

COMPLAINT INVESTIGATION REPORT
v. Sanford School Department & MSAD 60
Complaint 20.090C
Complaint Investigator: Rebekah J. Smith, Esq.
August 27, 2020

INVESTIGATION PROCEDURE

Complainants: _____, parents of student

Respondents: Sanford School Department
Matthew Nelson, Superintendent
Stacey Bissell, Special Education Director
917 Main Street, Suite 200
Sanford, Maine 04073

MSAD 60
Steve Connolly, Superintendent
Susan Macri, Special Education Director
100 Noble Way
North Berwick, Maine 03906

Student:

The Department of Education received this complaint on June 23, 2020. A Draft Allegations Report was issued on June 29, 2020. A videoconference was also held on June 29, 2020. Subsequent to the videoconference, the deadlines for submissions was amended by email from the Complaint Investigator. On July 8, 2020, Sanford School Department (“Sanford”) filed a response to the complaint as well as Exhibits A through X. In addition, 9 pages of emails from 2017 were included at the end of Sanford’s exhibits, which are marked as Exhibit Y. On July 10, 2020, the Parents submitted recordings of a December 17, 2019, staffing meeting and a February 12, 2020, IEP Team meeting. On July 15, 2020, Maine School Administrative District 60 (“MSAD 60”) filed a response to the complaint and Exhibits A to T as well as Appendices A, B, and C. On July 14, 2020, Sanford filed a reply. On July 21, 2020, the Parents filed a reply to the submissions of both Sanford and MSAD 60. On July 24, 2020, MSAD 60 filed a reply. The Family is represented by Atlee Reilly, Esq. Sanford and MSAD 60 are represented by Isabel Ekman, Esq.

The Complaint Investigator reviewed all documents, information, and responses from the parties. Both parties identified witnesses that they requested be interviewed. The following individuals were interviewed between July 14, 2020, and July 31, 2020: Susan Austin, MSAD 60 Assistant Superintendent; Stacey Bissell, Special Education Director for Sanford;

, Parent; Dawn Cedrone, Case Manager at Milestones Family Services; Justin Cialfi, Counselor; Andrew Elwell, Co-Administrator and Teacher; Spencer Libby, Co-Administrator and Teacher; Susan Macri, Special Education Director for MSAD 60; and the Student. The Student's Mother indicated that the Student's Father preferred not to be interviewed and he did not have any information regarding the Student's education beyond what she provided in her interview.

All witnesses identified by the parties were interviewed other than Matt Guertin and Dr. Donald Burgess. Mr. Guertin, an educational technician at , was not available for an interview during the summer. Although an appointment for an interview was made with Dr. Burgess, the Student's pediatrician, no release had been signed by the Parent at the time of the interview and another appointment was not possible before the deadline for this Report.

PRELIMINARY STATEMENT

The Student is years old. resides in with parents. The Student attended in MSAD 60 beginning in the fall of 2017, when entered grade, through a placement sanctioned by IEP Team but accomplished by a superintendent's agreement between the two school districts. In the fall of 2019, the Student had a series of behavioral incidents that led to a determination by that it could no longer meet the Student's needs. No manifestation determination was made by the Student's IEP Team although Sanford staff agree that the Student's behavior was a manifestation of disability.

ALLEGATIONS

1. MSAD 60 violated the IDEA when it terminated the Student's placement at by:
 - a. changing the Student's educational placement due to a violation of a code of conduct for more than 10 days without a manifestation determination in violation of MUSER XVII.1.E (within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, parent, and relevant members of the student's IEP Team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability or if the conduct in question was the direct result of the school district's failure to implement the IEP);
 - b. determining, outside the IEP Team process, to change the Student's placement in violation of MUSER IX.3.H (outlining IEP process for out-of-unit placements) and MUSER VI.2.I (IEP Team should work toward consensus); and
 - c. changing the Student's placement without providing at least seven days advance written notice in violation of MUSER Appendix 1 Written Notice and 34 CFR § 300.503 (school district must provide seven days advance notice of the proposed educational placement of a student).

2. Sanford School Department violated the IDEA by failing to ensure that MSAD 60 complied with the IDEA by:
 - a. changing the Student's educational placement due to a violation of a code of conduct for more than 10 days without a manifestation determination in violation of MUSER XVII.1.E (within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, parent, and relevant members of the student's IEP Team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability or if the conduct in question was the direct result of the school district's failure to implement the IEP) and MUSER IX.3.I (sending school district is responsible for ensuring compliance with MUSER);
 - b. determining, outside the IEP Team process, to change the Student's placement in violation of MUSER IX.3.H (outlining IEP process for out-of-unit placements) and MUSER VI.2.I (IEP Team should work toward consensus); and
 - c. changing the Student's placement without providing at least seven days advance written notice in violation of MUSER Appendix 1 Written Notice and 34 CFR § 300.503 (school district must provide seven days advance notice of the proposed educational placement of a student).

3. As a result of the above alleged violations, the Student has been denied the right to a free and appropriate public education by MSAD 60 and/or Sanford School Department in violation of MUSER I (School district must provide a free appropriate public education) and MUSER VI.2.J(4) (IEP Team must develop an IEP to provide the student with a free appropriate public education).

FACTUAL FINDINGS

1. The Student lives in Sanford with both of _____ parents. (Complaint.) The Student attended Sanford schools through _____ grade. (Interview with Mother.) _____ has received special education services since 2006. (Sanford Exh. A.) _____ has been identified as a student with multiple disabilities, including other health impairments (attention-deficit disorder and anxiety) and a specific learning disability relating to auditory memory deficits. (Sanford Exh. A.) Additional areas of concern included behavioral avoidance, impulsivity, and executive functioning. (Sanford Exh. A.) Sanford conducted a functional behavior assessment of the Student during _____ - _____ grade year, concluding that the Student's behaviors were intended to avoid tasks that _____ did not want to undertake. (Interview with Bissell.)

2. In March 2017, during the Student's _____ -grade year, Jessica Folsom, Behavior Interventionist/School Psychologist, conducted another functional behavioral assessment of the Student at the Family's request. (Sanford Exh. B.) Ms. Folsom concluded that the Student had been making positive progress pursuant to a behavior plan but _____ progress was eroded when _____ parents determined that _____ should not have

to remain in school when consequences for behavior were being implemented. (Sanford Exh. B.) Ms. Folsom concluded that despite attempts by school staff to communicate and create a plan that was a collaborative tool shared and reinforced at home, family periodically limited the information that the school was allowed to provide to them. (Sanford Exh. B.) The report indicated that data showed that when the Student was able to attend school for a few days in a row, showed behavior improvement within the social skills program. (Sanford Exh. B.) Ms. Folsom concluded that the Student was avoiding situations where did not feel good about or where thought would not do well. (Sanford Exh. C.) She considered the analysis incomplete, however, due to the Student's inconsistent attendance at school. (Sanford Exh. C.)

