the purpose of the family team meetings at [redacted] was to allow clinicians and teachers to provide updates to the family. Dr. Brackett indicated that although she would have allowed Ms. Marchese to attend the Student's family team meetings if the Parent signed a waiver, it was rare for School District staff members to attend family team meetings. Dr. Brackett did not believe that evaluation of the Student's progress toward goals, or [redacted] transition into the public school, were impacted by the fact that no School District personnel were in attendance at [redacted] family team meetings.

The transition process for the Student to attend public school began in September 2019 and continued through the day that the School District closed school buildings on March 13, 2020. The Student's goals were reviewed and amended during that process. There is no indication that the Student's progress, the development of [redacted] IEP, or [redacted] transition into public school were impacted in any way by the fact that School District staff did not attend family team meetings at [redacted].

Although MUSER IX.3.I(5) makes the sending School District responsible for participating in any meetings related to proposed changes in the Student's IEP, the family team meetings did not, and could not, constitute a vehicle for proposing changes to the Student's IEP, which had to be done by the Student's IEP Team. As such, no violation of MUSER IX.3.A(1)(b), MUSER IX.3.A(1)(c), MUSER IX.3.I(3), or MUSER IX.3.I(5) occurred.

7. The School District's indication on the attendance page in the Written Notice of March 2, 2020, and the Written Notice of March 3, 2020, that both Parents were informed of the changes to the Student's plan even though one Parent was not present at the IEP Team meeting was not a violation of MUSER Appendix I.

The March 2, 2020, and the amended March 3, 2020, Written Notices from the February 27, 2020, meeting listed both of the Student's Parents as having been in attendance at the meeting or informed of the changes to the plan. The Parent indicated that she did not provide documentation about the Student's special education services to the Student's Father. She asserts that the School District is aware that the attendance page is equivalent to a signature page and must accurately reflect the individuals in attendance. Ms. Marchese responded that the Student's Father was identified on the Advance Written Notice and therefore was apprised of the information that the Team would be discussing at the meeting.

MUSER Appendix I requires that the Written Notice identify the "names and titles of each member" of an IEP Team. The Written Notice calls for the name and position of "Team Members attending Team meeting or informed of the changes to the plan." The School District, by providing the Advance Written Notice to the Parents, who live in the same household, satisfied the condition identified in the Written Notice, that the parents were both informed of the changes to the Student's plan. Identifying the Student's Father as a Team member who had been informed of the changes to the plan under these circumstances was not a violation of MUSER Appendix I. Nevertheless, a better practice would be to note if a Team member listed on a Written Notice was not present but was alternatively informed of changes to the plan.

8. The Student's IEP, as amended on March 12 and April 13, 2020, identifies the special education and related services to be provided to the Student, identifies the percentage of time that the Student would not be educated in a regular education setting, and explains the reason that the Student was receiving services in a more restrictive setting. As such, no violation of MUSER IX.3.A(1)(d), MUSER IX.3.A(1)(e) or MUSER X.2.B occurred.

The Parent was correct that the percentage of time that the Student was spending with non-disabled peers could not have been accurately calculated at 24%, as indicated in the Student's March 12, 2020, IEP, unless [redacted] was not receiving all of the specially designed instruction and related services allotted in the IEP. During the complaint investigation, Ms. Marchese concluded that she had miscalculated the percentage of time that the Student spent with non-disabled peers and accordingly adjusted the calculation in the Student's IEP and issued a Written Notice. This alteration did not change any of the services or the amount of instruction specified in the Student's IEP, but was simply the correction of a math environment.

On April 13, 2020, the School District issued an amended IEP and a Written Notice that did not change the amount of service the Student was receiving in specially designed instruction or related services but corrected the calculation as to what percentage of time that the Student was spending with non-disabled peers to 15%.

