

## COMPLAINT INVESTIGATION REPORT

v.

Complaint 23.016C

Complaint Investigator: Rebekah J. Smith, Esq.

November 2, 2022

### INVESTIGATION PROCEDURE

Complainant: (Parent)

Respondent: (School District)

Student: , years old, not currently enrolled in school

The Department of Education received this complaint on August 30, 2022. A Draft Allegations Report was issued on September 16, 2022. An information session was held by videoconference on September 19, 2022, which was attended by the Parent and , Special Education Director for the School District. The Parent provided an Exhibit, marked as Parent Exhibit #1. On September 30, 2022, the School District filed a response to the complaint as well as a set of exhibits marked as School District Exhibits A to O and a narrative response to the allegations.

The Parent represents herself. The School District is represented by Isabel B. 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:

1. , Parent
2. , Special Education Director,
3. , Former Special Education Teacher,
4. , School Principal and Superintendent
5. , Case Manager and Special Education Teacher,

### PRELIMINARY STATEMENT

The Student is old. The Student is not currently enrolled in school. Since January 2022, the Student and the Student's Mother have lived in , Maine, which is within Regional School Unit No. . Prior to January 2022, the Student and the Student's Parents lived in , within Regional School Unit No. and the Student

attended \_\_\_\_\_ School. The Student experiences significant developmental and cognitive delays, a hearing impairment, and a mobility impairment. The Student experienced two incidents in which the same student removed \_\_\_\_\_ mask or hit \_\_\_\_\_ in the face. The Student graduated from \_\_\_\_\_ School in January 2022 and attended \_\_\_\_\_ at the end of the 2021-2022 school year.

## **ALLEGATIONS**

1. During the 2021-2022 school year, the School District failed to provide transportation services that were consistent with the identification of transportation as a related service in the Student's IEP in violation of MUSER IX.3.A(1)(d) (IEP must include statement of the related services and supplementary aids and services to be provided to the child).
2. During the 2021-2022 school year, the School District failed to provide the services identified in the Student's IEP, including failing to provide a deaf and hard of hearing service of observation and consultation, in violation of MUSER IX.3.A(1) (An IEP is a written statement for each child with a disability that a school district must follow) and MUSER IX.3.A(1)(d) (IEP must include statement of the related services and supplementary aids and services to be provided to the child).
3. During the 2021-2022 school year, the School District failed to provide the Student with transition services although the School District graduated the Student at the end of the 2021-2022 school year in violation of MUSER IX.3.A(h) (IEP Team shall adopt a transition plan during the Student's \_\_\_\_\_ grade year to be updated annually thereafter and to include transition services needed to assist in reaching measurable postsecondary goals).
4. Whether the School District graduated the Student prior to the end of his eligibility and failed to provide \_\_\_\_\_ with a free and appropriate public education in violation of MUSER I (requiring that students with disabilities have available to them a free appropriate public education); 20 U.S.C. 1415(a)(1)(B)(i); and Administrative Letter 1 of the Commissioner of the Department of Education dated January 21, 2021.

## **FACTUAL FINDINGS**

### **Documentary Record**

1. The Student attended \_\_\_\_\_ School from May 2018 to January 2022. (School District Exh. S-020 & S-052.) The Student has cognitive and developmental delays, a hearing impairment, and a mobility impairment. (School District Exh. S-001 to S-005.) IEP identifies \_\_\_\_\_ as a student with a disability in the category of Intellectual Disability. (School District Exh. S-006.)
2. On May 22, 2018, a Written Notice was issued following an IEP Team meeting regarding the Student's transfer into the School District as a \_\_\_\_\_ grade student receiving special education services in a functional life skills program in Florida. (School District Exh. S-020.) The IEP Team reviewed the Student's Florida IEP to ensure appropriateness of goals and services and agreed to maintain the Student's IEP

goals with regards to English/Content Area Reading; Math; Physical Therapy; Social Work; Functional Life Skills; Cooking; Money; and Fractions-Life Skills. (School District Exh. S-021 to S-023.)

