

COMPLAINT INVESTIGATION REPORT
v. Sanford School Department
Complaint 21.018C
Complaint Investigator: Rebekah J. Smith, Esq.
December 14, 2020

INVESTIGATION PROCEDURE

Complainant: (“Parents”)

Respondent: Sanford School Department (“School District” or “District”)
Stacey Bissell, Special Education Director
917 Main Street, Suite 200
Sanford, Maine 04073

Student: , age

The Department of Education received this complaint on October 16, 2020. On October 26, 2020, a telephonic conference was convened to review the investigation process and deadlines for submission of information. Additional exhibits were submitted by the parties after the submission deadlines in response to requests from the Investigator and accepted into the record.

A Draft Allegations Letter was issued on October 28, 2020. On November 2, 2020, an Amended Draft Allegations Letter was issued at the Student’s Mother’s request to clarify the allegation. On November 2, 2020, the School District submitted a preliminary list of exhibits. On November 16, 2020, the Parents submitted Parents Exhibits A to I. In addition, the Parents submitted a Written Notice issued on August 31, 2020 (identified as Parents Exhibit J), an Amended IEP issued on August 24, 2020 (identified as Parents Exhibit K), a list of School District Staff training provided to the Parents by the District on December 1, 2020 (identified as Parents Exhibit L), and emails between the Student’s Mother and School District Staff on April 22, 2020 (identified as Parents Exhibit M). On November 9, 2020, the School District submitted a response to the complaint along with School District Exhibits A to O. In addition, the School District submitted an Academic Evaluation of the Student issued on November 13, 2020 (identified as School District Exhibit P), an Amended IP issued on November 17, 2020 (identified as School District Exhibit Q), emails between School District Staff and Staff dated April 29 and 30, 2020 (identified as School District Exhibit R), an email from School District Staff to the Department of Education dated December 1 with attachments (identified as School District Exhibit S), and an email from School District Staff to the Student’s Mother dated December 1, 2020 (identified as School District Exhibit T). Both parties identified witnesses they requested be interviewed, all of whom were interviewed.

The Complaint Investigator reviewed all documents, information, and responses from the parties. Interviews with the following individuals were conducted on November 24 and 30, 2020: Tammy Delaney, Assistant Special Education Director for the School District; Stacey Bissell, Special Education Director for the School District; and Rebekah Bickford, Psy.D., Contracted Psychologist for the School District. On November 25, 2020, the Student's Mother was interviewed. On November 30, 2020, Nicole Heal, Director of _____, was interviewed.

PRELIMINARY STATEMENT

The Student is _____ years old. _____ began attending _____ grade at the _____ on November 16, 2020. The Student resides with _____ parents in Sanford, Maine.

ALLEGATION

The School District has not complied with any aspect of the corrective action, including determining compensatory education, providing staff training, completing assessments, holding an IEP Team meeting, and providing an appropriate placement or IEP, ordered in the Complaint Investigation Report of 20.075C pursuant to MUSER XVI.4.A(3).

FACTUAL FINDINGS

1. On February 24, 2020, an IEP Team meeting was held at which the Team determined that the Student required Academic/Development Testing to assess the Student's academic/development progress in specific areas, a Functional Behavioral Assessment, and a Writing Achievement Test. (School Dist. Exh. B.) The consent for evaluations was provided to and signed by the Student's Parent on March 9, 2020. (School Dist. Exh. B.) Rebekah Bickford, Psy.D., a contracted psychologist for the School District was to conduct both evaluations. (Interview with Delaney.)
2. Due to events that occurred on February 28, 2020, the Student was suspended from March 3 to March 13, 2020. (School Dist. Exh. A.)
3. The School District closed schools in mid-March 2020 due to the COVID pandemic and the Student's evaluations were not conducted due to the school's closure due to COVID-19. (School Dist. Exh. E.)
4. At some point in March 2020, the Student's Mother had a conversation with Nicole Heal, Director of _____, who indicated that there was potentially a spot for the Student at _____ in the summer if a referral was submitted quickly. (Interview with Student's Mother.)
5. On April 22, 2020, the Student's Mother emailed Tammy Delaney, Assistant Special Education Director, asking what the time frame would be for signing and submitting the Student's referral for an out-of-district placement. (Parents Exh. M.) The Student's

Mother acknowledged the difficulties of the pandemic but requested that a plan be ready for the Student, whether it be for summer or fall. (Parents Exh. M.) Ms. Delaney responded that she had requested release forms specific to _____, _____, and _____ that day. (Parents Exh. M.)