Although the initial calculation of 24% would have rendered it impossible for the Student to be getting the full amount of specially designed instruction and related services determined in the IEP, the clarification is consistent with the full set of services identified in the Student's IEP. The Student's IEP as issued on March 12, 2020, and as amended on April 13, 2020, identifies the location for the Student's specially designed instruction and related services. The Student's IEP also includes a statement regarding the need for specially designated instruction and related services due to the nature and severity of autism, noting that instruction could not be provided in the regular education setting and needed to be provided in a more restrictive setting.

As such, no violation of MUSER IX.3.A(1)(d), requiring that the IEP include a statement of the special education and related services to be provided to a student, or MUSER IX.3.A.(1)(3), requiring that to the maximum extent appropriate, students with disabilities should be educated with students who are not disabled, occurred. Furthermore, the IEP, as amended on April 13, 2020, specifies that the Student will spend 15% of school day with non-disabled peers, identified in the Written Notice as the periods of lunch, Wellness, Art, and RISE. As such, no violation of MUSER IX.3.A(1)(e), requiring that an IEP include a description of the extent to which the Student will not participate with non-disabled students in the regular class and in activities, occurred.

9. The School District's failure to include a statement in the Student's IEP, as requested by the Department of Education in November 2018, due to the Parent's refusal to agree was not a violation of MUSER IX.3.A(1)(a)(iii), MUSER IX.3.A(1)(d), or MUSER IX.3.A(1)(g).

MUSER IX.3.A(1)(a)(iii) states that the term "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with MUSER Section IX.3 and includes, for children with disabilities who take alternative assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objections. MUSER IX.3.A(1)(d) requires that an IEP must include a statement of the related services and supplementary aids and services to be provided to the student and a statement of the program modifications or supports for school personnel that will be provided for the student. Finally, MUSER IX.3.A(1)(g) indicates that an IEP must include projected date for the beginning of the services and the anticipated frequency, location, and duration of the services and modifications.

The Parent's allegation is specifically that the School District did not include a statement in Section 6 of the Student's January 2019 IEP or subsequent IEPs that addressed how the Student's disability affected involvement and progress in the general education curriculum.

The November 2018 letter from the Department of Education to the School District, following a review of program at , required two insertions of language in the Student's future IEPs, one of which was a statement of the how disability affected involvement and progress in the general education curriculum. In January 2019, School District staff emailed the Parent to propose the responsive change,

to which the Parent did not agree on the basis that the IEP as written met the regulatory requirements. The recording of the Parent's meeting with the Superintendent confirms significant conversation about the proposed amendment to Section 6 but no final agreement by the Parent. Caught between the Department and the Parent, the School District acquiesced to the Parent's refusal to agree and did not amend the IEP in the manner requested by the Department at the time. The Student's current IEP contains a statement in Section 8 that "the Student receives specially designed instruction and related service due to the nature and severity of autism."

Although the Department determined that the IEP in effect as of November 2018 did not satisfy MUSER IX.3.A(1)(a)(i), requiring a statement of how the Student's disability affects the Student's involvement and progress in the general curriculum, the School District was unable to obtain the Parent's agreement to comply with the Department's required amendment. Further, the School District determined not to make the change at an IEP Team meeting over the Parent's objection. The School District's acquiescence to the Parent's refusal does not constitute a violation of MUSER IX.3.A(1)(a)(iii), MUSER IX.3.A(1)(d) or MUSER IX.3.A(1)(g).

10. The School District's submission of the Written Notice from the February 2018 meeting during a previous complaint investigation, which identified Alison Marchese as the contact person rather than Chris Rohde, did not violate MUSER XIV.3.A.

MUSER XIV.3.A indicates that parents have right to a response from a school district to reasonable requests for explanations and interpretations of the records.