3. On September 20, 2019, a Psychological Reevaluation of the Student was issued by \_\_\_\_\_, Psy.D. (School District Exh. S-001.) The Student was \_\_\_\_\_ years old at the time of the evaluation and had multiple disabilities. (School District Exh. S-004.) The Student was attending a functional life skills program at \_\_\_\_\_ School in which \_\_\_\_\_ received specially designed instruction to improve functional academic skills, independent living skills, and social skills and also received physical therapy, speech and language therapy, and consultation from a teacher of the deaf. (School District Exh. S-005.) The Student's testing showed significant deficits in intellectual functioning and in general adaptive development. (School District Exh. S-005.) \_\_\_\_\_ was performing at a second-grade level academically. (School District Exh. S-002.) Dr. \_\_\_\_\_ recommended a variety of tools to assist the Student, including frequent repetition and visual representations of new materials, linking new information to already known information, the use of visual clues with verbal presentation of materials, and narrowing of focus on specific skills that would enable the Student to directly increase \_\_\_\_\_ capacity for independence and employment. (School District Exh. S-005.)
4. On May 4, 2021, an annual IEP Team Meeting was held and a new IEP was established for the Student for the period of May 14, 2021 through May 13, 2022. (School District Exh. S-006.) The Student's IEP Team ordered the following evaluations: academic, speech and language, physical therapy, psychological, and classroom observation. (School District Exh. S-031.) The Student was in \_\_\_\_\_ year of \_\_\_\_\_ school and it was determined that \_\_\_\_\_ was eligible to receive services until July 5, 2023, when \_\_\_\_\_ would turn \_\_\_\_\_; as such, \_\_\_\_\_ would \_\_\_\_\_ in the spring of 2023. (School District Exh. S-031.) The Team was determined that the Student would work on the following academic goals: reading, comprehension (cause/effect, compare/contrast); reading, comprehension (rereading, predictions); math, money and time. (School District Exh. S-031.) The Team also determined that the Student would work on the following functional goals: Functional Life Skills, cooking (fractions); Functional Life Skills, cooking process; Functional Life Skills, Peer Communication; Speech, Functional Communication/Intelligibility; Physical Therapy, Functional Mobility; Consult, Teacher of the Deaf; and they added the functional goal of Functional Life Skills, Attention to Task. (School District Exh. S-031.) The purpose of the consultation with a teacher of the deaf was to support incorporation of ASL into the Student's classes. (School District Exh. S-033.)
5. The Team agreed that the Student should continue to have the following accommodations carried forward from \_\_\_\_\_ prior IEP: signals/prompts to gain \_\_\_\_\_'s attention before the teacher gives directions; teacher use of microphone/Bluetooth capability of cochlear implant; simplified directions; use of sign language to spell words; concrete materials and manipulatives; access to adult support throughout school day; electives; modified physical education; access to wheelchair for

- emergency evacuation; modified seating as needed; close supervision during walking; and a hybrid/remote learning plan. (School District Exh. S-031-S032.) The Team added the accommodations of prompting the Student to voice words while using ASL and a health plan. (School District Exh. S-032.) The Team determined that the Student would continue to receive the following related services: speech/language, 30 minutes/week; teacher of the deaf (consult), 60 minutes/month; transportation, 10 (10) minutes/week; and physical therapy, 30 minutes/week. (School District Exh. S-032.) The Team determined that the Student did not qualify for ESY that summer because would be accessing a job coach through vocational rehab. (School District Exh. S-032.) The Student would be in the resource class placement for all of academics, including related services. (School District Exh. S-032.)
6. The Student's IEP indicated that several transition assessments had been completed, including the Enderle and Severson Postsecondary Outcomes and Interests in 2018, the What Do I Want to Do? And S.N.O.W. Chart in 2019, and the Transition Planning Inventory (Student Interests and Preferences – Basic) in 2021. (School District Exh. S-018.) The Student's post-secondary education/training goal was to participate in a job training program that would enable to work in a restaurant, which would require assistance from a job coach and a vocational rehabilitation counselor. (School District Exh. S-018.) The Student's employment goal was to pursue employment in a restaurant. (School District Exh. S-018.) The Student's independent living goal was to continue living with parents and work towards living in a group home at the age of 25. (School District Exh. S-018.) Because the Student qualified for vocational rehabilitation services, was referred to the Center for case management services. (School District Exh. S-019.)
  7. The Student's IEP called for access to adult support throughout the school day and special transportation to and from school, but did not specify that would have a one-on-one aid during bus rides. (School District Exh. S-015 & S-017.)
  8. The Written Notice from the IEP Team meeting indicated that the Student's next annual date would be on May 3, 2022, and triennial evaluation would also be conducted by May 3, 2022. (School District Exh. S-032.)
  9. On May 6, 2021, , School Social Worker, contacted the Center regarding openings for case management. (School District Exh. S-043.) She was informed that the Student would be a good fit for their services and there was no wait list for case management services. (School District Exh. S-043.) Ms. returned the referral form for the Student to attend the Center to Ms. the same day. (School District Exh. S-043 & S-045.) Also on that day, Ms. forwarded the referral to the Center and informed the Parent that the School District had filled out the referral for the Student to receive case management services from the Center and provided their flyer. (School District Exh. S-046 & S-047.) The Associate Director of Children's Case Management at the Center responded that she would assign a case