6. On April 29, 2020, Ms. Delaney emailed Ms. Heal requesting the referral form to get parental consent to share the Student's information because the District wanted to refer the Student to _____. (School Dist. Exh. R.) Ms. Heal responded the same day with the referral form. (School Dist. Exh. R.) On April 30, 2020, Ms. Delaney requested information regarding the waiting list at _____ and whether a summer or September registration might be possible. (School Dist. Exh. R.) Ms. Heal responded the same day, indicating that there were two significant variables: when the school would reopen and how many educational technicians would return to the school after being furloughed. (School Dist. Exh. R.) Ms. Heal indicated that after the current students had returned, _____ could begin to work on new referrals. (School Dist. Exh. R.) Ms. Heal reported that a summer start would likely be out of the question. (School Dist. Exh. R.)
7. On April 29, 2020, Ms. Delaney forwarded the Student's Mother the consent to disclose information to _____, noting that she was still waiting for the comparable forms for _____ and _____. (Parents Exh. B.)
8. On May 6, 2020, the Student's Mother emailed Ms. Delaney to indicate that she wished to revoke the release she had signed for _____ and wished to sign a new one indicating that she wanted to review documents before they were forwarded to _____. (Parents Exh. B.)
9. On May 7, 2020, Ms. Delaney emailed the Student's Mother a release for _____. (Parents Exh. B.) On May 8, 2020, the Student's Mother emailed Ms. Delaney an updated release form for _____ and a release form for _____. (Parents Exh. B.) The same day, Ms. Delaney emailed the Student's Mother indicating that she had emailed Dr. Bickford to follow up on the status of testing for the Student, indicating that if Dr. Bickford was comfortable, the academic testing could begin. (Parents Exh. B.)
10. On May 27, 2020, Ms. Delaney emailed the Student's Mother the referral packets she had sent to _____ and _____, noting that the Parents had not signed a release for _____ so she had not compiled a referral packet for that program. (Parents Exh. D.) _____ received the Student's referral packet on May 29. (Interview with Heal.)
11. On June 8, 2020, _____ reopened to students, having closed in mid-March due to the pandemic. (Interview with Heal.)
12. On June 9, 2020, a Complaint Investigation Report was issued finding that the School District had committed several IDEA violations and denied the Student a free appropriate public education. (School Dist. Exh. A.)

13. The Report included a Corrective Action Plan to be completed by the School District as follows:

1. The Student's IEP team shall convene within 30 days of this report to:
 - a) Determine an appropriate out-of-district placement for the Student in a special purpose private school or other appropriate placement focusing on children with behavior and emotional/social challenges. This placement shall have BCBA support/consultation as well as ed techs and staff trained and experienced in behavior/socialization and safety issues to provide specialized instruction in a small group and individual settings for the Student;
 - b) The District shall arrange for a manifestation determination/functional behavior assessment on the Student and if needed the following testing/evaluations:
 1. Psychological testing, including behavior assessments, classroom observation, and an assessment of the Student's need for counseling and other supportive services to address behavior issues;
 2. An assessment of academic, intellectual, and learning development, with a specific assessment of any deficiencies or decreases in the Student's current level as a result of lack of programming or behavior planning for the Student;
 - c) Review the findings of the evaluations with staff at the proposed placement to determine all necessary educational supportive services and specialized instruction that the Student requires, including ESY, emotional/social/behavioral support and additional academic supports;
2. Determine a schedule to review of progress within out of district placement along with appropriate opportunities for the Student to interact with typically developing peers and to return to placement within the District with appropriate instruction and supports;
3. Determine what compensatory education and services must be provided to the Student for equity in light of the District's failure to provide any meaningful social/behavioral educational programming to the Student for third grade year, taking into consideration the need for extended school year programming.
4. The IEP shall be amended to reflect all modifications of programming or services.
5. The District shall schedule training for all appropriate staff members in order to review state and federal regulations with respect to IEP Team responsibilities safety and documentation of behavior and supportive services offered to identified Students.
6. The following compliance documentation shall be sent to the Due Process Office and the Parents:
 - a copy of the IEP;
 - copies of all evaluation reports; and
 - a copy of the Written Notice (WN).

- Copy of the staff training curriculum, trainers and staff members attending the training.
14. On June 10, 2020, the Student's Mother emailed Dr. Bickford asking for support regarding the Student's behaviors, which the Parents as well as the Family's in-home supports were struggling with. (School Dist. Exh. N.) Ms. Delaney authorized Dr. Bickford to meet with the Parents to review in-home behavior supports. (School Dist. Exh. N.) Dr. Bickford also let the Student's Mother know that the CDC guidelines allowing groups of 10 to gather did not apply to the testing setting because psychologists fell under outpatient healthcare guidelines, which required wearing of masks, although that was contraindicated during testing since communication would be impaired and testing protocols would be violated. (School Dist. Exh. N.) Dr. Bickford also noted the guidance from the APA that psychologists must weigh the risks and benefits of providing in-person service and should provide in-person service in areas where community transmission was occurring only when the client would be at risk of harm if services were delayed. (School Dist. Exh. N.) She explained that she was working with colleagues to create safe testing sites. (School Dist. Exh. N.) Dr. Bickford was also concerned that if the Student conducted the evaluations remotely while at home, the results would not be valid. (Interview with Bickford.)
 15. On June 17, 2020, Ms. Delaney emailed the Student's Mother to indicate that the District felt they could set up a physical location for testing if Dr. Bickford was comfortable doing so. (School Dist. Exh. N.) The Student's Mother responded that she had spoken with Dr. Bickford, who felt that it would not be appropriate for the Student to be masked during testing and that she would need to be within a couple feet of the Student to conduct testing, rendering it impossible to do the testing at that time. (School Dist. Exh. N.)
 16. On July 2, 2020, Ms. Delaney emailed the Student's Mother regarding the IEP Team meeting scheduled for July 16 to explain that some members would be participating remotely. (School Dist. Exh. N.) She noted that an Advance Written Notice would be issued that day. (School Dist. Exh. N.) There is no responsive email from the Student's Mother in the record. (School Dist. Exh. N.)
 17. Also on July 2, 2020, an Advance Written Notice was issued regarding a July 16, 2020, IEP Team meeting. (School Dist. Exh. C.) The Student's Mother feels she was not given a choice of dates within the 30 days of the June 9, 2020, Corrective Action Plan. (Interview with Student's Mother.) School District Staff were in communication with the Student's Mother about the IEP Team meeting date and believed that the Student's Mother was in agreement with the Team meeting date. (Interview with Delaney; School Dist. Exh. O.)
 18. On July 6, 2020, Ms. Delaney emailed DOE to explain that due to staff vacations, the Student's IEP would be held on July 16, 2020, noting that she had spoken with the Student's Mother about the Team meeting date. (School Dist. Exh. O.)

