

**STATE OF MAINE**  
**SPECIAL EDUCATION DUE PROCESS HEARING**

**December 6, 2005**

**05.080H – Parents v. Five Town CSD**

REPRESENTING THE FAMILY: Richard O’Meara, Esq.

REPRESENTING THE SCHOOL: James Schwellenbach, Esq.

HEARING OFFICER: Shari Broder, Esq.

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This hearing was held and this decision issued pursuant to Title 20-A, MRSA, 7202 et. seq., and 20 U.S.C. §1415 et. seq., and accompanying regulations. The hearing was held on October 26 & 31, 2005, at the offices of the Department of Health and Human Services in Rockland, Maine, on November 2, 2005 at the offices of Five Town CSD in Camden, Maine, and on November 9, 2005 at the offices of XX in Rockport, Maine. In addition to counsel and the hearing officer listed above, those present for the entire proceeding were the parents, Cynthia Foreman, director of special education for Five Town CDS (“District”), and Patricia Hopkins, superintendent of schools. Karen Dube transcribed the proceedings. Testifying at the hearing were:

The mother	
The father	
Laura Griffiths	Program Director, Moonridge Academy
Stefanie Trimmer	Education Director, Moonridge Academy
Laura Slap-Shelton, Psy.D.	Psychologist
Jennifer Miller, M.D.	Psychiatrist
Darlene Horton	Therapist, Moonridge Academy
Cynthia Foreman	Five Town CSD Director of Special Education
Elizabeth Dailey	History Teacher, Camden Hills Regional High School
Rob Lovell	Science Teacher, Camden Hills Regional High School
Cindy Vohringer	Guidance Counselor, Camden Hills Regional High School
Frank McCabe, Ed.D.	Psychologist

All testimony was taken under oath.

**I. PROCEDURAL BACKGROUND:**

The parents requested this due process hearing on June 29, 2005. The case involves their daughter (henceforth “the student”), whose date of birth is XX/XX/XXXX.

A prehearing conference was held on August 1, 2005, attended by the above-named counsel, the parents, Cindy Foreman, director of special education, and the Hearing Officer. Documents and witness lists were exchanged in a timely manner. The parents submitted 124 exhibits comprising 321 pages, and the District submitted 36 documents comprising 97 pages.

The hearing was originally scheduled for August 11, 2005, but the parents’ counsel requested a continuance, which was granted without objection. The hearing was then scheduled to begin on August 22, 2005, but the Hearing Officer granted a continuance to the District’s counsel, due to a death in the family. Although the hearing was rescheduled to begin on September 26, 2005, the District again asked for a postponement to allow the PET to review recent evaluations of the student. The parents agreed to this, with certain conditions concerning rescheduling. Ultimately, the parties were unable to resolve the issues in dispute at the PET meeting, and a hearing was held on the four dates listed above.

Both parties requested and were granted leave to file written closing arguments, which were submitted on November 21, 2005, and the record closed at that time. The parties mutually consented to the Hearing Officer’s decision being due 15 days thereafter, or December 6, 2005.

**II. ISSUES:**

- a. Did the District violate its child find obligation under special education law or regulations? If so, is the student entitled to compensatory education?
- b. Did the District err in refusing to find the student eligible for special education on March 3, 2004?

c. Did the District fail to provide the student with a timely offer of a FAPE, thereby entitling the family to reimbursement of costs incurred in connection with its unilateral placement of the student at Moonridge Academy?

d. Is the family entitled to an order placing the student at an appropriate therapeutic placement until she is able to transfer successfully to a less restrictive educational placement?

### **III. FINDINGS OF FACT**

1. The student is XX years old, and lives with her family in Camden, Maine, where the student attended public school until February 2004. Both parents are professionals who work in Rockport, Maine.
2. The student moved to Camden when she was approximately XX years old. Around that time, she was sexually abused by a 13-year-old male babysitter. When her parents learned of this, the student began receiving psychological counseling, and continued this for three years.
3. After attending XX at a private school called the Riley School, the student began XX grade in MSAD #28. When the student was in XX grade, her parents sent her to Robert Dodge, Ph.D., for a psychoeducational evaluation because her XX grade achievement scores were below the parents' expectations. [S-54] At the time, the student reportedly loved school and was "quite diligent about completing her work." [S-54] Dr. Dodge found no evidence of any psychological problems. [S-55] He noted that the student's achievement scores on the Wechsler Individual Achievement Test (WIAT) were commensurate with her ability, as measured by the Kaufman Brief Intelligence Test, and that this was squarely in the average range. [S-56] Dr. Dodge had no concerns about the student either psychologically or educationally.
4. Approximately two years later, in December 2000, the parents brought her to Christine Fink, Ph.D. for a neuropsychological evaluation. The student was in XX grade, and parents were

concerned about the student's attention, concentration, homework completion and argumentativeness. [S-46] Dr. Fink noted that school was a major source of stress between the student and her parents, and that the student described herself as a procrastinator about her homework, preferring to engage in other activities. [S-46] The student had been earning good grades, and had made the honor roll during her first quarter in XX grade. [S-46] The student's IQ test scores on the Wechsler Intelligence Scale for Children (WISC-III) fell in the solid average range (Verbal IQ=101, Performance IQ=103, and Full Scale IQ=102). [S-49] Dr. Fink noted that while the school reported that the student had good behavior and better attention than the majority of her peers, at home, she was inattentive and noncompliant about chores and homework completion. [S-51] Dr. Fink did not conclude that the student had any disabilities, but gave her strategies for addressing these problems. [S-52]

5. In XX grade, the student's grades were a rather even mix of As, Bs and Cs. [S-59] There were issues with her missing assignments, but her behavior was consistently good in all areas, according to her report card. [S-59]
6. The following school year, XX grade, the student's grades began to decline. She continued to get mostly Bs and Cs, with an occasional A or D. [S-58] During the second quarter of XX grade, she failed science, due to not completing projects or turning in homework. [S-58] Some of her teachers noted that she needed to try harder. [S-58] Around the same time, she began socializing with a new group of friends, and her attitude towards school declined. [Testimony of mother]
7. Concerned about the student's ability to succeed in high school, her parents asked MSAD #28 to retain the student in XX grade for another year, but the school district denied this request. [Testimony of mother]

8. In the fall of 2003, the student began attending Camden Hills Regional High School (CHRHS), which is operated by the District.<sup>1</sup> Things went well for a few weeks, but the student's parents became concerned about the student completing her assignments. The mother spoke with Cindy Vohringer, the guidance counselor, about the student's academic difficulties during XX grade, but primarily discussed the parents' concerns about issues at home, such as the student's choice of friends and appropriate level of supervision at home. [Testimony of C. Vohringer]. In an effort to stay abreast of the student's progress and assignments, the parents regularly corresponded with the student's teachers by E-mail. [P-228-243]
9. In October 2003, the parents met with Ms. Vohringer, and disclosed the fact that the student had been sexually abused as a preschooler. [Testimony of mother, C. Vohringer] The mother explained that the student had had counseling for this. Ms. Vohringer treated this information as confidential, and did not share it with other school personnel. They also discussed the fact that the student could benefit from help with organizational skills. [Testimony of mother] Following this meeting, Ms. Vohringer spoke with the student's teachers. They reported that the student's focus at school was social, rather than academic, and that homework completion was sometimes a problem. [Testimony of C. Vohringer]
10. At home, the student became increasingly oppositional and angry. [Testimony of mother] Her mother found evidence that the student was smoking cigarettes, drinking alcohol and smoking marijuana.