manager on May 7, 2021, and would reach out to the Family to schedule an intake. (School District Exh. S-047.)

10. On June 14, 2021, a Written Notice was issued to the Parent amending the Student's IEP by agreement without a Team meeting. (School District Exh. S-037.) The Written Notice amended the IEP to add the following services to his IEP: specially designed instruction, functional sign language vocabulary of two 30-minute sessions weekly; and consultation, functional sign language vocabulary of two 10-minute sessions weekly. (School District Exh. S-038.)
11. On July 1, 2021, a Written Notice was issued to correct an error on the previous notice and to add the functional goal of functional life skills and functional sign language to IEP. (School District Exh. S-040.)
12. On October 7, 2021, Ms. [redacted] sent an email to the families of students in the life skills program indicating that RSU # [redacted] had rented out a cottage to allow students to practice their independent living skills in a residential setting between October 2021 and May 2022. (School District Exh. S-048.)
13. On October 5, 2021, a student on the bus with the Student tried to take off the Student's mask. (School District Exh. S-055; Interview with Parent.) The Student was not seen in the [redacted] School health clinic that day. (School District Exh. S-055.) No bus conduct report was completed. (School District Exh. S-059.)
14. On January 4, 2022, the Student was grabbed by the same student in the face area while riding the bus in the morning, the bus aide intervened, and the Student was left with a red mark under [redacted] left eye. (School District Exh. S-058.) The Student was seen in the [redacted] School clinic at 8:56 a.m. for a scratch below left eye, which was cleaned after which antibiotic ointment and a band-aid were applied. (School District Exh. S-055.) School District transportation staff decided to place the Student further back on the bus so that the offending student would not walk by [redacted] as [redacted] exited the bus to avoid future occurrences. (School District Exh. S-060.) [redacted], Special Education Teacher at [redacted] School, was serving as a bus aide at the time of the incident. (School District Exh. S-061.) She reported the incident to [redacted], the Special Education Director for RSU # [redacted], indicating that the offending student was very quick and went after the Student when she looked away for a second. (School District Exh. S-061.) She suggested moving the offending student closer to the front of the bus as well as moving the Student farther back. (School District Exh. S-061.)
15. Also on January 4, 2022, Ms. [redacted] sent an email to Ms. [redacted] stating that the Student's Mother was very upset about the bus incident because it was the second time it had happened and she had decided that the Student would not be returning to school until [redacted] or the other student had a separate bus or van. (School District Exh. S-060.) [redacted], [redacted] School Principal and RSU [redacted]

Superintendent, informed School District staff that afternoon that the offending student would be picked up and brought home by a different driver starting the next day and that the Student would remain in the same vehicle. (School District Exh. S-062.)