19. Also on July 6, 2020, Ms. Delaney reached out to Dr. Bickford to ask if there were aspects of a physical space that would be set up to accommodate the Student's academic testing. (School Dist. Exh. N.)
20. On July 7, 2020, Dr. Bickford emailed Ms. Delaney to indicate that she felt that in person testing remained problematic and she was not comfortable assessing the Student remotely for various reasons. (School Dist. Exh. N.) Dr. Bickford explained that online testing was also not an option for evaluating the Student although she was exploring possible access to a non-diagnostic academic assessment that the Student could do on-line at home with parental support. (School Dist. Exh. N.)
21. On July 16, 2020, the Parents provided a list of topics they wished to be discussed at the July 16 meeting. (School Dist. Exh. D.) The list included topics from the Corrective Action Plan including a review of the Student's current IEP, development of an appropriate IEP and discussion of placement options, review of assessments/evaluations, a manifestation determination, compensatory education, and staff training. (School Dist. Exh. D.) With regard to compensatory education, the Parents requested that the determination be deferred until all testing had been completed. (School Dist. Exh. D.) The Parents indicated that they were anticipating using compensatory education to provide tutoring/instruction or extra ESY the following summer. (School Dist. Exh. D.)
22. The attendees at the July 16, 2020, included the Parents, six School District Staff members, Dr. Bickford, and representatives from _____, _____, and _____. (School Dist. Exh. E.) The meeting was held to address the Student's annual IEP, to determine day treatment programming, and to address the Corrective Action Plan in the Complaint Investigation Report in 20.075C. (School Dist. Exh. E.)
23. During the July 16, 2020, meeting, the Team noted that due to the Student's requests to work outside the classroom and _____ significant unsafe behaviors, the Student did not spend much time in the classroom during _____ grade, the 2019-2020 school year. (School Dist. Exh. E.) The Student completed work that was based on _____ grade standards with support from an aide, a special education teacher, or the social worker. (School Dist. Exh. E.) Due to missed class time, the Student had noticeable gaps. (School Dist. Exh. E.) The Team agreed to update the Student's annual goals in writing and social skills after the Student's evaluations were completed. (School Dist. Exh. E.) The Student's IEP was updated to include direct instruction in writing 30 minutes five times per week (an increase from three times per week); continuation of social skills instruction for 30 minutes per day; and BCBA consultation services of two hour per month (a new service). (School Dist. Exh. E.) The Student's accommodations were also modified. (School Dist. Exh. E.)
24. The Team determined that the Functional Behavior Assessment agreed upon in February should be conducted once the Student had returned to a school setting. (School Dist. Exh. E.) The Team agreed that the Academic Evaluation was also still necessary but should wait until guidelines supported in person meetings, with Dr. Bickford noting that

testing the Student in a mask would prevent clear communication between the evaluator and the Student. (School Dist. Exh. E.) Finally, the Team agreed to reconvene the review the draft IEP and make the placement determination. (School Dist. Exh. E.) The Team also agreed that the most appropriate placement for the Student was a special purpose private school, specifically a day treatment program. (School Dist. Exh. E.)

25. During the meeting, representatives of _____, _____, and _____ provided an overview of their programs. (School Dist. Exh. E.) The Parents agreed to visit each program and let School District Staff know their thoughts regarding the Student's placement. (School Dist. Exh. E.) _____ and _____ had immediate openings although _____ indicated they would likely not have an opening for the Student until November. (Interview with Delaney.) Each representative indicated that they had their own BCBA on staff or utilized a contracted BCBA. (School Dist. Exh. E.)
26. With regard to the Functional Behavioral Assessment that had been agreed upon in February, Dr. Bickford indicated that she had been working with the Student's teachers before _____ was suspended from school on March 3, 2020, and had been regularly revising the Student's behavioral support plan, which was in its fourth iteration at the time of the Student's suspension. (School Dist. Exh. E; Interview with Bickford.) The Team agreed that the FBA needed to wait to be completed until the Student was in a school setting. (School Dist. Exh. E.) In addition, the Team agreed that the Student's February 28, 2020, behaviors were manifestations of _____ disability. (School Dist. Exh. E.)
27. Also at the July 16, 2020, meeting, the Parents' expressed their concern that the Student struggled with generalization of skills. (School Dist. Exh. E.) The Parents also requested that the Student have access to a BCBA and trauma-informed staff, in order to ensure that the Student was not unnecessarily escalated. (School Dist. Exh. E.)
28. The School District agreed with the Parents request that a determination of compensatory education was put on hold until testing could be completed so that there would be a basis upon which to evaluate the Student's deficits and what compensatory education would be appropriate. (Interview with Delaney.)
29. On July 24, 2020, the School District issued a Written Notice from the July 16, 2020, IEP Team meeting. (School Dist. Exh. E.)
30. On August 3, 2020, the Student's Mother emailed Ms. Delaney indicating that the Family had selected _____ as the Student's placement. (School Dist. Exh. N.) On August 4, 2020, Ms. Delaney emailed the Student's Mother to let her know that she would be meeting with Stacey Bissell, Special Education Director for the District, the next day to review next steps and she would get back to the Student's Mother. (School Dist. Exh. N.) The Parents did not visit _____ because they felt that it was not a good fit for the Student's needs. (Interview with Student's Mother.) The Student's Mother visited _____ on July 23 but felt their physical plant was insufficient to meet the Student's needs. (Interview with Student's Mother.) Because the Family had

familiarity with _____, the Student's Mother did not visit there. (Interview with Student's Mother.) At that time, _____ was slowly accepting Students back to in person learning. (Interview with Student's Mother.)