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<sup>1</sup> The District operates CHRHS, and is a separate school administrative unit from MSAD #28, which does not operate a high school.

11. Periodically, Ms. Vohringer checked in with the student. In November, Ms. Vohringer was involved in Myers-Briggs personality testing of the entire XX class. The student was very engaged in it, and was spokesperson of her group. [Testimony of C. Vohringer]
12. On December 3, 2003, the mother sent an E-mail to Ms. Vohringer, thanking her for her help and support. [P-227] She explained that the student had become more difficult, and was threatening to stop doing her school work, and drop out of school altogether upon turning XX. [P-227] The mother elaborated about the student's anger at not being permitted to hang out downtown with her friends, some of whom had juvenile criminal records. She expressed her concern that the student was "slipping away," and was going to try counseling. [P-227] She closed with, "Just wanted you to know." Two and one-half hours later, Ms. Vohringer responded, mentioning the Myers-Briggs personality profile. [P-225] She added, "it helps me understand why she isn't finding a lot of success right now – creative types typically don't have the same good 'fit' in public schools as the strongly academic students enjoy." [P-225]
13. The student began counseling with Linda Vaughan, Ph.D., on December 5. [P-30]<sup>2</sup> At the time, the student presented as an agitated, depressed, risk-taking adolescent. [P-30] She also had symptoms of Post Traumatic Stress Disorder (PTSD), including difficulty sleeping, outbursts of anger, difficulty concentrating, poor school performance and significant disruption in her family due to her behaviors. [P-30]
14. Teachers continued to keep in touch with the parents about the student's school work. Sometimes, the student was doing well, and other times, she was not engaged in her work. [P-220-224] Her teachers thought she seemed like a typical XX. [Testimony of R. Lovell, E.

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<sup>2</sup> In a letter dated March 1, 2004, Dr. Vaughan said that the student began treating [sic] her on December 17, 2003, but this appears to be an error. [S-45]

Dailey] She was outgoing and engaged with her friends, and did not always complete her assignments, which was not unusual for a XX.

15. On December 19, 2003, Robert Lovell, the student's science teacher, announced that a former student of his would be a guest speaker in class on Monday, December 22. Mr. Lovell was not aware that the guest speaker had sexually abused the student over ten years earlier. [Testimony of R. Lovell] When the student learned this, she called her father, and was hysterical. [Testimony of father] The father advised her to speak with Ms. Vohringer, who was not available, so the student went to see the school nurse, Judy Clossey. [Testimony of father, mother] The student did not present to Ms. Clossey as overly distressed. [S-72] The student also called her mother, who was in Washington, DC on business. The mother spoke with the assistant principal, Don Palmer, who assured her that he would not allow the guest speaker in the school. [Testimony of mother] Mr. Palmer then told Mr. Lovell that the guest speaker was not allowed in class. [Testimony of R. Lovell] The student's teachers did not observe her to be in distress regarding this incident, either at the time it occurred or after Christmas break. [Testimony of R. Lovell, E. Dailey] On Monday, December 22, 2003, when Ms. Vohringer spoke with the student about the incident, the student appeared to be in good spirits. [Testimony of C. Vohringer]
16. The student next saw Linda Vaughan on January 4, 2004. [P-30] Her behavior problems at home had increased significantly. [P-30] One time, she pointed a barbeque skewer at her mother, and chased her with it. [Testimony of mother] On January 4, Dr. Vaughan advised the parents that the student needed residential therapeutic treatment at a center that specialized in teenagers with similar issues, as she did not feel the family could manage the

student's behavior and mental health issues. [P-31] She also did not feel the student could be treated as an outpatient. [P-31]

17. During January, the student did not want to attend school, and the parents had to force her to do so. [Testimony of mother, father] Once at school, the student acted normally, and her teachers did not see her behavior as an issue. She continued to have problems with homework completion, however.
18. Around the third week of January, the mother called Ms. Vohringer because the student did not want to attend school. Ms. Vohringer offered to have the student's teachers call her about this. [Testimony of mother, C. Vohringer] Although Ms. Vohringer contacted some of the student's teachers, none of them called the student.
19. The student's attendance at school was good until the end of the semester. She finished the semester with very poor grades, failing math and history, and withdrawing from Latin. [S-57] Thereafter, she refused to return to school, and only attended two or three days within a two-week period. [S-31, testimony of parents] Although her mother called the school each day to report her absence, no one asked for a reason. [Testimony of mother]
20. On January 30, 2004, the Thomaston police called the parents to pick up the student, who was reportedly drunk. [Testimony of mother] The parents took her to the emergency room at Pen Bay Medical Center. The student said she took her father's Adderall. [Testimony of mother] She tested positive for alcohol and amphetamines, but became stable after about 90 minutes. [P-214]
21. After the student had missed a few days of school, Ms. Vohringer spoke with the father about the possibility that the student might be eligible for help under Section 504 of the Rehabilitation Act ("Section 504"). [Testimony of mother, C. Vohringer] It is the District's



policy to consider this option before making a referral to special education<sup>3</sup>. [Testimony of C. Foreman] Ms. Vohringer offered to schedule a Section 504 meeting, and set one for February 6, 2004. [Testimony of C. Vohringer] The parents then cancelled the meeting, based upon a misunderstanding about its purpose.

22. Around the same time, the mother called Cindy Foreman to request a PET meeting.

[Testimony of C. Foreman, mother] Ms. Foreman explained the referral, testing and eligibility process. [Testimony of C. Foreman] The mother asked about having the District support a residential placement for the student. [Testimony of C. Foreman] There was no discussion about the student's PTSD diagnosis or sexual abuse.