16. A bus conduct report was issued stating that a student was exiting the bus at Middle School when reached out and grabbed at the Student's face area. (School District Exh. S-058.) The bus conduct report indicated that the aide who was behind the offending student reached over and pulled arm back. (School District Exh. S-058.) The report stated that the bus aide then checked on the Student to see if was hurt; the Student took the bus aide's hand and placed it where had been grabbed and pointed to a mark below left eye where there was a red mark. (School District Exh. S-058.)
17. On January 18, 2022, Ms. emailed Mr. , informing him that the Student was moving to that weekend but the Parent had inquired about the Student remaining at School. (School District Exh. S-051.) Ms. informed Mr. that she had explained the Superintendent's Agreement process to the Parent and informed the Parent that the Family would be responsible for transportation to and from School if a Superintendent's Agreement occurred. (School District Exh. S-051.)
18. Also on January 18, 2022, an RSU # administrative staff member emailed the Parent indicating that RSU # had received the Student's new student registration and RSU # would be working to get the student enrolled as quickly as possible. (Parent Exh. #1.) The Parent was provided a variety of paperwork to be returned to School. (Parent Exh. #1.) The Parent responded that School would have most of the information that RSU # was requesting because she had provided it when the Student began attending School three years prior. (Parent Exh. #1.) The RSU # administrator responded the same day that the Parent needed to provide the information directly because RSU # could not ask for information from RSU # until the Student was enrolled in RSU # . (Parent Exh. #1.)
19. On January 23, 2022, the Parent sent an email to the RSU # administrative staff member to indicate that the family had decided to keep the Student at School. (Parent Exh. #1.) Nevertheless, the Student did not return to School. (Interview with .)
20. On February 7, 2022, a Written Notice was issued to the Parent reflecting an agreement for an amendment to the Student's IEP without a Team meeting on January 25, 2022. (School District Exh. S-052.) The Written Notice indicated that the Family had moved to , the Student was years old and medically fragile, and a review of credits indicated that had enough credits to graduate. (School District Exh. S-053.) It was noted that the Parent could have enrolled the Student in RSU # but this option was rejected due to the Student's medical issues and the fact

that had enough credits to graduate. (School District Exh. S-053.) The Written Notice stated that the Parent was concerned about keeping the Student in school during the pandemic and she felt that, given age and the fact that had enough credits to graduate, she felt it was safer to pursue adult services. (School District Exh. S-053.)

21. On April 4, 2022, School District Staff confirmed that the video footage from both the bus incidents involving the Student had been deleted due to the amount of time that had passed. (School District Exh. S-059.) Pursuant to RSU # policy, security camera recordings were not stored after 45 days except where there had been a request from the police or a court or the recordings were needed for a disciplinary matter. (School District Exh. S-063.)

### **Interview with Student's Mother**

22. The Parent feels that the School District was not following protocols regarding the two bus incidents the Student was involved in. (Interview with Student's Mother.) She feels they are brushing the bus incidents off because it involves special needs students. (Interview with Parent.) The Parent feels the incidents should be treated as bullying situations. (Interview with Parent.)
23. During the first bus incident in October of 2021, the Student had a mark on eye. (Interview with Parent.) When the Parent contacted the school, she was told that the Student was attacked on the school bus. (Interview with Parent.) She was told that the other student tried to take the Student's face mask off. (Interview with Parent.) The Parent requested that the school put an aide on the bus, which they did within two to three weeks; the Student was out of school during that time until they got an aide. (Interview with Parent.)
24. The second bus incident was in January of 2022. (Interview with Parent.) A school staff member called the Parent and told her she had to come pick up the Student, that the situation was really bad and that there was a lot of blood. (Interview with Parent.) When the Parent arrived at school, the Student was distraught. (Interview with Parent.) She took the Student to the doctor, who cleaned up eye and gave a tetanus shot. (Interview with Parent.) The Parent also called the police, who spoke with the Student and viewed the video of the bus. (Interview with Parent.) The Parent did not press charges due to the fact that the offending student is autistic. (Interview with Parent.)
25. The Parent states that the Student always had an aide on the bus even though it was not a one-to-one aide. (Interview with Parent.) She believes that the statement on the Student's IEP that will have access to adult support throughout the day should have extended to the bus. (Interview with Parent.)
26. The Parent believes that Ms. decided that the Student was done with school in January. (Interview with Parent.) The Parent did not receive anything in writing

about the termination of the Student's services. (Interview with Parent.) At the Parent's request, the Student was able to participate in graduation even though [redacted] had already been given [redacted] diploma. (Interview with Parent.)

27. The Parent states that she had enrolled the Student in RSU # [redacted] but was directed by Ms. [redacted] within approximately a week of [redacted] enrollment to unenroll the Student from RSU # [redacted] so that RSU # [redacted] could graduate [redacted]. (Interview with Parent.)
28. The Parent does not believe that the Student received appropriate transition services. (Interview with Parent.) She expected to attend an IEP meeting in May 2022 that would explain all of the Student's transition services. (Interview with Parent.) The Parent contacted the [redacted] Center in either 2018 or 2020 and was told that the application submitted by RSU # [redacted] was incomplete because the Student needed a sight test. (Interview with Parent.)