31. On August 5, 2020, a proposed IEP was sent to the Parents reflecting the selection of _____ as a placement. (School Dist. Exh. F.)¹
32. On August 6, 2020, the Student's Mother emailed Ms. Delaney to indicate that she had no changes to the Written Notice but did have some requested changes to Section 6 of the Student's IEP. (School Dist. Exh. G.) Ms. Delaney responded to the Student's Mother on August 20, providing an amended IEP. (School Dist. Exh. G.)
33. On August 17, 2020, the Student's Mother emailed School District staff expressing concern about what would happen for the Student when school began since _____ would not have a spot for _____ until November. (School Dist. Exh. N.) On August 18, 2020, Ms. Delaney let the Student's Mother know she had received a response from _____ indicating that their staff would be able to attend an IEP Team meeting on August 24. (School Dist. Exh. N.) That day, an Advance Written Notice was issued scheduling an IEP Team meeting for August 24, 2020. (School Dist. Exh. H.) The purpose of the meeting was identified as a placement determination to a special purpose private school. (School Dist. Exh. H.)
34. Thirty minutes prior to August 24 meeting, the Student's Mother provided a list of parent requests and concerns for the meeting as an attachment to an email but School District Staff were not able to open the document. (School Dist. Exh. I.) The Parents requested that the IEP include a day treatment level of services rather than special purpose school; that the IEP include a grid of what the Student's services and supports would consist of if the School District shifted to remote-only status; and requested that even if the School District were remote-only that the Student be provided some in person services. (School Dist. Exh. I.) The Parents also requested that the School District identify where the Student's placement would be on the first day of the coming school year, indicating that they supported a placement at the _____ but felt it was premature to make that location the Student's placement at the meeting because _____ indicated only that it might have an opening for the Student. (School Dist. Exh. I.) The Parents also requested that the IEP include the specific frequencies of supports and services that would be provided through a day treatment program, that the IEP include a one-on-one BHP or educational technician for behavior support, and that the two hours per month of BCBA consultation agreed to by the Team at the July 16 meeting be included in the IEP. (School Dist. Exh. I.) In addition, the Parents requested that the School District make a proposal regarding compensatory education so that the Parents could consider it. (School Dist. Exh. I.) Finally, the Parents requested that they be provided a copy of the staff training curriculum, trainers, and staff members attending the training as required by Item 6 of the Corrective Action Plan. (School Dist. Exh. I.) Prior to the meeting, Ms. Delany emailed the Student's Mother to let her know that she

¹ Although the Team agreed on BCBA consultation services of two hours per month, the IEP listed the service as one hour per month. (School Dist. Exhs. E & F.)

could not open the attachment with the Parents' list of concerns and requests. (School Dist. Exh. N.) The Student's Mother brought a paper copy of the document to the meeting, which was held in person. (Interview with Delaney.)

35. The August 24, 2020, meeting was attended by the Student's Mother; Kristin Hobbs (Assistant Director), Ms. Bissell, and Ms. Delaney. (School Dist. Exh. J.) The Student's Mother considered this to be a placement meeting but did not regard it as an IEP Team meeting. (Interview with Student's Mother.) School District staff considered the meeting to be an IEP Team meeting, and had issued documentation to indicate such, to make a final determination on placement and amend the Student's IEP to reflect the new placement. (Interview with Delaney.)
36. At the August 24, 2020, meeting, the Student's IEP Team specifically determined the Student's placement to be the day treatment program, a special purpose private school, to include 31.5 hours of specially designed instruction, related services of 60 minutes per week of licensed clinical psychologist services, and 12 hours quarterly of BCBA consultation. (School Dist. Exh. I.) In addition to the accommodations identified in the Student's IEP previously, BHP day treatment at 32.5 hours per week was added. (School Dist. Exh. I.) With regard to an interim placement until a spot available to the Student, the School District offered Calvert Learning through Edmentum for all aspects of academic programming except writing; Calvert Learning was being used by all students in grade who were accessing the remote learning program. (School Dist. Exh. I.) Social skills instruction was offered through online Zoom with the grade class. (School Dist. Exh. I.) Social work was to continue through telehealth or in person while direct instruction would occur via Zoom. (School Dist. Exh. I.) The Team did not reach agreement on an interim plan while waiting for a spot to become available. (School Dist. Exh. I.) School District Staff felt that the Team's July determination that the Student required a special purpose private school rendered a public school setting an inappropriate placement in the interim and rejected the Parent's request that the Student be placed in a public school setting while waiting for a spot . (School Dist. Exh. I.)
37. At some point after the August 24 meeting, Ms. Delaney reached out to to see if the District could assist in hiring staff in order to advance the date on which the Student could attend, but indicated that there were two students ahead of the Student on the wait list and that if the District helped them hire a staff person, that person would likely not be working with the Student anyway. (Interview with Delaney.)
38. The Student's Mother wanted the Student to attend public school while waiting for a spot at . (Interview with Student's Mother.) The Student's Mother feels the School District should have replicated a special purpose private school setting within the District while waiting for such as by creating an isolated classroom and hiring additional staff. (Interview with Student's Mother.) School District Staff believe that the Complaint Investigation Report in 20.075C as well as the Team's July 2020 determination that the Student required a day treatment program rendered it inappropriate for to return to public school programming in person while awaiting a