3. On April 25, 2017, the Student's IEP team met to review evaluations and conduct a program review. (Sanford Exh. C.) The Written Notice from the meeting indicated that although the Team reviewed the partial functional behavioral assessment of Ms. Folsom, it did not reach a determination on programming or placement because the Parent¹ had to leave the meeting after 45 minutes. (Sanford Exh. C.) Sanford offered tutorial services due to the Student's frequent absences, but the Parent declined. (Sanford Exh. C.) The Student's English teacher reported that the Student had shut down, refused to work, and exhibited difficult behavior, about which she had been in regulation communication with the Parent. (Sanford Exh. C.) School staff reported that the Student was getting picked up by parents early from school every time encountered a difficulty, which reinforced and increased negative avoidant behaviors because the Student was not experiencing any consequences from behaviors, which included not completing any work and engaging in negative behavior such as swearing, showing middle finger, or calling adults names when asked to engage in work. (Sanford Exh. C.) School staff expressed concern that they were not able to hold the Student accountable because of Parents' requests, which was causing not to progress. (Sanford Exh. C.) The Student's language toward school staff included calling various staff members a " " and a " . " (Sanford Exh. C.) The Parent expressed frustration that she felt that her viewpoint was not being considered and indicated that she did not recognize the student being described by school staff. (Sanford Exh. C.) The Parent declined Sanford's request to utilize restorative justice practices rather than picking up when encountered difficulty. (Sanford Exh. C.) Sanford's attorney expressed concern that the Student was not making progress in placement, refused to do work, and refused to participate in social work and that school staff were hampered in their ability to consult with other providers due to the Family's refusal to sign releases. (Sanford Exh. C.) Sanford's attorney indicated that it was important that the Team begin to consider other placements, such as , where the Student could be successful; the Family's attorney indicated that the Family was open to a conversation about placement in a special purpose private school. (Sanford Exh. C.) The Family's attorney suggested in MSAD 60, to which Sanford's Special Education Director responded that she was unsure if accepted tuition students. (Sanford Exh. C.) The Special Education Director also suggested that

¹ References to the "Parent" in this Report are to the Student's Mother.

School could be an option depending on its current population of students. (Sanford Exh. C.)

4. The Parents did not return the Student to school in Sanford after April 26, 2017. (Sanford Exh. D.)
5. On June 5, 2017, the Student's IEP Team met again to complete program review. (Sanford Exh. D.) The Team agreed that the Student's placement at Sanford Junior High School was not working for . (Sanford Exh. D.) The Parent expressed a belief that the program was not appropriate due to the Student's high anxiety and depression. (Sanford Exh. D.) Sanford proposed a therapeutic day treatment program. (Sanford Exh. D.) The Parent requested that the Student attend , an alternative program in nearby MSAD 60 that was not a special purpose private school or a therapeutic day treatment program. (Sanford Exh. D; Interview with Elwell.) The Team noted that did not offer the level of treatment that Sanford staff believed that the Student required but was similar to Sanford's BRIDGE program, an alternative school run by Sanford. (Sanford Exh. D.) Although the Parent disagreed that the Student required a therapeutic placement, she agreed to visit and and to sign consent forms for Sanford staff to communicate with those two programs as well as (Sanford Exh. D.) The Parent refused, however, to allow Sanford staff to speak with the Student's counselor or pediatrician. (Sanford Exh. D.) Sanford agreed to provide tutoring to the Student two hours a day, three days a week. after school through the end of the school year. (Sanford Exh. D.) Sanford also agreed to provide the Student with packets for the month of July and provide with a point person to help with assignments, evaluate work, and assign additional work. (Sanford Exh. D.) The IEP Team agreed to reconvene in August to review placement options. (Sanford Exh. D.)
6. On July 14, 2017, the Student's Mother emailed Susan Austin, Assistant Superintendent of MSAD 60, requesting a superintendent transfer for the Student from Sanford to MSAD 60 to allow to attend , which the Student's Mother had visited and felt would be a good fit for the Student. (Sanford Exh. Y.) The Student's Mother felt that the program at would allow the Student to be successful and would give a feeling of belonging and accomplishment. (Sanford Exh. Y.) She cited the program's hands-on learning, volunteer work, consistent field trips for positive behavior, thrift store, and backpack program. (Sanford Exh. Y.)
7. On July 26, 2017, the Student's Mother spoke with Ms. Austin. (Sanford Exh. Y.) Ms. Austin responded that Susan Macri, MSAD 60's Special Education Director, would reach out to Stacey Bissell, Sanford's Special Education Director. (Sanford Exh. Y.)
8. On August 2, 2017, Ms. Macri emailed the Student's Mother to indicate she had spoken to Ms. Bissell and they agreed to have an IEP Team meeting to determine if would be an appropriate placement for the Student. (Sanford Exh. Y.)

9. On August 24, 2017, the Student's Team met for an annual review and IEP program/placement changes. (Sanford Exh. E.) It was agreed that the Student would be placed at _____ for _____-grade year. (Sanford Exh. E.) It was also agreed that the Student's IEP would be amended to reflect specialized direct instruction of 35 hours per week and 60 minutes per month of social work services, which were embedded into the _____ program. (Sanford Exh. E.) Sanford agreed to provide transportation to _____ (Sanford Exh. E.) The Parent reported that the Student was undergoing an independent neuropsychological evaluation with Dr. Laura Slap-Shelton. (Sanford Exh. E.) The Team agreed to place the Student at _____ because it was the only program that the Parent signed releases for, toured, and supported. (Sanford Exh. E.) The Team agreed to meet again after the Student had been placed at _____ for 30 days. (Sanford Exh. E.)
10. The Student's out-of-district placement at _____ by the IEP Team, which recommended a day treatment program, was made due to the Student's Mother's refusal to consider any other placement. (Interview with Bissell.)
11. Andrew Elwell and Spencer Libby are co-administrators of _____ and have also been teachers for the Student. (Interview with Elwell.) _____ has approximately 11 staff and 37 students. (Sanford Exh. O.) _____ employs a school-wide positive behavioral intervention plan. (Sanford Exh. K.) The plan includes differential reinforcement of incompatible behavior, differential reinforcement of other behavior, a token economy, social work services, Michelle Garcia Winner Social Thinking Program, frequent motor breaks, clear and consistent expectations and consequences, high rates of positive verbal praise for reinforcement, preferential seating, and frequent prompts to participate in tasks. (Sanford Exh. K.) Although social work services are embedded into the curriculum, and students participate in social thinking groups, individual meetings with the _____ social worker are voluntary for students. (Interview with Elwell.)
12. _____ adopted a behavioral intervention plan specifically for the Student, that included allowing the Student to take a walk when _____ felt overwhelmed, anxious, or frustrated. (Sanford Exh. L.) The plan listed the places that the Student could walk without adult supervision as well as locations where a staff member would be required to follow _____ (Sanford Exh. L.)
13. The Student attended _____ for _____ grade (2017-2018) and _____ grade (2018-2019) years. (Interview with Bissell.) The Student attended _____ for _____ grade until December 10, 2019. (Interview with Bissell.) Sanford paid MSAD 60 tuition each year for the Student's attendance at _____ (Sanford Exh. Q.)
14. Whenever Mr. Elwell or Mr. Libby contacted Ms. Macri regarding the Student, she redirected them to Ms. Bissell since Sanford retained responsibility for the Student's special education services and programming. (Interview with Macri.) _____ staff contacted Ms. Bissell on many occasions during the Student's attendance at _____

for example to report concerns that the Student was in crisis and needed a crisis evaluation. (Interview with Bissell.)

15. On April 29, 2019, Stacey Bissell, Director of Special Education for Sanford, issued a letter to the Parent requesting that she provide Dr. Slap-Shelton's evaluation if she wished for the IEP Team to review it at their May 23, 2019 meeting. (Sanford Exh. F.)
16. The Family eventually provided Sanford with four redacted pages of Dr. Slap-Shelton's 16-page report. (Sanford Exh. G.) Although several diagnoses were redacted, the disorders that were visible included Autism Spectrum Disorder, Generalized Anxiety Disorder, Major Depression, Attention Deficit Hyperactivity Disorder, and Sensory Processing Disorder. (Sanford Exh. G.)
17. On May 23, 2019, the Student's IEP Team, convened by Sanford, met. (Sanford Exh. H.) The Student was identified as having multiple disabilities: other health impairment, anxiety, and a specific learning disability in the area of written expression. (Sanford Exh. H.) The Team agreed that the Student required a small student/teacher ratio, supportive positive behavior approach, and clinical support embedded in program. (Sanford Exh. H.) The Written Notice indicated that the Student required continued placement at , continued to qualify for special education as a student with multiple disabilities, and the Student's mother had agreed to draft the Student's IEP, including goals and services. (Sanford Exh. H.) Sanford agreed to reimburse the Parents for mileage in transporting the Student. (Sanford Exh. H.)
18. An IEP was generated for May 22, 2019, through May 21, 2020, consistent with the IEP's determinations. (Sanford Exh. I.) The Student was identified as eligible for special education and related services in the category of multiple disabilities, listed as autism and other health impairment. (Sanford Exh. I.) The Student was noted to have difficulty with social anxiety which prevented from participating in a traditional high school, although had the option to participate in extracurricular activities in Sanford and in MSAD 60 at School with peers. (Sanford Exh. I.)
19. In the fall of 2019, the Student exhibited significant behavioral challenges at . (Sanford Exh. J.) On October 7, 2019, the Student became escalated when a comment was made about the disruptiveness of new speaker. (Sanford Exh. J.)² The Student became verbally aggressive, wandering the halls and punching walls. (Sanford Exh. J.) went outside and immediately began destroying property just off school grounds. (Sanford Exh. J.) The Student then regained access to the building after another student let in. (Sanford Exh. J.) Upon reentry to the school, the Student started kicking the walls and punching other school property. (Sanford Exh. J.) The Student's Father was called and after arrival, the Student