The Parent asserts that the School District altered an educational record in its submission of documents regarding the Student during complaint investigation 20.033C. The basis of the allegation is the submission of the Written Notice from a February 13, 2018, meeting. The Written Notice of the meeting, generated on February 16, 2018, as provided to the Parent, listed the School Contact on the front page of the notice as Chris Rohde, a School District staff member who was involved with the Student at the time. When Ms. Marchese subsequently generated the Written Notice for submission in a complaint investigation, the School District's IEP software auto-filled her name, as the person designated as the contact person for the Student, into the document in place of Mr. Rohde's name. Ms. Marchese did not receive a request for an amendment to the record from the Parent but became aware of the unintended change through the Parent's allegation during the previous complaint investigation. No other information on the document was changed. The School District's submission of the Written Notice during the complaint investigation with this change in this document from the way it was originally generated was not substantive and was inadvertent. No violation of MUSER XIV.3.A occurred.

11. The School District did not alter the Student's day to 4.8 hours in the March 12, 2020, IEP. As such, no violation of MUSER VI.2.I or MUSER VI.2.L(1)(e) occurred.

The Parent asserts that the School District sought to remove the Student from school ten minutes early every day for the benefit of the transportation provider. The Parent asserts that when she refused this change because there was no benefit to the Student, the School District was upset with her. She states that the School District did not tell her until the morning of the proposed change.

The School District responds that it was clearly discussed at the IEP Team meeting on February 27, 2020, that the transportation department had requested to pick up the Student ten minutes early each day. When it was determined that the Student did not require a shortened day, the transportation department's request was rejected. The Written Notice from the February 27, 2020, meeting confirms the length of the Student's school day as being from 8:00 a.m. to 2:25 p.m., consistent with the middle school's regular schedule.

The Team reached agreement that the Student's day should not be shortened in satisfaction of MUSER VI.2.I, indicating that IEP Teams should work toward consensus. Further, because an abbreviated day was determined not to be appropriate or necessary, there was no need to document the basis for the determination of an abbreviated day in the Written Notice, which would have been required by MUSER VI.2.L(1)(e).

12. The School District did not disregard the IEP Team consensus, the Parent's concern, or the transition timeline, by proposing an extension of two days to the Student's transition. As such, no violation of MUSER VI.2.I or MUSER IX.3.B(3) occurred.

The Parent asserts that the School District altered the transition plan in contravention of her concerns. The Parent notes that the transition plan was created over a long period and was intended to minimize any regression the Student might experience. The School District responds that its staff attempted to adapt to an unforeseen circumstance while still honoring the Parent's requests regarding the transition.

The Student began the transition to \_\_\_\_\_ School on March 2, 2020. On March 11, 2020, the third to last day of the planned transition period, Ms. Teel emailed the Parent to explain that one of the School District's educational technicians had unexpectedly resigned. She indicated that as a result \_\_\_\_\_ staff had agreed stay on for two additional school days of transition, thus ending on March 16, to allow for training of a new educational technician. The School District did not feel that it needed \_\_\_\_\_ staff to participate in the transition on Monday, March 16, but added that day to accommodate the Parent's request that the transition not end on a Friday. Moreover, the School District shifted an educational technician from another assignment in order to disrupt the Student's transition as little as possible. The Parent's immediate response was that she was not comfortable with the Student returning to \_\_\_\_\_ School given the change to the transition plan, although the Student did attend school on March 12 and 13, 2020.

The School District's response to the resignation of a staff member was reasonable and respected the Parent's requests regarding the Student's transition, which

would have been completed on Monday, March 16, had school been in session. As such, no violation of MUSER VI.2.I, requiring the IEP Team to work towards consensus, or MUSER IX.3.B(3), instructing a school district to implement an IEP as soon as possible following the IEP meeting but no later than 30 days after the IEP Team's initial identification of the child as a child with a disability in need of special education and supportive services, occurred.

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

Although no violations are found regarding Issue #1 and Issues #3 through #12, there is a finding in Issue #2 of a violation of MUSER XIV.8.C by the School District's January 14, 2020, refusal of the Parent's request to amend the Written Notice of the January 9, 2020, meeting, which failed to advise the Parent of her right to a hearing. The corrective action required is that the District must issue an amended written denial of the Parent's amendment request to include the right to a hearing, which commences with the Parent's receipt of the amended denial.