spot at . (Interview with Delaney.) Dr. Bickford felt that the Student could not attend a school within the District in the fall while waiting for to maladaptive behavior. (Interview with Bickford.) She noted, for example, that School District Staff needed to chase the Student when eloped, even though chasing reinforced the attention-seeking behavior of eloping, while a special purpose private school would be better equipped to address eloping without providing additional stimulation for a student. (Interview with Bickford.)

39. On August 31, 2020, a Written Notice was issued regarding the August 24, 2020, IEP Team meeting. (School Dist. Exh. J.) The Written Notice indicated that the Parent's list of requests and concerns were not able to be discussed because School District Staff had not been able to open the document prior to the meeting. (School Dist. Exh. J.) The Written Notice also indicated that social skills instruction would be provided through online Zoom with the fourth class, social work services would be provided through telehealth or via Zoom, and specially designed instruction in writing would be provided through Zoom. (School Dist. Exh. J.)
40. Also on August 31, 2020, the Student's amended IEP, reflecting a prospective placement at , was sent to the Parents. (School Dist. Exh. L.) The amendments included the addition of specially designed instruction in all content areas other than social skills and writing as well as 60 minutes per week of psychological services to be delivered at the special purpose school with a start date of "TBD." (School Dist. Exh. L.) Although the IEP indicated it was mailed to the Parents on August 31, the Parents did not receive the Written Notice or Amended IEP. (Interview with Student's Mother.)
41. On September 3, 2020, Ms. Delaney updated the Due Process Office on the IEP Team meetings and IEPs generated since the Complaint Investigation Report in 20.075C was issued in June. (School Dist. Exh. O.)
42. The Student began the school year in remote school status with on line programming through Calvert Learning. (School Dist. Exh. N.) On September 23, 2020, the Student's Mother asked when Dr. Bickford would be able to begin testing, expressing concern about the Student's regression. (School Dist. Exh. N.)
43. The Student generally received writing instruction four days a week; was not able to attend on the 5th day because the writing session conflicting with a standing appointment had. (Interview with Student's Mother.) The Student was offered the opportunity to participate in a weekly meeting by the School District Staff person tasked with offering social skills instruction but the Student did not participate. (Interview with Delaney.)
44. The Student's Mother was not comfortable with the staff person initially identified to provide social work services through the District. (School Dist. Exh. N.) On September 28, 2020, Ms. Delaney asked Sharon Berliner, LCSW, Sanford School Social Worker, to add the Student to her social work caseload. (School Dist. Exh. N.) On September 29, 2020, Ms. Berliner emailed the Student's Parents to offer weekly guided social work lessons targeting social and emotional skills specific to the Student's social work goals.

(Parents Exh. G.) On October 1, 2020, Ms. Berliner forwarded the Student's Mother a series of five weekly video lessons and activities. (Parents Exh. G.)

45. On October 4, 2020, Ms. Delaney emailed the Parents to indicate she had reached out to _____ to determine if they remained on target for the Student to begin in November. (School Dist. Exh. N.) She noted that she would be meeting with Lisa Miller, the special education staff providing the Student specially designed writing instruction, the following day and would follow up on the social skills programming. (School Dist. Exh. N.)
46. In mid-October 2020, the Student was dropped to _____ grade programming in the online curriculum for English Language Arts at the Student's Mother's request. (School Dist. Exh. N.)
47. Dr. Bickford had the opportunity to remotely observe the Student on a few occasions while _____ was working independently at home in the fall of 2020, noting that _____ seemed to be tolerating on-line instruction well and was not in fight or flight mode. (Interview with Bickford.) In her observations of _____ doing remote learning at home, Dr. Bickford found the Student to be better regulated than she had ever observed since she began participating on _____ IEP Team in November 2019. (Interview with Bickford.)
48. On October 23, 2020, Ms. Delaney forwarded the Student's Mother an email from Ms. Heal indicating that all the entrance paperwork had been completed by the family but that _____ was still trying to hire a staff person to work with the Student. (School Dist. Exh. N.) Ms. Heal indicated that the Student would be the next student to start at _____. (School Dist. Exh. N.)
49. Also on October 23, 2020, Dr. Bickford conducted testing of the Student in person with COVID precautions, including masks. (Interview with Bickford; School Dist. Exh. P.) It was the first evaluation conducted by Dr. Bickford since the pandemic began. (Interview with Bickford.) The Student's Mother has concerns about how long it took to conduct the Student's academic testing and believes that delays on by the School District Staff in implementing Dr. Bickford's requirements for physical space accommodations delayed the testing. (Interview with Student's Mother.)
50. In late October, it was realized that the Parents had not received the Written Notice and IEP related to the August 24 meeting and School District Staff resent it. (Interview with Student's Mother; Interview with Delaney.) On October 29, 2020, the Student's Mother emailed Ms. Delaney to express confusion about the changes made to the IEP resulting from the August 24, 2020, meeting and questioned whether the meeting on August 24 was a legitimate IEP Team meeting. (Parents Exh. A.) The Student's Mother requested that the location of "special purpose private school" also include criteria for the placement, to include a program with behavior professionals, highly trained staff, and a smaller setting. (Parents Exh. A.) The Student's Mother also disagreed with the handwritten strikethrough of "7/16/20" for the start of some services and its replacement with "TBD." (Parents Exh. A.) The Student's Mother noted that the Student had not yet