² Counsel for Sanford and MSAD 60 confirmed that although Sanford Exhibit J identifies several incidents dated 2020, the events occurred in 2019.

- continued to escalate, trying to break back into the school and ignoring prompts from father to get into the vehicle. (Sanford Exh. J.) The Student threw large rocks and tipped over a trash can. (Sanford Exh. J.) The Student's Father informed that he was going to call the police if the Student continued, to which the Student responded that would kill the police if they came. (Sanford Exh. J.) After a ten-minute struggle between the Student and Father, the Student left school grounds with Father. (Sanford Exh. J.)
20. On November 13, 2019, the Student became escalated during the second period of the school day. (Sanford Exh. J.) The Student was pacing back and forth and using vulgar language. (Sanford Exh. J.) The Student was able to calm down after lunch by going for a ride with other students. (Sanford Exh. J.)
21. On November 18, 2019, the Student was picked up by father around 12:30 after a 30 to 40-minute period of escalation that included throwing chairs, writing a message of self-harm, and posturing towards another student who was being protected in a lockdown situation inside a locked classroom. (Sanford Exh. J.) Although staff utilized help, wait, and prompt strategies to try to resolve the situation, de-escalation was not achieved. (Sanford Exh. J.) staff members, including the school's social worker, were concerned about the Student's suggestion that would try to kill and suggested that the Student required crisis intervention services, but the Student's Mother was adamantly opposed. (Sanford Exh. O; Interview with Libby.)
22. continued to put different behavior plans in place for the Student in the fall of 2019 to try to address concerning behavior. (Interview with Elwell.) Matt Guertin, the Student's educational technician, was the Student's designated point person because the two had a good relationship. (Interview with Elwell.)
23. On November 20, 2019, a staffing meeting was held at (Sanford Exh. J.) Although staff regularly invited special education directors from sending school districts to staffing meetings, the Student's Mother had specifically requested that no Sanford staff, including Ms. Bissell, be invited to meetings regarding the Student; complied with the Mother's request. (Interview with Austin.)
24. At the November 20 staffing meeting, the Student's Mother expressed concern that the Student was being bullied and staff attempted to come up with solutions to support the Student in communicating bullying events to staff. (Sanford Exh. J.) The Team agreed that the Student's educational technician would text the Student when was showing signs of frustration, to include a prompt to go for a ride with the educational technician; this strategy had been effective in the past. (Sanford Exh. J.) The Student's Mother reported that she was "playing around" with the Student's medication to try to improve behaviors at school by altering doses of (Sanford Exh. J.) The group discussed the role of the social worker and strategies for her to better support the Student. (Sanford Exh. J.) The group also discussed whether the Student's failure to eat at school was playing a role in

- behaviors and brainstormed options for ensuring that the Student had access to snacks throughout the day. (Sanford Exh. J.) staff reiterated that if dangerous behaviors occurred at school, specifically walking on the main road, the police would be contacted for the safety of the Student. (Sanford Exh. J.)
25. During the fall of 2019, the Student lost the approximately 20 hours of in-home weekly support that had been receiving for the prior six months due to turnover in the agency that was providing the service. (February 12, 2020, IEP Team Meeting Recording.)
26. On November 24, 2019, the Student’s Mother informed Mr. Elwell that the Student had begun a taper of the medication and asked for feedback on how the next few days went. (MSAD 60 Exh. Q.) She noted that would be starting a new medication at night for sleep that she hoped would help get more rest going forward. (MSAD 60 Exh. Q.) The Mother did not get any direct response from staff in response to her request for feedback about the Student’s behavior during the period of titration from although staff was checking in with the Student’s Father regularly at the morning drop off. (Interview with Mother; December 12, 2019, IEP Team Meeting Recording.) The Family’s plan was to take the Student off completely, then restart it to see how behavior changed. (Interview with Mother.)
27. On December 10, 2019, the Student became escalated early in the day after being called “gay” by another student. (Sanford Exhs M. & O; Interview with Mother; December 17, 2019, Staffing Team Meeting Recording.) The Student stood up, sighed loudly, walked towards the door, kicked a trash can, exited the room, and left the building. (Sanford Exh. M; Interview with Elwell.) While was outside, another student yelled at through the window that was a “school shooter.” (Sanford Exh. O; Interview with Elwell.)
28. Spencer Libby, Co-Administrator, was informed that the Student walking down the school’s driveway toward Route 4. (Sanford Exh. M; Interview with Libby.) Mr. Libby assessed the situation as dangerous and left the building to intervene. (Sanford Exh. M; Interview with Libby.)
29. By the time Mr. Libby made visual contact with the Student was climbing over the fence, onto the baseball on school property. (Sanford Exh. M.) Mr. Libby approached and asked the Student what was going on; the Student did not respond and told Mr. Libby to “stay the away.” (Sanford Exh. M.) Mr. Libby disengaged from the Student and followed from a distance to avoid further escalating (Sanford Exh. M.) The Student walked back to the school, where was let in by another student. (Sanford Exh. M.) The Student approached the whiteboard in the hallway and wrote “ ” on it at which point turned and walked up the hallway. (Sanford Exh. M.) Mr. Libby erased what the Student had written on the whiteboard, at which point the Student turned around and asked Mr. Libby “Why the did you do that?” (Sanford Exh. M.) As Mr. Libby continued to stand in front