**Interview with [redacted], Case Manager and Special Education Teacher**

29. [redacted] is the Special Education Teacher in the functional life skills classroom at [redacted] School. (Interview with [redacted].) She was also the Student's Case Manager. (Interview with [redacted].)
30. When the Student enrolled in RSU [redacted] in 2018, [redacted] was considered a [redacted] grader. (Interview with [redacted].) During the last IEP meeting at the end of the 2020-2021 school year, the Parent wanted the Student to be able to sign and speak at the same time. (Interview with [redacted].) The School District made a referral to the Maine Center for the Deaf and Hard of Hearing in July of 2021. (Interview with [redacted].) The provider who came conducted observations and developed a consultation goal and also worked with the Student on functional sign language. (Interview with [redacted].) Ms. [redacted] was aware that the provider was not present at some scheduled sessions due to COVID exposure she experienced in the school setting. (Interview with [redacted].)
31. In May of 2021, Ms. [redacted] was involved with the referral for adult services for the Student. (Interview with [redacted].) Ms. [redacted] wanted to send the referral from RSU # [redacted] in order to get the ball rolling for the Student. (Interview with [redacted].) The School District also invited a representative from Opportunity Alliance to attend the Student's IEP meeting but the Parent did not see what value the representative added to the Team and he was not invited to any further meetings. (Interview with [redacted].) In addition, the Parent visited the [redacted] day program and the Team decided that it was not an appropriate setting for [redacted]. (Interview with [redacted].) Ms. [redacted] also suggested that the Student could be referred to [redacted] Case Management and left it in the Parent's hands to consider the program, but she did not. (Interview with [redacted].) As a result of the exploration of other programs that was not fruitful, the School District referred the Student to the [redacted] Center. (Interview with [redacted].)



32. Ms. \_\_\_\_\_ checked in on the Student during his vocational rehabilitation placement at the Parent’s restaurant during the summer of 2021. (Interview with \_\_\_\_\_.) She understood that the Student was learning to take on various tasks around the restaurant. (Interview with \_\_\_\_\_.) She also observed that \_\_\_\_\_ was making great strides in expanding the tasks \_\_\_\_\_ could do and sustaining attention to complete various tasks. (Interview with \_\_\_\_\_.)
33. Ms. \_\_\_\_\_ was not present for either of the incidents involving another student grabbing the Student’s face mask on the bus. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ did interact with the Student after both incidents. (Interview with \_\_\_\_\_.) The Student had a tendency to get upset because \_\_\_\_\_ was so medically fragile. (Interview with \_\_\_\_\_.) Following the January 4, 2022, incident, the Student was grumpy when got off the bus and Ms. \_\_\_\_\_ observed a scratch under \_\_\_\_\_ left eye. (Interview with \_\_\_\_\_.) The Student was able to tell her what happened on the bus; Ms. \_\_\_\_\_ followed up with the Student to explain that the offending student had not been nice. (Interview with \_\_\_\_\_.)
34. Ms. \_\_\_\_\_ called the Parent and let her know what happened; she told the Parent that the Student was upset about the incident. (Interview with \_\_\_\_\_.) The Parent was very angry. (Interview with \_\_\_\_\_.) The Parent came to pick up the Student and stated that she was not bringing the Student back to school until the other student was off the bus. (Interview with \_\_\_\_\_.) The other student was moved off the bus that afternoon and put on a van. (Interview with \_\_\_\_\_.) For the next few days, the Student did not ride the bus; instead, the Parent drove \_\_\_\_\_. (Interview with \_\_\_\_\_.)
35. The Parent looked into enrolling the Student in RSU # \_\_\_\_\_ when the Family moved to \_\_\_\_\_ but had concerns about how big the Student’s program would be. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ explained the possibility of a Superintendent’s Agreement to the Parent, which would allow the Student to continue attending \_\_\_\_\_ School if the superintendents of RSU # \_\_\_\_\_ and RSU # \_\_\_\_\_ agreed, but the Family would have to transport the Student to \_\_\_\_\_ School. (Interview with \_\_\_\_\_.) The Parent responded that she had found a new job and did not feel as though she could provide transportation. (Interview with \_\_\_\_\_.) On January 25, 2022, because the Parent was not going to enroll the Student elsewhere, the Parent and the School District agreed to graduate the Student. (Interview with \_\_\_\_\_.)
36. Ms. \_\_\_\_\_ understood from the Parent around that time that the Student was facing significant medical issues that were very concerning. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ personally purchased a yearbook for the Student and provided it to \_\_\_\_\_. (Interview with \_\_\_\_\_.) When she texted the Parent to let her know the yearbook was in, the Parent responded by asking for information about graduation. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ was caught off guard because she was not expecting that inquiry. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ spoke with Ms. \_\_\_\_\_, who responded that she had spoken to Mr. \_\_\_\_\_ and they had determined that the Student was eligible to