23. On or about Friday, February 13, 2004, the father sent an E-mail to Ms. Foreman. [P-213, S-

45c] In it, he explained that he had contacted Ms. Vohringer to "reschedule the PET that was scheduled for 02/06/04." [S-45a, 45c, P-213] The father expressed some confusion about whom to contact regarding PET meetings, and the difference between a PET and 504 meeting and thus contacted Ms. Foreman. [P-213, S-45a, 45c] Cindy Vohringer had no authority to schedule PET meetings, as this was done exclusively by the special education office.

[Testimony of C. Vohringer, C. Foreman, P-212, S-45b] Section 504 meetings, however, were the responsibility of the director of counseling, who was Ms. Vohringer's supervisor.

[Testimony of C. Vohringer] The father asked to schedule a PET meeting as soon as possible. [P-213, S-45c] School vacation began the following day. Ms. Foreman replied to the father's E-mail on February 17, clarifying that from a conversation she had with the mother, she thought the parents had decided not to pursue special education, as they felt the student would not be eligible. [P-213, S-45c] She added that, "I'd be very happy to

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<sup>3</sup> Parent referrals to special education, however, are acted upon immediately. [Testimony of C. Foreman]

schedule a PET” and scheduled one for the next school day, February 23, 2004. [P-213, S-45c] The father responded that the mother had spoken with Ms. Foreman, and it was clear from that conversation that Ms. Foreman did not think the student would be eligible for special education. [P-212, S-45b] Ms. Foreman said that this was not how she recalled the conversation. Her recollection was that she explained the process and eligibility to the mother, who

kept saying that your daughter is defiant and not special ed. I tried to explain [sic] that defiance alone does not qualify any student as special ed. The handicapping conditions I was referring to were emotionally disabled or learning disability. I do not have the right to say your daughter does not qualify for special ed. That question has to be answered through evaluation and the PET process.

[P-212, S-45b] The father then explained that they had other commitments on February 23, and requested March 1 for the PET meeting. [P-212, S-45b] Because that date was not good for the District, the PET was scheduled for March 3, 2004. The father confirmed this date, and told Ms. Foreman that the student “is clearly an at risk student.” [P-211, S-45a]

24. On March 3, 2004, the parents attended the PET with Rita Furlow, an attorney. They shared their concerns about the student’s school performance and emotional health. S-26. Upon reviewing the student’s cell phone bill, they learned that she had called a suicide hotline on December 20, 2003. [S-27, Testimony of mother, father] The parents also brought the two psychological evaluations they had had done when the student was in XX and XX grade, and two brief letters: one dated March 1, 2004 from Dr. Vaughan stating that the student had Dysthymia, PTSD, and Opposition Defiant Disorder (ODD), and that these disorders had significantly affected her ability to perform academically and her absences; [S-45] and one from Susan McKinley, M.D., the student’s pediatrician, diagnosing the student with PTSD, depression and anxiety. [S-44] The letter added that the student’s mental state was tenuous,

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“due to the recent events which would have put her in contact with the perpetrator of her past abuse.” [S-44] The student’s three teachers in attendance discussed the student’s failure to pass in homework, but none had observations that the student might have a disability requiring special education. [Testimony of C. Foreman, S-27] Rose Mary Fetterman, the school psychological services provider, noted that the student did not appear to have a learning disability. [S-27] She clearly explained the need for conducting various evaluations before making an eligibility determination. [P-203-204] Although Attorney Furlow suggested that the student be identified as a student with an emotional disability, Ms. Foreman explained that the District needed to do its own evaluations of the student before she would feel comfortable making an identification, as the previous evaluations were over three years old, and there was not adequate information upon which to make such a decision. [S-28, Testimony of C. Foreman] To allow the assessments to be done, Ms. Foreman offered two temporary educational placement options: tutoring the student, or trying to place the student at another high school. The parents were not interested in either option. [S-28, Testimony of C. Foreman] They were concerned about the student’s safety, and about their need to constantly supervise her. The father then said that the family would seek a private placement for the student and seek reimbursement from the District. [S-28, P-207] Attorney Furlow said she felt there was enough testing to make a decision regarding eligibility. [S-28] Ms. Foreman confirmed that the parents wanted to continue pursuing special education eligibility, despite the parents’ decision to remove the student from the District’s schools and place her privately. [S-28, Testimony of C. Foreman]

25. On March 8, 2004, Ms. Foreman met with Ms. Fetterman to consider what information they needed to determine eligibility. [Testimony of C. Foreman, S-24] Ms. Foreman sent an E-

mail and a letter to the parents again explaining the additional information needed to properly consider whether the student had an emotional disability, and that the law provided school districts with this right. [S-22, 24] She again offered tutoring or the possibility of sending the student to a high school outside the District, and attempted to address the parents' concerns about the student's safety. [S-22-23] She enclosed a consent form for conducting evaluations, and encouraged the parents to return it as soon as possible. [S-23, Testimony of C. Foreman] Had the parents returned the form quickly, the District would have begun evaluations immediately. [Testimony of C. Foreman]

26. The parents hired an educational consultant, Anne Ritchie, to explore options for placing the student in a residential treatment program. [Testimony of mother] The parents were too busy exploring schools and completing applications to complete and return the District's consent form to conduct evaluations. [Testimony of mother] The parents sent an application to Moonridge Academy ("Moonridge"), a small residential program for teenage girls in Utah, because they were able to admit the student immediately. [Testimony of mother] On the application, the father reported that the student found school boring, and that it was more of a social event. [P-178] He indicated that the student's educational goals after graduating from Moonridge were to return to a private or boarding school, and graduate high school. [P-178] In response to the application question about how the student had failed to benefit from mental and behavioral health services provided in a less restrictive environment, the father replied, "She will refuse to go [sic] therapy (although most of the time she was good at attending)," that she would agree to try things, but would refuse at home, and was inconsistent in taking her medication. [P-180]