- of the board and explain why [redacted] had erased the Student's writing, the Student threatened to move Mr. Libby if [redacted] did not move away from the whiteboard (Sanford Exh. M.) Mr. Libby stepped aside to avoid a physical confrontation. (Sanford Exh. M.) The Student returned to the whiteboard and wrote "[redacted]" in big letters and erased the rest of the writing on the whiteboard. (Sanford Exh. M.) The Student's educational technician, Matt Guertin, stepped in and Mr. Libby returned to [redacted] classroom. (Sanford Exh. M.)
30. The Student returned to [redacted] classroom, where Sloane Sorrell, a teacher, entered her classroom following the Student and another student. (Sanford Exh. M.) The Student then kicked the chair in front of [redacted] at another student, who picked up the chair and threw it at the Student. (Sanford Exh. M.) Ms. Sorrell called for adult support and other students separated the Student from the individual [redacted] was arguing with. (Sanford Exh. M.) Ms. Sorrell stepped between the Student and the individual [redacted] was arguing with and attempted to remove the other student from the room. (Sanford Exh. M.) As she was doing so, the Student charged toward her and the other student. (Sanford Exh. M.) By then, other staff members had entered the room and were able to remove the other student, although the Student ran out of the classroom after him. (Sanford Exh. M.)
31. Mr. Libby had heard a bang emanate from Ms. Sorrell's classroom and [redacted] entered the room right behind Mr. Elwell. (Sanford Exh. M.) Mr. Libby observed Ms. Sorrell standing between the Student and another student, the individual who had yelled to [redacted] while [redacted] was outside; Mr. Libby moved towards the commotion as Ms. Elwell escorted the other student from the room. (Sanford Exh. M.) The Student raced out the door behind the other student yelling that [redacted] was going to "[redacted] kill" him. (Sanford Exh. M.) Mr. Libby and Mr. Elwell sought to place the Student in a two-person restraint to give the other student an opportunity to get to a safe place. (Sanford Exh. M.) During the attempted restraint, the Student hit Mr. Libby twice in the head. (Sanford Exh. M.) Mr. Libby and Mr. Elwell disengaged the restraint because they were not able to hold it safely. (Sanford Exh. M.) Instead, they moved ahead of the Student to the area where the other student had gone to protect the other student. (Sanford Exh. M.) The Student informed Mr. Libby and Mr. Elwell that "[redacted] had a knife" in [redacted] bag and [redacted] was going to "kill people." (Sanford Exh. M.) Mr. Elwell began de-escalation techniques with the Student, who indicated that [redacted] had guns at home and was going to shoot Mr. Libby in the head. (Sanford Exh. M.) The Student stated that they should kick [redacted] out of school because if [redacted] came back, [redacted] was going to bring a knife and "kill everybody." (Sanford Exh. M.) The Student then exited the building. (Sanford Exh. M.) Mr. Guertin followed the Student from a distance. (Sanford Exh. M.) Mr. Libby then called the police. (Sanford Exh. M.)
32. When Mr. Guertin caught up with the Student outside, the Student was trying to convince a fellow student to kill another student for [redacted]. (Sanford Exh. M.) The Student was desperately pleading for the fellow student to kill the other student, repeating [redacted] request several times to the point of tears. (Sanford Exh. M.) The fellow student responded with laughter as if the Student were joking, but the Student

- reiterated that [redacted] was serious. (Sanford Exh. M.) Mr. Guertin then observed the Student shove Mr. Elwell as [redacted] reentered the building as Mr. Elwell was trying to shut the door to keep [redacted] from reentering the building. (Sanford Exh. M.) Mr. Guertin offered the Student a car ride home or a casual drive for a talk. (Sanford Exh. M.) The Student was not interested so Mr. Guertin got into his car where he could observe the Student and text [redacted] to reiterate the offer of a ride. (Sanford Exh. M.) The Student started punching a school window and kicking the recycling bins. (Sanford Exh. M.) The Student started moving towards Route 4, a busy road in front of the school, as [redacted] called [redacted] mother. (Sanford Exh. M.) Mr. Guertin continued to follow the Student from a safe distance. (Sanford Exh. M.) [redacted] heard the Student repeatedly tell [redacted] mother frantically that [redacted] “didn’t want to kill these people at school, but [redacted] had to.” (Sanford Exh. M.) The Student asked [redacted] mother to pick up several times before [redacted] ended up killing students and staff. (Sanford Exh. M.) The Student began to cry harder and faster, throwing up twice as [redacted] explained need to kill everyone. (Sanford Exh. M.) The Student told [redacted] mother that if [redacted] did not kill the people today, [redacted] would return to school with a knife to kill people a different day. (Sanford Exh. M.) When two police cars arrived, Mr. Guertin moved away from the Student to speak with police officers. (Sanford Exh. M.) The Student was picked up by [redacted] father. (Interview with Elwell.)
33. The incident was over by approximately 8:30 a.m.; Mr. Elwell contacted the Student’s Mother at approximately 10:00 to set up a meeting for the next day. (December 17, 2019, Staffing Meeting Recording; Sanford Exh. O.)
34. The Student had been given a dose of [redacted] that morning as part of an exercise to determine if the [redacted] was causing behavioral disruptions. (Interview with Mother.) The Student had been tapering down the [redacted] over the couple of weeks prior, and had not received any dose on the 9th, but was given a dose on the 10th. (Interview with Mother.)
35. On December 11, 2019, staff and family representatives took part in a post-incident debrief. (Sanford Exh. J.) The meeting was attended by the Student’s Mother, Mr. Elwell, Dawn Cedrone (the Student’s Case Manager at Milestones Family Services), Ms. Austin, and the [redacted] social worker. (Interview with Cedrone; Sanford Exh. J.) The incident was reviewed in its entirety and the [redacted] staff answered the Parent’s questions about protocol and procedures. (Sanford Exh. J.) The Parent expressed concern that the [redacted] staff did not follow protocol regarding texting the Student; the Student’s educational technician reported that [redacted] had utilized texting as a method to attempt to deescalate the Student on November 18 and on December 10. (Sanford Exh. J.) [redacted] staff expressed concern about the safety of the Student and [redacted] peers due to the threats that the Student made. (Sanford Exh. K.) [redacted] staff expressed the need for a risk assessment/psychological evaluation to be completed before the Student would be allowed back to [redacted] (Sanford Exh. K.)
36. The Student’s Mother feels strongly that Mr. Elwell does not want the Student to succeed. (Interview with Mother.) The Student shared with Mr. Elwell that

mother told that Mr. Elwell did not like and did not want to succeed. (Interview with Elwell.) Mr. Elwell feels that the Student's Mother's perception has negatively impacted his relationship with the Student. (Interview with Elwell.)

37. On December 12, 2019, staff met and concluded they did not have the tools in their program to allow the Student to be successful. (Interview with Elwell.) It was an extensive discussion about the Student's needs and the staff's feelings of defeat regarding the December 10 incident. (Interview with Libby.) staff did not consider the removal of Student to be disciplinary but rather necessary due to inability to meet needs, which included mental health and safety considerations. (Interview with Macri.)
38. By December 12, 2019, Ms. Bissell was attempting to schedule an IEP Team meeting for the Student on December 17, 2019, and had contacted the Student's mother to get her availability. (Sanford Exh. N.) On December 13, 2019, Ms. Bissell confirmed that the meeting would be held at a Sanford building because staff did not feel it was appropriate to hold the meeting there given the Student's actions. (Sanford Exh. N.) Ms. Bissell noted that because it was an emergency IEP meeting, she would be bringing the Advance Written Notice to the meeting. (Sanford Exh. N.) responded with suggestions for alternative meeting locations because she was not comfortable having the meeting at Sanford's special education office but did not express concern about the meeting date or lack of seven days notice. (Sanford Exh. N.) Ms. Bissell responded that she was not able to change the location because she was fitting it between other meetings she had at Sanford's central office and wanted the Student's IEP meeting to be held as soon as possible. (Sanford Exh. N.) After additional email correspondence about the meeting location, Ms. Bissell offered to include the Student's Mother by telephone if she was too uncomfortable to attend in person but underscored that she hoped to schedule the meeting quickly to avoid delaying the Student's return to participation in a school program given that the Student was not able to return to school until an IEP Team meeting was held. (Sanford Exh. N.)
39. On December 17, 2019, a staffing meeting took place at Sanford's Central Office. (Sanford Exh. K; Sanford Exh. O.) It was attended by Ms. Bissell; Mr. Elwell and Mr. Libby, co-administrators at ; the Student's Mother; and Dawn Cedrone. (Sanford Exh. K.) The Student's Mother declined to sign the seven-day waiver to allow the meeting to proceed as an IEP Team meeting. (Sanford Exhs. K & O.) Ms. Bissell continued the meeting as a staffing because staff members were present and Sanford needed to obtain information regarding their concerns. (Sanford Exh. O.) After the December 10 incident was reviewed, staff expressed their conclusion that the Student required a higher level of intervention for mental health than could provide. (Sanford Exh. K; December 17, 2019, Staffing Meeting Recording.) The Student's Mother expressed concern that could not provide the level of support that the Student needed to be successful. (Sanford Exh. K.) Mr. Elwell reported that no longer felt able to meet the Student's needs within their program, noting that although the Student was able to maintain compliance for some