received any social skills lessons and had not had any contact with the social worker. (Parents Exh. A.) On October 30, 2020, Ms. Delaney responded that the Student's Mother's concerns would be addressed through the complaint investigation process. (Parents Exh. A.)

51. On November 6, 2020, Ms. Delaney forwarded the DOE copies of the Written Notices and IEPs for the Student that had been issued since June as well as information about staff trainings. (School Dist. Exh. O.)
52. On November 13, 2020, Dr. Bickford issued an academic evaluation of the student. (School Dist. Exh. P.) Although masks were worn during the assessment, Dr. Bickford opined that the results were valid. (School Dist. Exh. P.) Her recommendations included a function-based behavior support plan, teaching techniques and accommodations to address slow processing speed, intensive mathematics instruction, a systematic approach to writing, minimization of pressure from adults, mindfulness training, emotion recognition programming, and careful monitoring of response to interventions regarding mathematics deficits. (School Dist. Exh. P.)
53. On November 16, 2020, the Student began attending . (Interview with Student's Mother.) On November 17, 2020, the School District convened an IEP Team meeting with the Student's Mother and Staff to review the Student's IEP. (Interview with Delaney.) The same day, an Amended IEP was issued. (School Dist. Exh. Q.) Dr. Bickford's academic testing was reviewed in the IEP. (School Dist. Exh. Q.) The Student's services were also amended to reflect that had begun at so the specially designed instruction that had been provided by the District ended and all content areas of specially designed instruction were begun at . (School Dist. Exh. Q.) The Student was noted to be placed at a special purpose private school where could work on challenging behavior that impacted ability to remain regulated with emotions and sensory system. (School Dist. Exh. Q.) At the November 17 meeting, the Student's Mother signed a new consent form for Staff to conduct the Student's FBA. (Interview with Student's Mother.) Nicole Heal, the Director of , is not able to determine whether the Student could have started earlier if the initial referral packet had come to her earlier than May 29, particularly due to the impact of the pandemic. (Interview with Heal.) In order to enroll the Student, had to hire a staff person and there were two students in the preschool program who entered new students this fall prior to the Student's opportunity to enroll. (Interview with Heal.) The Student was the first admittee in particular program at fall. (Interview with Heal.) Ms. Heal could not identify any actions by the School District following the Student's referral that delayed ability to offer a spot. (Interview with Heal.)
54. On December 1, 2020, the School District provided the Student's Mother a summary of the training it had conducted in response to the Corrective Action Plan. (School Dist. Exh. T.) Also on December 1, 2020, the School District provided the Due Process Office

with an update on the Student's placement and the training it had conducted. (School Dist. Exh. S.)

55. A meeting is scheduled for December 14 to conduct a 30-day review of the Student's placement at . (Interview with Delaney.) School District Staff anticipate making determinations of compensatory education and services at the December 14 meeting. (Interview with Delaney.) If the Student's FBA is completed by that time, it will be reviewed with Team members. (School District Response to Complaint.) If the FBA is not completed by December 14, the IEP Team will reconvene to review the FBA as soon as it is issued. (School District Response to Complaint.)
56. The School District conducted a series of trainings between August 27 and November 12, 2020. (School Dist. Exh. M.) Individual Remote Learning Plans training provided by the Department of Education was conducted on August 27 and September 27. (School Dist. Exh. M.) On September 1 and 8, all special education teachers and education technicians in grades K to 4 and all special education teachers and educational technicians in self-contained functional life skills and social/emotional programs attended Safety Care Training updates. (School Dist. Exh. M.) On October 7, 2020, a Complaint Investigation debrief was conducted by Ms. Delaney and attended by five School District Staff members, including the Student's special education teacher and the special education teachers who worked together in the same program, all of whom also serve as case managers. (School Dist. Exh. M; Interview with Delaney.) The meeting covered the complaint investigation process, the corrective action plan in 20.075C, District resources, a timeline for action when staff have concerns about a student, and a review of Chapter 33. (School Dist. Exh. M.) The information from the meeting was to be reviewed mid-year. (School Dist. Exh. M.) On November 12, 2020, a training on School District resources and behavior plans, including a timeline for action when staff have concerns about students, was conducted by Ms. Delaney and attended by all special education teachers in grades K through 4. (School Dist. Exh. M.)
57. In addition, every Wednesday, the School District holds district-wide training and special education topics are covered once or twice a month. (Interview with Delaney.) Ms. Delaney has incorporated information from the Complaint Investigation in 20.075C into those trainings. (Interview with Delaney.) School District Staff expressed some uncertainty as to the exact content and timeframes for the training required by the Corrective Action Plan in 20.075C. (Interview with Delaney.)