- participate in graduation. (Interview with .) Ms. was also informed that the classroom staff would need to provide support for the Student to participate in graduation. (Interview with .) Ms. felt that the Student was happy to participate and the Parent was content. (Interview with )
37. After the Student had moved, the Parent asked Ms. about the Student's referral to the Center, indicating that she had not received the email that Ms. had sent her in May 2021 indicating that the referral had been put through. (Interview with .)
38. Ms. and other members of the classroom were devastated when the Student moved. (Interview with .) Ms. had planned for the Student to be in her classroom until the end of eligibility in the spring of 2023. (Interview with ) The Student was loved by everyone in the classroom and was a very active participant. (Interview with .)

**Interview with , Former Special Education Teacher**

39. was a Special Education Teacher at School in RSU # during the 2021-2022 school year. (Interview with .) Because RSU # could not find anyone to fill the bus aide position and she had two students who required a bus aide in their IEP, Ms. agreed to take turns with Ms. filling in on the morning bus run as a bus aide beginning in late fall 2021. (Interview with .) Ms. served as the bus aide three mornings a week. (Interview with .)
40. Ms. was the bus aide on January 4, 2022, when the offending student grabbed at the Student as the offending Student walked off the bus. (Interview with ) The Student normally sat with hood up and back to the offending student. (Interview with .) On January 4, 2022, however, the Student was facing the aisle when the offending student walked by. (Interview with .) When Ms. realized that the offending student was grabbing at the Student, she grabbed the offending student and walked off the bus at School, where was getting off and where an educational technician met . (Interview with .)
41. The Student was upset. (Interview with .) Ms. observed that the Student had a red mark just below eye. (Interview with .) She asked if was okay and although shook head to indicate yes, also pointed at face. (Interview with .)
42. Ms. had never observed any other interactions between the Student and the offending student, who attended School. (Interview with .) She found the offending student's behavior towards the Student to be impulsive but not atypical for in the classroom. (Interview with .)

**Interview with \_\_\_\_\_, Special Education Director**

43. \_\_\_\_\_ has been the Special Education Director in RSU # \_\_\_\_\_ for five years. (Interview with \_\_\_\_\_.) She has been at all of the Student's IEP meetings since enrolled. (Interview with \_\_\_\_\_.)
44. Some years the Student did not attend school during the winter because the Family moved to Florida for several months. (Interview with \_\_\_\_\_.)
45. The Student's IEP called for ASL support, which took the form of a service provider utilizing the \_\_\_\_\_ program rather than sign language. (Interview with \_\_\_\_\_.) The contracted service provider worked primarily with kids who were using oral language. (Interview with \_\_\_\_\_.) The service provider missed some of her sessions with the Student due to COVID exposure she experienced while in the school building. (Interview with \_\_\_\_\_.)
46. Ms. \_\_\_\_\_ was made aware of both incidents that occurred on the bus. (Interview with \_\_\_\_\_.) After the January 4, 2022, incident, school district staff made arrangements for alternative transportation for the offending student and made a safety plan for the Student. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ called the Parent to let her know that the offending student would be moved to a different bus. (Interview with \_\_\_\_\_.)
47. When it was determined that the Student was going to move to \_\_\_\_\_, Ms. \_\_\_\_\_ asked Ms. \_\_\_\_\_ to inform the Parent of the possibility of a Superintendent's Agreement so that the Student could remain at \_\_\_\_\_ School. (Interview with \_\_\_\_\_.) The Parent declined because she would have to transport the Student. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ suggested that the Student be given a diploma from RSU # \_\_\_\_\_ so it would not appear that \_\_\_\_\_ had dropped out. (Interview with \_\_\_\_\_.) School staff looked at \_\_\_\_\_ credits and determined that the Student was eligible for a diploma. (Interview with \_\_\_\_\_.)
48. Ms. \_\_\_\_\_ feels that the Student was appropriately provided transition services, which is a major component of the life skills program. (Interview with \_\_\_\_\_.) Ms. \_\_\_\_\_ served as an education technician in the Student's classroom for 12 weeks at the start of the school year and observed the Student performing recycling and other life skills in the classroom. (Interview with \_\_\_\_\_.) Every other day the students in the life skills classroom went to the cottage rented by the School District to perform life skills such as cooking, cleaning, making beds, and hosting gatherings. (Interview with \_\_\_\_\_.)