27. On March 16, 2004, the father brought the student to Moonridge. [Testimony of father]

28. In the meantime, the District heard nothing from the parents. Upon the father's return from Utah, the parents looked at the consent to evaluate form, and had Attorney Furlow review it. [Testimony of mother] On March 29, 2004, the father left a message for Ms. Foreman informing her that, after discussions with their attorney, they would sign the consent form, and that the parents had placed the student at Moonridge in Utah. [Testimony of C. Foreman] The District received the consent to evaluate form on March 31, 2004. [S-18] Sometime after the student was placed at Moonridge, the mother sent Ms. Foreman an E-mail with the contact information for Moonridge.
29. On May 20, 2004, Ms. Foreman wrote a letter to the parents stating that it had been a long time since they had had any formal communication. [S-15] Ms. Foreman explained that while the student was at Moonridge, she was not available for testing by the District's evaluators. [S-16] She said that the District was eager and ready to move forward with the referral process, and asked the parents to let her know when the student would be in the area, and "I will make every attempt, even during this summer, to have one of our school psychological service providers available to do the required assessments." [S-16] She explained that once the testing was completed, she would schedule a PET to review the results. [S-16]
30. About a month later, the parents wrote to Ms. Foreman to bring her up to date on the student's status. [S-6-13] The parents noted that the 45 school day period for evaluating the student ended on June 9, 2004, and they felt that the student had been available for evaluation in Utah, and that the District should have chosen an evaluator there. [S-7, testimony of mother] Again, the parents questioned the District's need to conduct its own evaluations of the student. [S-11] Ms. Foreman responded on July 12, 2004, after she

returned from vacation, and asked about evaluating the student when she came home to visit in August. [S-5] Having received no response, she followed up with an August 5, 2004 E-mail to the parents about evaluating the student while she was at home. [S-5] The mother responded that the family believed the District had evidence that was “more than sufficient” to substantiate the student’s qualification for special education services. [S-2] For the first time, she informed the District that they asked Moonridge to perform all of the assessments contained on the District’s consent form, and that these assessments were done the preceding Wednesday, but the results were not yet available. [S-3] They again insisted that if the District wanted to evaluate the student, they could do so in Utah. [S-2] They added that the student would not likely be available for testing during her short home visit in mid-September. [S-3]

31. The District did not hear from the parents again until they filed this due process hearing request in June of 2005. [Testimony of C. Foreman]
32. The student remained at Moonridge until December 30, 2004. Moonridge is a very small school licensed for 16 adolescent girls, and staffed with four teachers, several therapists and administrators. [Testimony of L. Griffiths] Although most of the teachers there are certified in their respective subject areas, most are not certified in special education. [Testimony of S. Trimmer] When the student initially arrived at Moonridge, Darlene Horton, a certified professional counselor there, conducted a mental health intake assessment. P-141-148. She found that the student’s global assessment of functioning (GAF) score was 50. [Testimony of D. Horton] The student denied any suicidal ideation or thoughts of cutting at that time. [P-140] She was assigned a therapist, and spent two to three hours each week in individual therapy, and had group therapy four to five times each week. [Testimony of D. Horton, P-

155] The student was given short and long term goals to address in therapy relating to her sexual abuse, oppositional defiance, substance abuse and cutting behaviors. [P-129-132] She had two educational goals: (1) to “be able to acknowledge and show an understanding for the importance of education and how it relates to her future; and (2) to complete assignments on time. [sic] [P-122] While at Moonridge, the student became more organized and motivated, and earned good grades because she received the structure and support she needed. [Testimony of S. Trimmer]

33. On April 12, 2004, David H. Stoker, Ph.D., a clinical psychologist, saw the student for an intake assessment. [P-134-136] He noted the student’s feelings of anger and opposition, and that she had very low expectations for herself. Because the student was “experiencing very little emotional discomfort at this time,” he did not feel that medication was warranted. [P-135] On April 23, 2004, Dr. Stoker saw the student again, and conducted several depression inventories, concluding that the student was mildly depressed. [P-126] He noted that her depression was not in the clinically significant range upon admission to Moonridge, and that was consistent with the results of his test. [P-126]

34. On August 12, 2004, Brent Turek, Ed.D., conducted a psychological evaluation of the student at the parents’ request. Dr. Turek noted that the student “tends to be quite conflicted in much of her emotions . . . and a whole range of emotions that appear to be fairly rapid cycling, much like what might be expected if she had Attention Deficit/Hyperactivity Disorder (ADHD) or Bi-polar Disorder.” [P-108] He noted that this was somewhat common in girls her age, particular if they have hormonal issues. [P-108] He concluded that the student had an average IQ with average achievement for someone her age, and no significant problems except ADHD and ODD. [P-110] Dr. Turek recommended medication

for ADHD, and that the student should be accommodated in school for this reason. [P-110] He did not recommend a private placement, but appeared to feel the student could attend public school. [Testimony of D. Horton, P-110] He added that the student needed an IEP to allow her and the teachers to find the best way to meet her needs and accommodate her difficulties with attention, impulsivity and concentration. [P-110] Her GAF at the time was assessed at 60. [P-111] The parents did not share Dr. Turek's report with the District.

35. When the student was discharged from Moonridge on December 30, 2004, her GAF score was 70, and she had achieved all of her mental health and therapy goals. [P-58-67] The discharge report noted that the student's difficulties manifested approximately a year earlier, and were rooted in issues that were the result of sexual molestation. [P-65]

36. Before being discharged, the parents arranged for the student to attend Kent's Hill School, a private school in Readfield, Maine. [Testimony of mother] Although the student did well socially there, she did poorly academically, as Kent's Hill did not offer adequate structure and supervision. The student did not receive special education services there. The parents removed her in early April 2005. [Testimony of mother] They never notified the District of the student's discharge from Moonridge or entrance and withdrawal from Kent's Hill. [Testimony of C. Foreman] The District was unaware that the student remained out of school for the remainder of the school year.

37. At the parents' request, Laura Slap-Shelton, Psy.D., conducted an evaluation of the student on four days between May 19, 2004 and July 29, 2005. She obtained behavior ratings only from the parents, and reviewed records from Moonridge and Kent's Hill, but did not speak with anyone there, nor did she obtain behavior ratings from teachers because the student was not in school. [Testimony of L. Slap-Shelton] She diagnosed the student with Bipolar



Disorder and PTSD, and thought that her earlier sexual abuse precipitated the decline in her mental health. [Testimony of L. Slap-Shelton] Dr. Slap-Shelton considered the student to have a clinically significant level of depression, acting out behaviors, rebelliousness, potential for drug and alcohol abuse, and significant symptoms of inattention, hyperactivity and impulsivity. [P-18] In her opinion, the student had regressed after leaving Moonridge, and without appropriate supports, was at risk for alcohol and substance abuse, suicidal activities and school failure. [P-19] To avoid further relapse, Dr. Slap-Shelton recommended a structured residential educational and therapeutic placement. [P-19] She felt the student needed daily therapeutic intervention, a highly structured setting with trained staff and small classes to be successful in school, and made seven clinical and eighteen academic recommendations for the student. [P19-20]