- periods of time, then experienced significant behavioral issues. (Sanford Exh. O.) Mr. Elwell explained that staff were very shaken by the event. (Sanford Exh. O.)
40. The Student's Mother expressed a belief that the medication had been the root of the Student's behavior for the prior five years and specifically regarding the December 10 incident. (Sanford Exh. O.) Meeting participants noted that the Student had responded well to the structure at and had been on the highest level of reward, allowing to participate in community outings. (Sanford Exh. O.) The Student's Mother expressed concern that the Student was being called names daily, although staff responded that they had met regularly and followed up on similar concerns and were unable to establish that the Student was being bullied. (Sanford Exh. O; December 17, 2019, Staffing Meeting Recording.)
 41. The Student's Mother felt frustrated that the Student was penalized for walking out of the building on December 10 even though was authorized to do so. (Interview with Mother.) The Mother agrees that the Student's language on December 10 was unacceptable but felt that was pushed too far by other students and was not receiving adequate support from staff. (Interview with Mother.) The Mother feels too much responsibility was being placed on the Student because was being antagonized by other students and took the steps was supposed to in order to deescalate. (Interview with Mother; December 17, 2019, Staffing Meeting Recording.)
 42. At the December 17, 2019, staffing meeting, staff informed the Student's Mother that a no trespass order had been issued against the Student for all MSAD 60 schools. (December 17, 2019, Staffing Meeting Recording.) No criminal charges were filed against the Student regarding the December 10 incident. (Interview with Mother.)
 43. During the December 17, 2019, meeting, the Student's Mother indicated that the Student and Father would likely be moving to a location within the MSAD 60 school district. (December 17, 2019, Staffing Meeting Recording.) She also reported that she was considering home school or an online school for the Student. (December 17, 2019, Staffing Meeting Recording.)
 44. At the conclusion of the meeting, Ms. Bissell indicated that the IEP meeting would be scheduled for after the holiday break. (Sanford Exh. O.)
 45. Although no Written Notice was required since the meeting was not an IEP Team meeting, Ms. Bissell issued a note to the Student's file regarding the emergency meeting. (Sanford Exh. O.)
 46. Although there was no discussion at the December 17, 2019, meeting as to whether the Student's behavior was a manifestation of disabilities, nor was there any request that the topic be covered then or at a subsequent IEP Team meeting, Ms.

Bissell agrees that the Student's actions on December 10 were manifestations of disability. (December 17, 2019, Staffing Meeting Recording; Interview with Bissell; Sanford response filed on July 8, 2020.)

47. The Student saw private counselor Justin Cialfi, MS, beginning in May 2015. (Interview with Mother; Interview with Cialfi.) It took a year for the Student to be able to access internal experience in treatment with Mr. Cialfi; the Student has a difficult time trusting others. (Interview with Cialfi.) On December 18, 2019, Mr. Cialfi issued a letter advocating for continued placement at on the basis that the Student found to be the only academic environment in which had been able to thrive. (Sanford Exh. S.) Mr. Cialfi opined that the Student had been able to break long-standing behavioral patterns that were the result of previous academic programs in which the Student did not feel a sense of belonging, community, or self-confidence. (Sanford Exh. S.) Mr. Cialfi pointed to the Student's integration and success at and conclusion that staff provided the type of understanding and support that allowed the Student the courage to take emotional risks and begin to better see and understand as part of a larger accepting population. (Sanford Exh. S.) expressed concern that a forced transition to a different educational and social environment would prove highly detrimental to the Student's academic, personal, and socioemotional development. (Sanford Exh. S.) The Student's counseling relationship with Mr. Cialfi concluded at the end of 2019, due to the closure of Mr. Cialfi's practice. (Interview with Mother; Interview with Cialfi.)
48. Dr. Burgess believes that the use of contributed to a lot of the Student's irritability. (February 12, 2020, IEP Team Meeting Recording.) In 2019, the Student was hospitalized approximately eight times in crisis situations due to behavioral concerns. (Interview with Cedrone.) At one point, Ms. Cedrone began an evaluation for to enter residential care although that did not come to fruition. (Interview with Cedrone.) The Mother reports that the Student's behavior at home has improved greatly since has stopped taking . (Interview with Mother.) Ms. Cedrone has not had enough interaction with the Student to assess whether behavior had changed since was removed from . (Interview with Cedrone.) Ms. Cedrone met the Student only once during her tenure as case manager from November 2018 to spring 2020. (Interview with Cedrone.)
49. On January 10, 2020, the Student's Mother reached out to Ms. Bissell to ask about scheduling an IEP meeting. (Sanford Exh. P.) Following further email correspondence in which the Student's Mother inquired whether Wednesday mornings were a possibility, an Advance Written Notice was issued on January 22 scheduling an IEP Team Meeting for Wednesday, January 29, to conduct a placement review. (Sanford Exh. P.) On January 23, 2020, the Student's Mother responded that she would let Sanford staff know by the end of the day whether January 29 worked for her. (Sanford Exh. P.)

50. Also on January 23, 2020, the Student's Mother emailed Ms. Austin asking why the Student was not being allowed to attend and asking whether had been suspended. (Sanford Exh. P.) Susan Marci, Director of Special Education Services for MSAD 60, responded to the Student's Mother, stating that it was her understanding that the Student had been suspended. and that there was concern that could no longer continue as an appropriate placement for the Student. (Sanford Exh. P.)
51. On January 27, 2020, Ms. Bissell emailed the Student's Mother to indicate that the IEP meeting scheduled for January 29 should be held particularly in light of the Student's removal from school, her rearrangement of her schedule to allow for the meeting on January 29, and the ability of staff to participate on that date. (Sanford Exh. P.) The Student's Mother informed Ms. Bissell that January 29 was not an agreed upon time for the meeting and further that she would not waive the right to seven days notice. (Sanford Exh. P.) She also inquired whether the Student had been suspended. (Sanford Exh. P.)
52. On January 28, 2020, the Student's Mother hand delivered a letter to Ms. Bissell's office indicating that she could not attend a meeting on January 29, noting that she and two of her children were sick, and offering alternatives of February 7, 12 or 19. (Sanford Exh. P.) The same day, Ms. Bissell responded that she would work to reschedule the meeting and asking who the Student's Mother wanted to invite to the meeting since she was unclear on who else the Student's Mother wished to include in the Team. (Sanford Exh. P.) Ms. Bissell also stated her understanding that although staff would participate in an IEP Team meeting to help determine the Student's needs, goals, programming, and placement, MSAD 60 would have no further role in the Student's education. (Sanford Exh. P.)
53. On February 3, 2020, Donald R. Burgess, M.D., issued a letter indicating that the Student carried several diagnoses, including ADHD, generalized anxiety disorder, sensory integration disorder, disruptive mood dysregulation disorder, and autism spectrum disorder. (Sanford Exh. R.) He reported that the Student had previously been taking for ADHD but had recently been taken off the medication due to adverse effects of aggression and irritability. (Sanford Exh. R.) He stated that according to the Student's Parents, they did not give on December 9, 2019, and no significant behavior was reported; they did give on December 10 prior to departure for school. (Sanford Exh. R.) Dr. Burgess stated that the Student's irritability, anger, and physical aggression were very likely related to being put back on for that day. (Sanford Exh. R.) He reported that the Student's prescription was discontinued after December 10, 2019. (Sanford Exh. R.)
54. On February 4, 2020, Ms. Bissell emailed the Student's Mother that she had rescheduled the IEP meeting for February 12 and issued an Advance Written Notice scheduling the meeting. (Sanford Exh. P; MSAD 60 Exh. N.)