DETERMINATION

The School District has substantively complied with the requirements of the corrective action ordered in the Complaint Investigation Report of 20.075C, ordered pursuant to MUSER XVI.4.A(3).

1. The first requirement in the Corrective Action Plan was for the Student's IEP Team to convene within 30 days of the report, which was issued on June 9, 2020, to determine an

appropriate out-of-district placement, arrange for a manifestation determination/functional behavioral assessment, and review the findings of evaluations with staff.

The Student's IEP Team met on July 16, 2020, which was 37 days after the issuance of the Complaint Investigation Report. The Student's Mother feels she was not given a choice of dates within the 30 day time frame for an IEP Team meeting to occur. School District Staff states that the delay was due to staff vacation times given that the report was issued near the end of the school year and the 30 days encompassed the 4th of July holiday. School District Staff also state they were in communication with the Student's Mother about scheduling the IEP Team meeting and she did not object to the IEP Team meeting date.

Although the Student's IEP Team meeting was not held within 30 days, the Team conducted the actions required at the meeting. First, the Team determined that the Student required a special purpose private school, specifically a day treatment program. The Family, which was in agreement with the determination that a day treatment program was required, was offered three potential placements, with representatives from each of the schools present to explain their programs. Each of the programs met the criteria in the Corrective Action Plan of being a program focused on children with behavior and emotional/social challenges.

Second, the Team conducted a manifestation determination, concluding that the Student's behaviors on February 28, 2020, were a manifestation of disability. The Team also renewed its determination that a Functional Behavioral Assessment should be conducted. Dr. Bickford, who the Team had determined in February would conduct an FBA, was again tasked with conducting the assessment. The Team, including the Student's Mother, agreed that the FBA could not be conducted until the Student was in a school setting. The Corrective Action Plan also called for the Team to consider whether other testing or evaluations were needed, with the Team agreeing that the only other assessment required at that time was an academic assessment. Dr. Bickford was also tasked with completing the academic assessment.

The third requirement of this component of the Corrective Action Plan was that the Team review the findings of the evaluations with staff at the proposed placement to ensure that all necessary educational supportive services and specialized instruction that the Student required would be provided. Although it was not possible for the Team to do this at the July 16, 2020, meeting since the evaluations had not been conducted and the placement had not been determined, the Team has reviewed the academic evaluation issued in November 2020 with Staff. The academic evaluation was the first conducted by Dr. Bickford following the start of the pandemic in mid-March. She was not comfortable conducting the testing prior to October 2020 based on CDC and professional guidance. With regard to the Functional Behavioral Assessment, the Parents and School District agree that it could not have been completed until the Student returned to a school setting, which occurred in mid-November 2020. The Parents and the School District also agree that the BCBA at is best situated to conduct the FBA at this time; the Student's Mother has signed a consent for the FBA to be conducted by Staff.

There is no indication in the record that the delay of a week in the IEP Team meeting delayed any of the actions determined made at the meeting. The FBA could not be conducted

until the Student began at _____, which occurred on November 16. The academic assessment conducted by Dr. Bickford did not begin until several months after the meeting due to Dr. Bickford's concern about COVID 19 requirements and their impact on the administration of the test. Ultimately, Dr. Bickford was able to test the Student in October and November and issued her report within a few days of completing the testing of the Student.

Nor was the Student's placement at _____ impacted by the one-week delay in the scheduling of the IEP Team meeting. The three placement options were presented on July 16 and the Parents informed the District on August 3 that they preferred _____, at which time the District began taking steps to allow the Student to enroll at _____. Although the Student's Mother expresses concern that delays by the District in the spring in requesting a release from _____ or in submitting the full referral packet led to a delay in the Student's ability to enroll at _____, it is not clear that this was the case. The Director of _____ explained that she could not state with certainty whether the Student would have been admitted any sooner if the initial inquiry from the District in the spring, prior to the Family definitively choosing _____ in August, had come sooner. Furthermore, _____ Staff made clear at the July 16 meeting that it anticipated an opening for the Student no earlier than November. Although the other two programs offered to the Family had immediate openings as of July 16, the Family preferred to wait for the placement. Finally, School District Staff offered to assist _____ in hiring the staff necessary to allow the Student to enroll, with _____ declining the District's offer.

As such, the District substantively complied with the first requirement in the Corrective Action Plan to convene the Student's IEP Team and determine an appropriate out-of-district placement and arrange for a manifestation determination/functional behavioral assessment and to subsequently review the findings of academic evaluation with District and _____ Staff once the evaluation was complete. As noted above, the one-week delay in the scheduling of the IEP Team meeting did not have a substantive impact on the Team's determinations and subsequent actions.

2. The second requirement of the Corrective Action Plan was that the District determine a schedule to review the Student's progress within _____ out-of-district placement along with appropriate opportunities for the Student to interact with typically developing peers and to return to _____ placement within the District with appropriate instruction and supports.

The Student began attending _____ on November 16, 2020. An IEP Team meeting was held on November 17 to review the Student's IEP and the academic assessment issued on November 13 with _____ Staff. A 30-day review, to assess the Student's transition into _____, is scheduled for December 14. The School District anticipates continued review of the Student's progress in order to assess _____ readiness to return to a public school setting.

In terms of the Student's ability to interact with typically developing peers, School District Staff have expressed concern about the Student's potential lack of access to similar peers at _____. The only service being provided by the District is transportation. No other opportunities for interaction with same age peers has been requested by the Family.