38. On June 26, 2005, the student began seeing Jennifer Miller, MD, an adolescent psychiatrist, for therapy and psychopharmacology. She started seeing her twice weekly to avoid the need for inpatient hospitalization. Dr. Miller diagnosed the student with bipolar disorder. [Testimony of J. Miller] Dr. Miller observed that with treatment, the student has longer periods of euthymia. [Testimony of J. Miller]
39. Upon reviewing the documents for this hearing, Ms. Foreman first learned that the parents had the student evaluated by Dr. Slap-Shelton in May 2005. [Testimony of C. Foreman, S-65] Ms. Foreman sent a letter to the parents reminding them that the District has been seeking to evaluate the student for some time. [S-65] She asked the parents whether they wanted to schedule a PET meeting to review Dr. Slap-Shelton's evaluation and make a determination regarding special education eligibility. [S-65]

40. On September 1, 2005, the PET met. [P-262-264] Dr. Slap-Shelton and Dr. Miller participated by telephone. [Testimony of C. Foreman] The PET felt it was not necessary to redo evaluations that had already been conducted. Because the District wanted its own evaluation, the PET agreed to have an outside evaluator chosen by the District review the student's records. [Testimony of C. Foreman, P-263] The District asked Frank McCabe, Ed.D., a licensed psychological examiner and certified school psychological services provider, to review existing evaluations and interview teachers and the parents. The parents were agreeable to this. Dr. Miller said she believed it would be difficult for any school system to provide a program to meet the student's needs. [P-263] The District's counsel, James Schwellenbach, said that this should be discussed after the District evaluated the student. [P-263]
41. As the student had been out of school for a long time, Ms. Foreman suggested tutoring, which was arranged to help the student earn credits in English and history. [Testimony of C. Foreman] The student began tutoring. Although resistant at first, the student was excited about it after the first session. [Testimony of father] Her tutor found her to be present, alert, and upbeat, with some comprehension difficulties. [S-80]
42. Dr. McCabe evaluated the student by reviewing all of her evaluations, communications from health care providers, and documents from Moonridge, and interviewing the parents, people at Moonridge and Kent's Hill, Dr. Slap-Shelton, Dr. Miller, and the student. Dr. McCabe did not believe the student needed a therapeutic residential placement to progress educationally, and thought that her needs could be met either in the mainstream classroom or an alternative or day treatment placement. [Testimony of F. McCabe, S-81] He has seen the public schools provide appropriate programming for students with much greater

behavioral and psychological needs than this student. [Testimony of F. McCabe] Dr.

McCabe recommended that any program for the student must have a life skills component to assist her in coping with and managing her life stress and mental health issues, and accessing services before she reaches the crisis stage. [S-81] She also needs a positive behavioral support plan that is monitored systematically as part of her IEP, and access to support, such as social workers or guidance counselors. [S-82, Testimony of F. McCabe] Dr.

McCabe emphasized keying into the student's assets and developing her interests.

[Testimony of F. McCabe] Outside of school, he recommended that she continue her psychiatric treatment. [S-82]

43. The PET met again on October 12, 2005, at which time Dr. McCabe reviewed his evaluation with the team. [S-83-85] Based upon all of the information provided, the PET identified the student as qualifying for special education as a student with an emotional disability. [S-84] The PET worked on developing an IEP for the student. [S-84] They discussed goals and objectives for organizational skills, emotional support, academic skills and attendance. [S-85] It was noted that the student would need a safety/crisis plan and a behavior support plan, but that this would have to be developed with the family and Dr. Miller, so one was not drafted at that meeting. [S-85, Testimony of C. Foreman] Although the parents expressed concern about the student attending CHRHS, the school staff reported that many students with significant psychiatric needs participate successfully there. [S-85] Ms. Foreman also proposed contacting other high schools in the area to see if an agreement could be reached that would allow the student to attend a high school other than CHRHS. [S-85] The PET discussed the Zenith program, the District's alternative education program, as another option for the student. [S-85] That program, which is not located at CHRHS,

could include special education support or instruction as needed, although not all participants are eligible for special education. [S-85] Zenith has 24 students who attend it for either a full or half day. Some of these students have ADHD and mental health diagnoses. [Testimony of C. Foreman] It is a very structured, supported, nurturing program. [Testimony of C. Foreman] Community service work is a component. There are group sessions with the social worker in which participants discuss social issues. [Testimony of father] Although the father thought the student would fit in this program, he was concerned that it was not sufficiently structured. [Testimony of father] At the conclusion of the meeting, the PET agreed to meet again soon to discuss placement. The District thought that the parents accepted the basic components of the IEP, which needed to be “more thorough,” and that the PET could explore placement options. [Testimony of C. Foreman, S-85] A copy of the IEP drafted at this meeting was given to the parents later that week. [Testimony of C. Foreman] That IEP provided special education instruction or support for 80 minutes per day. [S-86] It also provided psychiatric consultation “as needed.” [S-86] It stated that the student, along with her psychiatrist, would assist with the development of a behavior support plan. [S-92] The IEP incorporated most of the specific educational recommendations made by Dr. Slap-Shelton. [S-88] It contained four educational goals: (1) organizational skills; (2) development of a positive support plan, with assistance from the student’s psychiatrist and school staff so that the student could identify stages of her current functioning and acceptable strategies; (3) achievement and maintenance of passing grades, including addressing some mild delays noted in Dr. Slap-Shelton’s evaluation; and (4) compliance with the school attendance policy. [S- 90-96, Testimony of C. Foreman] The IEP included a number of modifications and accommodations to help ensure the student’s success. [S-88]

44. Dr. Miller felt that the student needed 24-hour supervision in a therapeutic setting, as her needs went far beyond what the District's IEP offered. [Testimony of J. Miller] Dr. Slap-Shelton thought the proposed IEP could be a reasonable plan once the student was stabilized. [Testimony of L. Slap-Shelton]

45. The PET met again on October 20 to discuss placement. That meeting was very contentious, and the team was unable to reach consensus on this issue. [Testimony of C. Foreman] They did not discuss the proposed IEP at all, as the parents continued to insist on a therapeutic boarding school, while the rest of the PET felt the student could be educated in a public school setting, and felt the Zenith program would be a good fit. [Testimony of father, C. Foreman] The father then notified the PET that he would be seeking a unilateral private residential placement for the student, and requesting reimbursement from the District. [Testimony of C. Foreman]

#### IV. **DISCUSSION**

**Position of the Parents:** The District violated its child find obligations by failing to refer, evaluate and identify the student for special education in a timely manner, in light of her failure to do schoolwork, attend school, her defiant behaviors and mental illness. These issues should have given District personnel reason to suspect that the student may have a disability requiring special education, and they should have made a referral.