55. On February 12, 2020, the Student's IEP Team met for an annual review and other IEP program/placement changes. (Sanford Exh. T.) In attendance were the Student's Mother; Dr. Burgess (by telephone); Troy Watts, School staff; Mr. Libby; Ms. Cedrone; Maureen Gilliam, the Student's Grandmother; Kim Belanger, the Student's Aunt; Kim Gregoire, Special Education Administrative Assistance; and Ms. Bissell. (Sanford Exhs. T & U.) Ms. Bissell explained that 110 minutes per week of social work services were embedded into the program at and that although students were given a choice to participate in social work services individually, the Student had declined. (Sanford Exh. U.) The Student's Mother was not aware that the Student was not working with the social worker individually. (Sanford Exh. U.)
56. At the IEP Team meeting, Mr. Libby confirmed that was not able to reinstate the Student due to safety concerns, particularly given the number of students at with a trauma history. (Sanford Exh. T.) staff were also traumatized by the Student's actions on December 10. (February 12, 2020, IEP Team Meeting Recording.) The Student's Mother explained that she believed that all of the Student's behavioral incidents in the fall of 2019 were caused by prescription. (Sanford Exh. T.) Dr. Burgess agreed that could cause irritability, but he acknowledged that he was not fully aware of all of the Student's behavioral incidents in the fall of 2019 so could not confirm that all incidents were related to the use of Vyvanse. (Sanford Exh. T.) Dr. Burgess explained that the Student had been taking for approximately four to five years, with the dosage being adjusted at times. (Sanford Exh. T.) The Team discussed the need for the Student's program to include a therapeutic component, more consistent with a day treatment program, which was not. (Sanford Exh. T.) Because the Student struggled with accessing education in a setting with more than ten students, a traditional school setting was deemed inappropriate for the Student. (Sanford Exh. T.) Ms. Bissell indicated she would provide the Student's Mother with contact information for School and requested that she schedule a tour. (Sanford Exh. T.) The Student's Mother discussed her concern with putting the Student in a full day of school no matter where was placed, stating that she was not inclined to agree to anything other than tutoring services at the meeting. (Sanford Exh. T; February 12, 2020, IEP Team Meeting Recording.) Ms. Bissell explained that she was in the process of filling the tutoring vacancy and would contact the Student's Mother to determine the tutoring schedule. (Sanford Exh. T.) The Team agreed to meet again on March 18, 2020, and to include day treatment program representatives in the meeting. (Sanford Exh. T.)
57. After the meeting, Ms. Bissell and the Student's Mother exchanged emails about School, with the Student's Mother indicating that she found the website to make the school appear an unhappy place and she heard very negative reviews from other parents. (Sanford Exh. V.)
58. The Student's Mother spoke to staff at School and but still feels that the Student requires a less restrictive setting than did on December 10, 2019.

- (Interview with Mother.) Ms. Cedrone encouraged the Student's Mother to visit the potential placements. (interview with Cedrone.) The Student's mother is not interested in pursuing a placement at _____ or _____ School. (February 12, 2020, IEP Team Meeting Recording.) Although the Student's Mother believes that the Student has the potential to make great progress at _____ she has enrolled in an online learning academy for the 2020-2021 school year if _____ cannot return to _____. (Interview with Mother.)
59. The Student has not engaged in any meaningful tutoring services since _____ was removed from _____ (Interview with Mother.) The Student has utilized approximately four hours of tutoring since school closures in mid-March due to the pandemic. (Interview with Mother.)
60. On May 20, 2020, Ms. Bissell emailed the Student's Mother regarding scheduling the Student's annual review, asking her to provide dates that would work for her. (Sanford Exh. W.) She noted that Sanford did not have the authority to require MSAD 60 to accept the Student. (Sanford Exh. W.) On May 26, 2020, Ms. Bissell emailed the Student's mother again requesting dates that would work for her for an IEP meeting. (Sanford Exh. W.) On May 29, 2020, the Student's Mother emailed Ms. Bissell asking her to put forward some dates. (Sanford Exh. W.) On June 5, 2020, Ms. Bissell emailed the Student's Mother to provide a proposed date of June 18 for the Student's IEP meeting, while also offering June 12 as an alternative. (Sanford Exh. W.)
61. On June 9, 2020, Ms. Bissell emailed the Student's Mother that she would be sending out an invitation for an IEP meeting on June 18. (Sanford Exh. W.)
62. On June 23, 2020, an IEP meeting was held to conduct an annual review and other IEP program/placement changes. (Sanford Exh. X.) The following individuals were in attendance: the Student's Mother; Atlee Reilly, Esq., Attorney for the Family; Ms. Bissell; Ms. Macri; Diane Hilton, Special Education Teacher; Mr. Libby; Mr. Elwell, Mickey Deering, Representative of _____; Ron Roberts, Representative of _____ School; and Isabel Ekman, Esq., Attorney for Sanford. (Sanford Exh. X.)
63. At the meeting, the Family's attorney expressed concern that an IEP could not be drafted since the Student had not been in school since December and had not undergone evaluations for several years. (Sanford Exh. X.) Sanford agreed to conduct a psychological evaluation, academic evaluation, speech and language evaluation (specifically to look at pragmatics), an occupational therapy evaluation, and an updated functional behavioral assessment. (Sanford Exh. X.) Sanford also agreed to conduct transition evaluation activities to inform the Student's transition plan. (Sanford Exh. X.) The Family has not yet returned releases for evaluations to occur. (Interview with Bissell.) The Student's Mother stated that the Student and Family wished for _____ to return to _____. (Sanford Exh. X.)

64. The Team considered four educational options: _____ School; _____ program, which was similar to _____ and a special purpose private school. (Sanford Exh. X.) The Student's Mother stated that the Student and Family wished for _____ to return to _____. (Sanford Exh. X.) Sanford staff explained that although they also wanted the Student returned to full-time programming as soon as possible, they were not able to force MSAD 60 to place the Student at _____ (Sanford Exh. X.) As a compromise, Ms. Bissell suggested that Sanford could offer a placement at _____ School for the summer while the IEP obtained updated evaluations, with the goal of this temporary placement allowing the Student to re-engage with school while the Team developed updated information. (Sanford Exh. X.) Sanford staff explained that although they also wanted the Student returned to full-time programming as soon as possible, they were not able to force MSAD 60 to place the Student at _____ (Sanford Exh. X.)
65. The Team agreed that the Student would participate in _____ Extended School Year program, up to 12 hours per week, from July 6 through August 13, 2020. (Sanford Exh. X.) The Team agreed to reconvene on August 24 to review completed evaluations and conduct the Student's annual review. (Sanford Exh. X.)
66. The Student would like to return to _____ (Interview with Student.) _____ liked it there and felt _____ had friends and liked many of _____ teachers. (Interview with Student.) _____ also enjoyed working with the prior counselor at _____ (Interview with Student.)
67. Although the Student visited a new private counselor prior to the pandemic, the relationship did not solidify, and the Student has not received private counseling services for several months. (Interview with Mother.)
68. With regard to the Student's enrollment in an on-line institution for the coming school year, Ms. Cedrone is concerned about the Student's lack of socialization with peers since December 2019. (Interview with Cedrone.) Mr. Libby expressed concern about the Student's ability to work on communication skills and have access to speech/language and social pragmatics instruction through an exclusively on-line school. (Interview with Libby.) Mr. Elwell expressed concern that the Student was a hands-on learner and would not be successful in an on-line school. (Interview with Elwell.) Mr. Cialfi feels that the Student requires a consistent school routine and structure with solid support available at all times. (Interview with Cialfi.) _____ staff believe that the Student requires a more therapeutic setting, likely a day treatment setting, to include access to multiple social workers, wrap around services, and more physically safe buildings. (Interview with Elwell; Interview with Libby; Interview with Austin.) Even if the Student does not require a day treatment program, _____ is unable to reenroll the Student due to the deterioration of the school's relationship with the Family. (Interview with Elwell.) Ms. Bissell believes that the Student would be a good fit for _____ School, which utilizes adventure-based counseling in a farm setting. (Interview with Bissell.) Ms. Bissell is concerned that the Student will not succeed in an on-line only setting because _____ may become dysregulated when _____ becomes frustrated, noting that _____ afternoons at _____

consisted of experiential learning opportunities, which were off campus activities in which the Student succeeded. (Interview with Bissell.)