As such, the District met the second requirement in the Corrective Action Plan.

3. The third requirement of the Corrective Action Plan was that the District determine “what compensatory education and services must be provided to the Student for equity in light of the District’s failure to provide any meaningful social/behavior educational programming to the Student during third taking into account the need for ESY.”

The District has not yet made an offer of compensatory education to the Family. The District and the Parents initially requested that the determination of compensatory education should be delayed until the academic assessment was completed and School District Staff agreed in order to allow for a meaningful determination of any regression the Student might have experienced and present levels of performance. At the July 16 meeting, the Team agreed to delay the determination of compensatory education until the academic evaluation was completed, which occurred on November 13. Just prior to the August 24 meeting, however, the Parents submitted a list of parent concerns, requesting that the discussion of compensatory education be held despite the fact that the academic evaluation was not complete. School District Staff were not able to open the Parents’ document, however, and informed the Student’s Mother of such prior to the meeting. The Student’s Mother brought a hard copy of the list of Parent concerns to the meeting. Ms. Delaney recalled that the School District Staff did not have time to thoroughly respond to the list of parent concerns since they did not have it in advance but did recall that Ms. Bissell explained the School District’s position that the academic evaluation was necessary to a meaningful discussion of compensatory education. Compensatory education was also not discussed at the November 17 meeting during which the academic evaluation was reviewed.

As such, this action is not yet completed. School District Staff have indicated that now that the academic assessment has been issued, compensatory education will be an agenda item for the December 14 IEP Team meeting. No deadline was given for the determination of compensatory education in the Corrective Action Plan and there was at least initially agreement that the determination should be made after the Student’s academic assessment was completed. It is not unreasonable that School District Staff needed more than the four days between the issuance of the academic evaluation on November 13 and the IEP Team meeting on November 17 to reach a final determination of an offer of compensatory education. Nevertheless, compensatory education should be determined at the December 14 IEP Team meeting.

4. The fourth item in the Corrective Action Plan was that the Student’s IEP should be amended to reflect all modifications of programming or services.

The Student’s IEP was issued on July 16, 2020. It was amended on August 24, 2020, and again on November 17, 2020. The August 24 amendment included a change in services to reflect what would be offered at , with the start date for such services listed as “TBD” because the Student’s start date at was not yet determined. Social work and social skills instruction, however, were to continue to be provided by the School District by a special education teacher in a special education setting for 30 minutes once a day.

The Student's Mother was not comfortable with the initial social worker assigned to work with the Student; the School District changed the Student's assigned social worker at the end of September to address the Student's Mother's concern. Although the Student's Mother expected social work services to be provided through remote interaction, social work services were provided through a set of video lessons and activities that was forwarded to the Family on October 1, 2020. School District Staff state that the Student was offered to attend a weekly morning meeting with a _____ grade class for social skills instruction but _____ did not attend.

The Student was provided the same general educational instruction as other remote students via Calvert Learning through Edmentum. Because the _____ grade curriculum was too difficult for the Student in English Language Arts, _____ program was converted to the _____ grade program in that subject in mid-October 2020. The Student's Mother provided significant assistance to the Student to help _____ access the on-line educational programming. The Student was provided specially designed instruction in writing four days per week; although a fifth day of instruction was offered, the time slot conflicted with a preexisting appointment the Student had for counseling services.

The Student's Mother did not agree with the Student's interim placement being primarily remote learning. School District Staff, however, felt that the Complaint Investigation Report in 20.075C as well as the Team's July 16, 2020, determination that the Student required a day treatment program as a placement prevented the District from offering the Student a placement within a public school program while waiting for _____ to enroll the Student. As Dr. Bickford pointed out, the public school setting inadvertently reinforced some of the Student's negative behaviors due to the nature of the classroom setting. The concerns that led to the Student being placed in a day treatment program could not adequately be addressed by the School District, even on an interim basis. When the Family and School District Staff disagreed on an interim placement, the Team made the determination that the Student would remain in remote school pending _____ placement at _____ but would receive some special education services remotely. Other day treatment programs, such as Sweetser or _____ were not explored as possible alternatives, although they may have had openings, because the Parents had selected _____ knowing that an opening was unlikely until November.

Although the Student's Mother has concerns about the provision of education during the interim placement (and she may file a due process proceeding to address that allegation), the School District met the fourth requirement of the Corrective Action Plan by amending the Student's IEP to reflect modifications of programming or services as they occurred between July 2020 and the Student's enrollment at _____ in November 2020.

5. The fifth item in the Corrective Action Plan was that the District would schedule training for all appropriate staff members in order to review state and federal guidelines with respect to IEP Team responsibilities, safety and documentation of behavior, and supportive services offered to identified Students.

The School District has provided information to the Due Process Office and the Parents regarding the trainings it has offered. The Due Process Office will provide a substantive response to the School District following its review of the training conducted.

6. The sixth item in the Corrective Action Plan was that the District would provide the Due Process Office and the Parents with a copy of the Student's IEP, copies of all evaluation reports, a copy of Written Notices, and a copy of the staff training curriculum, trainers, and staff members attending the training.

The School District has provided the Due Process Office and the Parents with a variety of documents and information regarding completed and planned training. The Due Process Office will provide a substantive response to the School District following its review of the submitted documents.

CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

Because no violations of the Corrective Action Plan requirements from Complaint Investigation 20.075C were found to have occurred, no corrective actions are required.