The PET should have determined that the student qualified for special education under the category of emotional disability, based upon the information before it at the March 3, 2004 PET meeting.

As a result of the District's failure to honor its child find obligation, the parents had to make an emergency unilateral placement of the student at Moonridge Academy in Utah in March

2004. Because the District failed to make a timely offer of FAPE, the student's family is entitled to compensation for the costs of her education at Moonridge.

The IEP currently offered by the District is inappropriate, as the student needs to be placed in a therapeutic residential school. Consequently, the Hearing Officer should order the District to reimburse the family for the costs they will incur in placing the student in an appropriate school until the student is able to be educated successfully in a less restrictive environment.

**Position of the District:** The student's teachers took reasonable steps to address the student's only real difficulty presented at school, which was homework completion. Her school performance, both behavioral and academic, did not warrant a referral by school personnel while the student was at CHRHS during the 2003-2004 school year.

The parents' withdrawal of the student shortly after the PET process had begun [sic] deprived the District of the opportunity to evaluate or develop a program for the student. Consequently, the District is not responsible for the costs of the student's unilateral placement at private school. Finally, the program proposed by the District for the student this fall is reasonably calculated to provide her with educational benefit in the least restrictive environment and addresses her documented educational needs. The parents seek a residential placement not to address the student's moderate educational needs, but to address her behavior at home. There is no evidence that the student needs such a restrictive setting to progress educationally.

**A. Child find**

The IDEA places an affirmative, ongoing obligation upon school administrative units to identify and evaluate all children within their jurisdiction suspected of having disabilities and needing special education. 20 U.S.C. §1412(a). This includes students who are suspected of

being students with disabilities in need of special education, even though they are advancing from grade to grade. Maine Special Education Regulations (MSER), §7.2.

None of the student's teachers had any knowledge of the student's past sexual abuse or mental health issues, and saw her performance and behavior at school as within the norm. [Facts #9, 14, 15, 17, 24] She appeared to be a typical XX who was more concerned with her social life than academics. Although she had problems completing assignments, this was not unusual for fresh, and was not an indication that the student necessarily needed special education. [Facts #14, 15] Even after her crisis on December 19, 2003, which the student's evaluators see as the likely trigger for the manifestation of her PTSD symptoms and emotional and behavioral difficulties, the student appeared fine when in school, and did not seem to be in distress. [Fact 15] The problems her family encountered at home were not apparent at school.

The combination of the student's poor second quarter grades, refusal to attend school, knowledge on the part of some District employees of the student's PTSD, and the incident on December 19, would give rise to a reason to suspect that the student might have a disability that required special education. When those factors converged, Ms. Vohringer offered to explore options under Section 504 at that time, but the parents elected to make a special education referral. [Fact #21, 23]

The parents described the student as an "at risk" student. [Fact #21] While this was their characterization, the regulations define students "at risk" as including "individuals who have accumulated 45 absences during a school year, have been suspended or removed in excess of 10 days during a school year, students who have experienced an illness or accident likely to cause neurological or emotional impairment, etc." MSER 7.7 (D). The student's attendance at school

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was very good through the first semester. She was not “at risk” under the regulations during the first semester of her XX year.

At the hearing, there was considerable conflicting evidence about the facts surrounding the parents’ initial request for a referral. I find the District’s account of the facts credible. This does not mean that the parents were being intentionally untruthful, but they had considerable confusion about the special education process, which may account for their different recollection of what transpired. There are many reasons to believe the District’s factual account. It was clear that Ms. Vohringer only had authority to set up Section 504 meetings, not PET meetings, and that Ms. Foreman’s office had sole authority to schedule PET meetings. This was confirmed by both testimony and written evidence. [Testimony of C. Vohringer, C. Foreman, S-60, S-63, S-64, S-45a-c, P-211-213] It is not credible that a special education director with Ms. Foreman’s experience would tell parents, particularly sophisticated, educated professionals like the parents here, that special education was only for students who were blind, deaf or in wheelchairs. It is possible that, in explaining the process, Ms. Foreman gave examples such as those, but it is difficult to believe that if she were giving such information as the parents alleged, she would have remained in her position for long. Additionally, all written documentation of what transpired demonstrates that Ms. Foreman was professional, cooperative and responsive to the parents’ referral to special education. [S-45a-c, P-211-213]

A student must be referred “within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability.” *W.B. v. Matula*, 67 F.3d 484, 501 (3rd Cir. 1995). Under these facts, I cannot conclude that the District’s failure to make a referral violated its child find obligation.



**B. Failure to identify the student and make a placement decision at the March 3, 2004 PET meeting**

The Maine Special Education Regulations contain strict time frames in which the District must evaluate, identify and offer an educational program to a student with a disability. MSER §7.7 requires the District to convene a PET within 15 school days of receipt of a referral for the purpose of reviewing existing evaluation data and determining the need for additional evaluations. The referral request was made on February 13, 2004, and was received by Ms. Foreman on February 17, during winter break. Ms. Foreman offered to schedule a PET meeting the very next school day, which would have been February 23, but the parents had a scheduling conflict, so the initial PET was held on March 3, which was within the limits of the regulations.

MSER §8.1 provides that the PET shall determine the need for evaluations and recommend such evaluations to the parents. The regulations further require that the PET ensure that the student is assessed in all areas related to the suspected disability, and that the PET makes [sic] its eligibility determinations “based on a full and individual evaluation of the student” before the initial placement of a student in a program of special education. MSER § 9.2, 34 CFR 300.531. Only upon completion of administration of tests and other evaluation materials may the PET determine whether a student is a student with a disability under IDEA. MSER §9.4.

At the March 3, 2004 PET meeting, the PET had scant and very inadequate information on which to make an eligibility determination. There was no classroom observation, as required under the regulations. MSER §9.6. All the PET had was two old evaluations, each over three years old, and neither of which supported a finding of eligibility, and brief letters from Drs. Vaughan and McKinley setting forth the student’s diagnoses. Although the PET was free to consider these letters, neither constituted evaluations under the definition in section 9 of the regulations. Dr. Vaughan’s letter said that the student’s disorders had significantly impacted her

ability to perform academically, but she was not specific about this. The regulations require evaluation reports to provide specificity so that the PET has adequate information upon which to base its determinations. MSER §9.13. The parents allege that they consented to the District speaking with both doctors, but this would not have helped the PET make a decision at this meeting. The parents had legal counsel who presumably knew what information was required for the PET to make an eligibility and placement determination. If the parents wanted to offer additional information from these medical providers, they had the right to have either attend the PET meeting, but did not do so.