DETERMINATIONS

1. a. MSAD 60 violated the IDEA when it terminated the Student's placement at
by changing the Student's educational placement due to a violation of a code of conduct for more than 10 days without a manifestation determination in violation of MUSER XVII.1.E (within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, parent, and relevant members of the student's IEP Team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability or if the conduct in question was the direct result of the school district's failure to implement the IEP).
- b. MSAD 60 did not violate MUSER IX.3.H (outlining IEP process for out-of-unit placements) or MUSER VI.2.I (IEP Team should work toward consensus) when it terminated the Student's placement at
- c. MSAD 60 did not violate MUSER Appendix 1 Written Notice and 34 CFR § 300.503 (school district must provide seven days advance notice of the proposed educational placement of a student) when it terminated the Student's placement at
2. a. Sanford School Department violated the IDEA by failing to ensure that MSAD 60 complied with the IDEA when it changed the Student's educational placement due to a violation of a code of conduct for more than 10 days without a manifestation determination in violation of MUSER XVII.1.E (within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, parent, and relevant members of the student's IEP Team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability or if the conduct in question was the direct result of the school district's failure to implement the IEP) or MUSER IX.3.I (sending school district is responsible for ensuring compliance with MUSER).
- b. Sanford School Department did not violate the IDEA because it did not determine, outside the IEP Team process, to change the Student's placement which would have violated MUSER IX.3.H (outlining IEP process for out-of-unit placements) or MUSER VI.2.I (IEP Team should work toward consensus).

- c. Sanford School Department did not change the Student's placement without providing at least seven days advance written notice which would have been a violation of MUSER Appendix 1 Written Notice or 34 CFR § 300.503 (school district must provide seven days advance notice of the proposed educational placement of a student).
3. The procedural violations that occurred did not deny the Student a free and appropriate public education in violation of MUSER I (School district must provide a free appropriate public education) or MUSER VI.2.J(4) (IEP Team must develop an IEP to provide the student with a free appropriate public education).

ANALYSIS

Maine statutes dictate that a student is eligible to attend school in the school administrative unit where the student's parents reside. 20-A M.R.S. § 5202(2). School districts are responsible for providing special education services to all students residing within the district, including those who attend other public schools. 20-A M.R.S. § 7202; MUSER IV.4.B.

A student age three to twenty-one who has been identified as eligible for special education is entitled to a free appropriate public education ("FAPE") provided by the school district in which he or she resides. 20 U.S.C. § 1412(a)(1)(A). A free appropriate public education includes special education as well as related services. MUSER II.13. The Maine Unified Special Education Regulation ("MUSER") governs the delivery of a FAPE to eligible children ages three to twenty with disabilities. MUSER I.

The IDEA provides the families of children with disabilities with procedural safeguards regarding the provision of a free appropriate public education as well as the opportunity to bring forward disputes relating to the identification, evaluation, placement, or provision of services to a student with a disability. 20 U.S.C. § 1415. A procedural violation results in a denial of FAPE only if the procedural inadequacy impeded the student's right to FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the student; or caused a deprivation of educational benefit. MUSER XVI.15.A(2).

MUSER places the responsibilities on both a sending school district and a receiving school district. A sending school district has the administrative responsibility for the education of a student with a disability who has been placed in an out-of-district placement. MUSER IX.3.I. When a student from one district is attending a public school in another district, the sending school administrative unit maintains responsibility for initiating the 30-day IEP review meeting and any other recommended reviews; initiating the required annual review of the child's IEP and placement; revising the child's IEP as a result of any meetings; ensuring the completion of any required reevaluations of the child; participating in any meetings related to proposed changes in the child's IEP; ensuring the parent's involvement in meetings; providing prior written notice; and ensuring compliance with MUSER. MUSER IX.3.I. In addition, a sending school district is responsible for scheduling IEP meetings and notifying the receiving placement of such meetings. MUSER IX.3.I. The receiving placement, on the other hand, is responsible for providing representative attendance at the initial IEP Team meeting when requested by the sending district; providing representative attendance at the 30-day IEP review meeting; providing representative attendance at the annual review and at any other meetings when the receiving placement or the sending SAU propose to review a child's IEP; implementing a child's IEP which cannot be amended without an IEP Team meeting or the consent of the sending district and the parent; providing the sending district with access to all the child's educational records relating to placement; providing the sending district with progress reports at least as often as the sending district sends progress reports for its in-district students; and ensuring compliance with these rules and the IDEA. MUSER IX.3.I.

1. MSAD 60 violated the IDEA by changing the Student's educational placement due to a violation of a code of conduct for more than 10 days without a manifestation determination in violation of MUSER XVII.1.E. MSAD 60 did not determine, outside the IEP Team process, to change the Student's placement in violation of MUSER IX.3.H

nor did it change the Student's placement without providing at least seven days advance written notice in violation of MUSER Appendix 1 Written Notice and 34 CFR § 300.503.

MUSER XVII.1.E requires that a school district that is changing a student's educational placement due to a violation of a code of conduct for more than 10 days must conduct a manifestation determination, constituting a meeting of the school district, parent, and relevant members of the student's IEP Team to review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability or if the conduct in question was the direct result of the school district's failure to implement the IEP.

The Parents argue that MSAD 60 was required to ensure compliance with the IDEA and MUSER, yet failed to do so by changing the Student's educational placement due to a violation of a code of conduct for more than 10 days without a manifestation determination; determining, outside the IEP Team process, to change the Student's placement; and changing the Student's placement without providing at least seven days advance written notice.

The Student's Mother requested the Student's placement at _____ in the summer of 2017, just prior to the start of the Student's _____ grade year. Ms. Bissell agreed to seek permission from MSAD 60 for the Student to attend _____ primarily in recognition of the Family's desire for a placement at _____ and their refusal to consider other placements. MSAD 60 agreed to accept the Student into _____ the placement was sanctioned by the Student's IEP Team, and Sanford transmitted approximately \$25,000 in tuition to MSAD 60.

MSAD 60 and Sanford both continued to believe, and act upon the belief, that Sanford remained responsible for the Student's special education services.³ When staff approached Ms. Macri with questions, she directed them to Ms. Bissell. Ms. Bissell fielded concerns from staff multiple times regarding their concerns that the Student required crisis intervention or a more therapeutic setting.

Nevertheless, when the Student was removed from it was the result of the staff deciding as a group that they were unable to meet needs any longer. Sanford had no role in the decision. MSAD 60 staff in one communication referred to the Student's removal as a suspension, while consistently noting that the Student's removal was due to staff's concern that was no longer an appropriate placement for the Student. While it is clear that staff did not perceive the Student's removal to be "disciplinary" per se, the termination of the placement was the immediate result of concerning behavior exhibited by the Student that caused disruption and trauma to Students as well as staff. The events of December 10, 2019, were a culminating event for staff who had increasingly felt that the Student required a more restrictive environment in order to have needs met. If they had attended an IEP Team meeting in which the question was asked, MSAD 60 staff would have agreed that the Student's behaviors were manifestations of disabilities.

³ Although Sanford and MSAD 60 staff at times referred to the Student's placement as a transfer, it functioned as an IEP Team placement, as indicated by the sanctioning of the placement by the Student's IEP Team and the transfer of tuition funds to MSAD 60 from Sanford. If the Student's placement had actually been a superintendent's transfer (which would not have included the transfer of tuition funds from Sanford to MSAD 60), then MSAD 60 would have assumed all responsibilities for the Student's special education services through the entirety of the 2019-2020 school year and could not have simply terminated placement at without undertaking the IEP Team work required regarding a change in placement. Pursuant to 20-A M.R.S. Section 5205(6)(C) and (D), a superintendent's transfer, which must be reviewed annually, renders a student effectively a resident of the district into which the student has transferred. It is clear that neither of the school districts believed that they were operating under this model nor does the fact pattern indicate that this model was being used.