**Interview with \_\_\_\_\_, School Principal and RSU Superintendent**

49. \_\_\_\_\_ is the \_\_\_\_\_ School Principal and the Superintendent of RSU # \_\_\_\_\_. (Interview with \_\_\_\_\_.) Mr. \_\_\_\_\_ was contacted by the Student's Stepfather with concerns months after the Student left

- School. (Interview with .) The Student's Stepfather told him that the injury to the Student's eye was causing other issues and they wanted to file several complaints regarding the school's reaction to the bus incidents. (Interview with .) The Student's Stepfather had called an elected official's office and Mr. received some correspondence from that office inquiring as to what happened with the Student. (Interview with .)
50. Mr. was not informed about the first bus incident when it occurred. (Interview with .) After the second bus incident, the Student was seen by the school nurse and Mr. saw the band-aid under the Student's eye. (Interview with .)
51. Mr. feels that School has high quality and caring special education staff as well as a high performing program that is taking kids to places that they were never able to foresee before. (Interview with .)
52. The school policy allows them to store videos for 45 days. (Interview with .) When the Student's Stepfather first contacted him, Mr. told the Student's Stepfather that he could come in and watch the video and made an appointment for the Student's Mother to come in to watch it but she did not appear for the appointment. (Interview with .) The second time the Student's Stepfather called about the video, the 45 days had elapsed and the video had been deleted. (Interview with .)
53. There were no concerns of bullying raised by the Family until March of 2022. (Interview with .) The Family's concerns seemed to center on the bus incidents. (Interview with .) Mr. was trying to figure out how he could help. (Interview with .) The Student's Stepfather was talking about the physical impact and that the scratch on the Student's eye had led to other health issues but Mr. was unable to make sense of the linking of issues. (Interview with .) Mr. just listened and tried to make the Student's Stepfather feel better. (Interview with .) The Student's Stepfather made multiple threats regarding other offices to which he was going to report the bus incident. (Interview with .)
54. Mr. had no problem with the Student attending graduation at the end of the 2021-2022 school year even though the Student had left the school in January. (Interview with .) They assigned staff to provide accommodations to the Student and the Student participated successfully. (Interview with .)

## **DETERMINATIONS**

1. During the 2021-2022 school year, the School District did not fail to provide transportation services that were consistent with the identification of transportation as a related service in the Student's IEP in violation of MUSER IX.3.A(1)(d). **NO VIOLATION FOUND.**

2. During the 2021-2022 school year, the School District failed to provide the services identified in the Student's IEP, including failing to provide a deaf and hard of hearing service of observation and consultation, in violation of MUSER IX.3.A(1) and MUSER IX.3.A(1)(d). **VIOLATION FOUND.**
3. During the 2021-2022 school year, the School District did not fail to provide the Student with transition services although the School District graduated the Student at the end of the 2021-2022 school year in violation of MUSER IX.3.A(h). **NO VIOLATION FOUND.**
4. The School District did not unilaterally graduate the Student prior to the end of his eligibility and thus did not fail to provide with a free and appropriate public education in violation of MUSER I, 20 U.S.C. 1415(a)(1)(B)(i), and Administrative Letter 1 of the Commissioner of the Department of Education dated January 21, 2021. **NO VIOLATION FOUND.**

### **ANALYSIS**

1. The Student's IEP called for specialized transportation, which was provided by the School District during the 2021-2022 school year. Although the Student's IEP also called for access to an adult, the IEP did not specify that the Student would have a one-on-one bus aide nor did have a one-on-one bus aide during time attending RSU . Although the School District created a safety plan for the Student that involved having the offending student sit in front of, rather than behind , when the Parent requested that the Student not be transported with the offending student any further, the School District immediately made arrangements for alternative transportation for the offending student. As such, the School District did not fail to provide transportation services consistent with the Student's IEP during the 2021-2022 school year and did not violate MUSER IX.3.A(1)(d).
2. The Student's IEP for the 2021-2022 school year included three different services regarding hearing impairment. IEP originally called for a consultation with a teacher of the deaf for 60 minutes per month. The School District asserts, and no evidence was presented to the contrary, that this service was provided consistently by , a private organization contracted by the School District, in accordance with the Student's IEP.