Although the parents allege that the information before the PET on March 3 was adequate to make a determination of eligibility, the contrary is true. The PET would have been acting irresponsibly and in violation of the regulations, had it made an identification determination without evaluating the student, based upon the sparse and inadequate information before it at that meeting.

It goes without saying that if the information before the PET was inadequate to determine eligibility, it was also inadequate to make a placement decision. The PET did not have evaluations or other documentation supporting the residential placement demanded by the parents. Thus, the District did not violate applicable law and regulations by failing to either identify or place the student at the March 3, 2004 PET meeting.

### **C. Evaluation of the student**

Federal regulations provide that a student must be evaluated “within a reasonable period of time” after the parents sign a consent to evaluate. 34 CFR 300.343(b)(i). It is the responsibility of the state to prescribe specific deadlines, and the Maine regulations do so. MSER §9.17 requires school units to complete evaluations, make an eligibility determination,

and an offer of services in accordance with an IEP within 45 school days of the District's receipt of the consent to evaluate. The parents chose to make finding a placement for the student a priority over having the student evaluated by the District, and thus did not return the consent to evaluate form until three weeks after they received it, and two weeks after the student had left the state. As the District received the consent form on March 31, 2004, the regulatory deadline for conducting evaluations would have been June 9, 2004.

It is well established that school districts have an absolute right to perform PET-ordered evaluations with their own personnel. *Falmouth School Dept.*, 40 IDELR 83 (ME SEA 2003), *Falmouth School Dept.*, 102 LRP 4426 (SEA Me. 4/24/00) ("The district's right to perform these evaluations is absolute, rather than negotiable, as suggested by the family") "[T]he school system may insist on evaluations by qualified professionals who are satisfactory to the school officials." *DuBois v. Conn. State Bd. of Ed.*, 727 F.2d 44, 48 (2d Cir.1984). See also *Vander Malle v. Ambach*, 673 F.2d 49, 53 (2d Cir.1983)(School officials are "entitled to have [the student] examined by a qualified psychiatrist of their choosing.") A parent who disagrees with the school's evaluation has the right to have the child evaluated by an independent evaluator, possibly at public expense, but does not have the right to insist on how the District conducts its own evaluations.

In *Patricia P. v. Board of Education*, 203 F.3d 462 (7<sup>th</sup> Cir. 2000), the Seventh Circuit noted that a school board needed the cooperation of the parents to properly evaluate a child and convene a PET meeting to determine appropriate services. This case involved facts similar to the case at hand. The parent, who lived in Illinois, unilaterally enrolled her son in private school in Maine, and once there, did not send the student back to the school district for evaluation. The parent's sole action indicating a willingness to make her son available for evaluation was

offering to allow District staff to travel to Maine to evaluate the child at his private placement there. The court found that the parent deprived the school district of a reasonable opportunity to conduct an in-state evaluation of the student and make an informed educational placement recommendation him. Such was the case here. The parents made their unilateral placement a priority over allowing the District to evaluate the student. Although this was their right, there was time to begin the evaluation process before the student went to Utah, but the parents delayed returning the evaluation consent form in favor of making arrangements for the student to go to school in Utah. In doing so, the parents unreasonably expected the District to travel to Utah to evaluate the student, or hire someone there, rather than allowing the District to evaluate the student in Maine using the District's evaluators. Despite the District's repeated requests to evaluate the student when she came home for a visit, the parents did not inform the District that the student was home. The parents were very uncooperative about allowing the student to be evaluated by the District, and insisted several times that they felt the District had adequate information to make an identification determination. As noted above, this was not true. As the District's inability to evaluate the student by June 9, 2004 was due to the parents' refusal to make her available, it was not a violation of the IDEA or its regulations.

**D. Tuition reimbursement for Moonridge**

In accordance with considerable authority in the Circuit Courts of Appeal, "parents who, because of their failure to cooperate, do not allow a school district a reasonable opportunity to evaluate their disabled child, forfeit their claim for reimbursement for a unilateral private placement." *Patricia P., supra*. See also *Schoenfeld v. Parkway School District*, 138 F.3d 379, 380-382 (8<sup>th</sup> Cir. 1998); *Tucker v. Calloway County Bd. of Educ.*, 136 F.3d 495, 503-05 (6<sup>th</sup> Cir. 1998); *Ash v. Lake Oswego Sch. Dist.*, 980 F.2d 585,589 (9<sup>th</sup> Cir. 1992). This deprives the

District of its right to formulate an IEP. As the Seventh Circuit noted in *Patricia P.*,  
“Reimbursement for the costs of his private placement would therefore be inappropriate because school officials were excluded from the decision and because no showing of inadequate services under IDEA can be made.” The Court held that

“[Patricia] removed [Jacob] unilaterally from the state, knowingly frustrating the [School] District's ability to conduct its own timely evaluation, and has made no genuine offer to make [Jacob] available to the [School] District for an evaluation . . . [T]he [School] District has committed no violation by its actions. For this reason, the issue of reimbursement similarly must be decided in the [School] District's favor.”

Here, the parents were insistent upon handling matters their own way. While they are free to do this, they cannot do so without taking a risk that it will be at their own expense. They did not give the District a reasonable opportunity to evaluate the student or to make an offer of FAPE before making a unilateral placement. The District was willing to offer several alternative options for the student while the identification, evaluation and placement process ran its course, but the family was unwilling to consider anything short of a therapeutic residential placement, despite the absence of evidence to support it. Thus, it is not necessary to reach the issue of whether the District made FAPE available. The family is not entitled to reimbursement of the costs of the student's placement at Moonridge under the circumstances.

**E. Appropriate placement for the student's current needs**

The Individuals with Disabilities Education Act (IDEA) requires that local schools provide students identified as disabled with a “free appropriate public education” which is described in the student's “individualized education program” (IEP). 20 USC §1412(a)(1)(A), §1413 (a)(1), §1414(d)(A) The standard for a “free appropriate public education” is defined as a program that is “reasonably calculated to enable the child to receive education benefit”. *Board*

*of Education v. Rowley*, 3 IDELR 553:656, 667 (1982) The court made clear that “educational benefit” was not synonymous with “maximum” benefit.

We think, however, that the requirement that a State provide specialized educational services to handicapped children generates no additional requirement that the services so provided be sufficient to maximize each child’s potential “commensurate with the opportunity provided other children”.

(*Id.* 666)

The IDEA is based on the principle that children with disabilities have a right to be educated with their non-disabled peers in the least restrictive educational environment appropriate to meet their needs. The law requires that, to the maximum extent appropriate, children with disabilities must be educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 USC § 1412 (a)(5)(A).