MUSER appears to divide some responsibilities for ensuring compliance between sending and receiving districts, with some overlap in roles. Notably, in addition to implementation, reporting, and representation requirements, the receiving school is subject to the catch-all requirement of “ensuring compliance with MUSER” by MUSER IX.3.I. Understandably confusing to both districts involved in this matter, there is no clarification within MUSER as to how this provision applies to a receiving school in a situation such as the present one. As indicated by several MSAD 60 staff members, a decision that receiving districts have responsibilities beyond those outlined in MUSER IX.3.I could significantly chill the ability of receiving districts to accept students with IEPs. As MSAD 60 argued in its brief, it could also be very difficult for school districts to maintain co-responsibility for the provision of FAPE, which will likely require significant guidance from the Department of Education.

Nevertheless, this provision of MUSER, requiring compliance with MUSER, required MSAD 60 to conduct a manifestation determination, or at a minimum participate in a manifestation determination meeting convened by Sanford, prior to concluding that the Student could no longer attend and its recession of the placement agreement with Sanford. Once it made the determination that the Student could not return and had so notified Sanford, the responsibility for providing the Student’s special education services, and complying with MUSER in determining the Student’s next placement, returned wholesale to Sanford.

2. Sanford School Department violated the IDEA by failing to ensure that MSAD 60 complied with the IDEA by changing the Student’s educational placement due to a violation of a code of conduct for more than 10 days without a manifestation determination in violation of MUSER XVII.1.E. Sanford School Department did not determine, outside the IEP Team process, to change the Student’s placement in violation of MUSER IX.3.H nor did it change the Student’s placement without providing at least seven days advance written notice in violation of MUSER Appendix 1 Written Notice and 34 CFR § 300.503.

As explained above, the Student was removed from _____ because of _____ staff's collective determination that the Student required more therapeutic intervention than _____ could provide. The determination to end the Student's placement at _____ was made exclusively by _____ staff, not by Sanford staff. In fact, Ms. Bissell was not invited to the December 11 meeting at _____ at which the incident was reviewed with the Student's Mother. Furthermore, it was at a meeting of _____ staff the following day, to which Ms. Bissell was also not invited, that _____ staff determined it could not meet the Student's needs. No members of Sanford's special education staff were in attendance at either meeting nor were they consulted to assist with _____ determination. As a result of _____ determination that it could not maintain its placement for the Student, Sanford was left with a placement agreement no longer in effect on very short notice, as a result of which it attempted to quickly schedule an IEP meeting to address the Student's lack of a placement.

Pursuant to MUSER IX.3.I, Sanford was ultimately responsible for ensuring that a manifestation determination occurred. A staffing meeting was held on December 17, 2019, which Sanford was prepared to conduct as an IEP Team meeting. Nevertheless, a manifestation determination did not appear to be on the agenda. MUSER XVII.1.E does not require a full IEP Team meeting but does require the presence of district staff, a parent, and relevant members of the Student's IEP Team, which was arguably satisfied at the December 17, 2019, meeting and would have allowed a manifestation determination to occur. When the Team did finally meet in the context of a formal IEP meeting in February 2020, a manifestation determination was also not conducted. By not requesting that MSAD 60 conduct a manifestation determination inquiry and by not conducting such an inquiry itself and including _____ staff, at either the December 2019 or the February 2020 meetings, Sanford violated MUSER XVII.1.E.

Substantively, Ms. Bissell also concludes that the Student's behaviors were manifestations of disabilities. Had the manifestation determination been specifically made, the Team would have been required either to conduct a functional behavior assessment unless a functional behavioral assessment had been conducted before the behavior that resulted in the change of placement occurred or review the behavioral intervention plan in place. MUSER XVI.F. In the present case, a functional behavioral assessment had been conducted prior to the Student's placement at

Although the Parent had five days advance notice of the emergency meeting on December 17, 2019, and there was no indication that anyone she wished to be invited had not been able to attend, she declined to sign the seven day notice waiver that would have allowed the meeting to constitute an IEP Team meeting. Minimal progress could be made at the staffing meeting regarding the Student's placement subsequent to After the December 17 meeting, there was a cancellation of a meeting by the Parent and then much wrangling about a date for the next Team meeting, which eventually occurred on February 12, 2020. Even as of the February 12, 2020, meeting, the Student's Mother was not willing to agree on a placement for the Student other than which was not an option.

As such, Sanford did not make a placement determination outside of the IEP Team process, which would have been a violation of MUSER IX.3.H and MUSER VI.2.1, nor did it change the Student's placement without providing seven days advance written notice, which would have been a violation of USER Appendix 1 Written Notice and 34 CFR § 300.503. Sanford attempted, in procedural scheduling of meetings and in substantive determinations of evaluations and placement, to ensure that decisions were made by consensus consistent with MUSER IX.3.H and MUSER VI.2.I.

3. Although procedural violations were found in allegations 1 and 2, no denial of FAPE in violation of MUSER I and MUSER VI.2.J(4) has occurred.

The failure of MSAD 60 and Sanford to conduct a manifestation determination was a procedural violation, although staff from both districts agreed that the Student's actions were a manifestation of disabilities. MSAD 60 was authorized to terminate the Student's placement and would have done so even if the manifestation determination had been explicit. Upon the termination by , Sanford took immediate and substantial steps to convene the Student's IEP Team and make placement decisions going forward by consensus, offering the Family multiple options to move forward. The procedural violation by Sanford and MSAD 60 did not impede the Student's right to FAPE, significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the student, or cause the Student a deprivation of educational benefit as would be required under MUSER XVI.15.A(2) to constitute a denial of FAPE.

Sanford attempted to convene an IEP meeting quickly, on December 17, 2019, but was unsuccessful due to the Parent's refusal to sign the seven-day waiver. Under the circumstances, faced with a Student without a placement, the inability of Sanford to convene an IEP meeting on December 17 significantly delayed the Team's efforts to identify a placement that could be agreed upon.

With regard to whether Sanford violated the Student's right to FAPE since the February 12, 2020, meeting, the Student's Mother has not agreed to any placement for the Student other than tutoring. A tutor was hired by Sanford, but the Student engaged only minimally before the pandemic arrived and after school closures. Although the Team offered for the Student to participate in School summer services, and believed that the Student was in fact engaging in such services, the Student has not done so. The series of evaluations agreed upon at

the June 2020 IEP Team meeting has not begun at the time of the interviews with Sanford staff due to the Family's failure to return the consents to evaluations. As such, neither MSAD 60 nor Sanford has denied the Student a FAPE.

With regard to the Student's future placement, in their filings, the Parents request that the Student be returned to [redacted]. At the December 17, 2019, staffing meeting at Sanford, when the Family was formally informed that [redacted] would not take the Student back, the Student's Mother expressed her belief that [redacted] could not meet the Student's needs. In her interview, the Student's Mother indicated that although the Student wished to return to [redacted] she was unsure of her willingness to return [redacted] because [redacted] had felt so rejected after [redacted] was removed from [redacted]. She noted that she had signed the student up for an on-line academy. Even if the Family would return the Student to [redacted] given the conclusion that MSAD 60 no longer maintains any responsibility for providing the Student with FAPE, it is beyond the authority of the Complaint Investigator and the Department of Education, as it was beyond the ability of Sanford, to order MSAD 60 to re-enroll the Student at [redacted].

CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICTS

Within one year, Sanford and MSAD 60 must conduct staff training, outlined by the Department, on their respective responsibilities to comply with special education requirements found in MUSER XI.3.I when they are a sending or a receiving district of a student with disabilities entitled to the protections of MUSER.