In June 2021, the Student's IEP was amended without a meeting to add, at the Parent's request, 60 minutes per week of functional sign language instruction and 20 minutes per week of functional sign language vocabulary consultation. The instruction occurred during the last block of the Student's day, the customized learning block, and worked with the Student in a space across the hallway. The School District has acknowledged that this service, provided by the Maine Educational Center for the Deaf and Hard of Hearing pursuant to a contract with the School District, was not provided completely consistently with the Student's IEP because the teacher missed several sessions without notice due primarily to COVID

exposures she experienced in the school setting. As such, the School District violated MUSER IX.3.A(1) and MUSER IX.3.A(1)(d) by not consistently providing a special education service and a related service in the Student's IEP, specifically 60 minutes per week of functional sign language instruction and 20 minutes per week of functional sign language vocabulary consultation.

3. Although the Student graduated a year and a half prior to the time that the School District anticipated that the Student would graduate, several transition assessments had been completed, including the Enderle and Severson Postsecondary Outcomes and Interests in 2018, the What Do I Want to Do? And S.N.O.W. Chart in 2019, and the Transition Planning Inventory in 2021. The Student's final IEP indicated that post-secondary education/training goal was to participate in a job training program that would enable to work in a restaurant, which would require assistance from a job coach and vocational rehabilitation counselor.

In addition, even though the Student was not going to graduate until the end of the 2022-2023 school year, the Student was referred to the Center for case management services in May 2021. It appears that the Parent did not follow up on the referral although Ms. emailed the Parent that the referral had been put through and the Center staff indicated they would be contacting her. The School District did not hear any concern from the Parent about this referral until well after the Student had graduated. Ms. also suggested multiple other placements or case management service providers for the Student but none were followed through on by the Family.

Furthermore, Ms. checked in on the Student during vocational rehabilitation placement at the Parent's restaurant during the summer of 2021 although that was not part of her job description. She understood that the Student was learning to take on various tasks around the restaurant. She also observed that was making great strides in expanding the tasks could do and sustaining attention to complete various tasks. Ms. utilized this information to further inform her understanding of the Student's progress towards transition goals. placement during the summer of 2021 was consistent with employment goal of working in a restaurant. The Student's independent living goal, to work towards living in a group home at the age of 25, was supported by classroom instruction and by the participation of students in the functional life skills classroom in a program that allowed them to practice independent living skills in a residential setting.

As such, during the 2021-2022 school year, up until graduation in January 2022, the School District did not fail to provide the Student with transition services and thus did not violate MUSER IX.3.A(h).

4. After the Parent informed Ms. on short notice that the Student was moving out of the RSU district, she also began the process of enrolling the Student in RSU # . After the Parent expressed concern about the size of the program the Student would be participating in in RSU # , Ms. offered the Parent the suggestion of a Superintendent's Agreement, which would allow the Student to continue

education at \_\_\_\_\_ School. The Parent determined that this was not feasible because she would have to drive the Student to school which was not possible given her work schedule. Although the Parent expresses frustration that another student who lives near the Family receives transportation to \_\_\_\_\_ School, the School District is required to provide transportation for that Student pursuant to the McKinney-Vento Act.

An IEP Amendment was sent to the Parent confirming the agreement that the Student would be graduated from \_\_\_\_\_ School in January 2022, which the School District agreed to do after reviewing the Student's credits to ensure \_\_\_\_\_ did not appear to have dropped out. The School District also agreed to allow the Student to participate in graduate activities at the end of the school year, which it was not required to do. This involved providing support staff to ensure the Student's participation was successful, which staff were happy to do. Ms. \_\_\_\_\_ observed that the Student enjoyed participating in the graduation activities.

As such, the School District did not unilaterally graduate the Student prior to the end of \_\_\_\_\_ eligibility and thus did not violate MUSER I, 20 U.S.C. 1415(a)(1)(B)(i), or the Administrative Letter 1 of the Commissioner of the Department of Education dated January 21, 2021.

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

With regard to the violation found in Issue #2, the School District should calculate the amount of service that was missed and provide the Student with compensatory educational services of the amount of time that was not provided between the start of the 2021-2022 school year and the Student's move out of the school district.