To be eligible for reimbursement of the costs for a placement made outside the PET process, the parents must show that the program offered by the school is inappropriate, and that the program they have chosen is appropriate to meet the needs of the student. *Burlington School Committee v. Department of Education*, 471 US Ct, 359 (1985).

The record does not support a conclusion that the student requires a setting as restrictive as a therapeutic residential program for the student to make educational progress. The only special education programming she has had to date was at Moonridge, so she has not attempted to attend school in a less restrictive setting with the kind of supports that are available to her through special education. Her placement at Kent’s Hill is no reflection of how the student

would do in a proper special education program with the supportive services she needs, as she did not receive special education, or much structure or support there.

There is no dispute that the student needs a very structured environment and considerably more support than she had when she attended CHRHS as a regular education student. Her educational needs, however, are fairly limited, which was also true while she was at Moonridge. There, her only educational goals were completing assignments on time and understanding the importance of her education. Her placement there by her parents was primarily for therapeutic purposes. The current proposed IEP contains four educational goals, including (1) organizational skills; (2) development of a positive support plan; (3) achievement and maintenance of passing grades; and (4) good school attendance.

To achieve these educational goals, the student will require considerable support for her mental health needs. She needs to continue her psychotherapy. Dr. Miller testified that her current level of treatment is necessary to prevent hospitalization. Thus, she does not need a residential program for psychiatric reasons. Although Dr. Miller testified that the student “would not survive without 24-hour supervision,” she did not elaborate upon the basis for this opinion, or why that supervision could not be accomplished with a combination of support in a very structured school environment and at home. There was no evidence that the student is suicidal. Dr. Miller’s opinion related to the student’s therapeutic needs, not her educational needs.

As Dr. McCabe testified, the student also needs a positive behavioral support plan that is monitored as part of her IEP, and to have the support of social workers or guidance counselors. Although this is one of the goals in her proposed IEP, it was supposed to be developed with input from Dr. Miller and the family, and this has not yet occurred because the PET process broke down at the October 20, 2005 meeting.

Dr. Slap-Shelton testified that the student needed a structured, therapeutic setting, but her evaluation was based upon behavioral ratings from the parents only. The parents' experience with the student at home has been vastly different than the teachers' experience at school. Dr. Slap-Shelton did not have direct input from any of the teachers at any school the student has attended. This is an important component of any evaluation, which is why the regulations require classroom observation and teacher input.<sup>4</sup> Had she spoken with the student's teachers, she would have learned that the student was not disruptive, other than socializing a bit much with her peers, nor was she dangerous or unmanageable in school. [Fact #9. 14] On cross-examination, she testified that all of the student's academic recommendations could be provided in a typical school setting. Most of Dr. Slap-Shelton's academic recommendations are in the nature of accommodations and modifications, and are included in the student's IEP. [P-19-20]

Dr. McCabe did not believe the student needed a therapeutic residential placement, and thought that her needs could be met either in the mainstream classroom or an alternative or day treatment placement. He correctly pointed out that public schools currently meet the needs of students who are considerably more disabled emotionally than this student. Dr. Turek, the evaluator chosen by the parents in Utah, felt that the student could be accommodated in public school. I found both Dr. McCabe's testimony and Dr. Turek's report credible.

When Dr. Vaughan advised the parents to pursue residential therapeutic treatment during the winter of 2004, it was because she did not believe the *family* was in a position to manage the student's behavior and mental health issues, and that she could not be treated on an outpatient basis. Since returning to live with her parents, the student has made gains with outpatient

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<sup>4</sup> Dr. Slap-Shelton could not observe the student in the classroom, as she has not attended school since April 2005. It is unclear, however, why she did not obtain behavioral information from any of the student's teachers at Kent's Hill, Moonridge or CHRHS. It was apparent from her testimony that she was confused about the student's educational program at Kent's Hill, and that she made incorrect assumptions about it.



treatment, and the family has been able to manage her, although undoubtedly it is a challenge, as it is for any family to deal with someone who has a psychiatric illness. In any event, the need for a residential placement must be directly related to the student's ability to benefit from her education, and cannot be justified solely based upon difficulties at home. *E.g., Ciresoli v. MSAD No. 22, 901 F. Supp. 378, 386 (D. Me. 1995).*

Based upon the evidence, I believe that the student's needs can be met with the proposed IEP, once the behavioral supports discussed by the PET have been developed, and with clarification of precisely what services "psychiatric consultation as needed" would provide. Although Cindy Foreman testified that such services would be "front loaded," the IEP requires more specification than that, and should contain a specific level [sic] support from a social worker or psychologist.

Regarding placement, there is evidence against returning the student to CHRHS right now, but she would benefit from a highly structured public school program, such as a day treatment program in a neighboring district, or Zenith, if her IEP could be implemented there without going to CHRHS for part of the day. With the supports discussed above, this type of placement would provide the structure the student needs while allowing her to be educated in the least restrictive educational setting.

There is no doubt that the student fared very well at Moonridge, and she might do well in another similar placement, such as the Chamberlain School proposed by the parents. While such a restrictive placement would likely relieve some of the family's stress, it cannot be justified as necessary for the student to make educational progress. The parents' concerns must be balanced with the student's right to be educated with her non-disabled peers. As the First Circuit said in *Abrahamson v. Hershman*:

It follows from Rowley that the Act does not authorize residential care merely to enhance *an otherwise sufficient* day program. A handicapped child who would make educational progress in a day program would not be entitled to placement in a residential school merely because the latter would more nearly enable the child to reach his or her full potential. A school committee is required by the Act merely to ensure that the child be placed in a program that provides opportunity for some educational progress.

*Abrahamson v. Hershman*, 701, F.2d 223, 227 (1<sup>st</sup> Cir. 1983) (emphasis in original). Ordering residential placement under any lower standard would "likely violate the Act's mainstreaming provisions." *Abrahamson*, 701 F.2d. at 227, n.7.

## V. CONCLUSIONS

1. The District did not violate its child find obligation or its obligation to evaluate, identify and place the student in special education.
2. The District did not err in refusing to find the student eligible for special education on March 3, 2004.
3. The District did not fail to provide the student with a timely offer of a FAPE, thereby entitling the family to reimbursement of costs incurred in connection with its unilateral placement of the student at Moonridge Academy.
4. The family is not entitled to an order placing the student at a therapeutic placement.

## ORDER

After consideration of the evidence presented during this due process hearing, the Hearing Officer orders as follows:

1. The IEP offered by the District is appropriate, but needs to have the behavioral plan drafted and clarification of psychological supports, consistent with this decision. If the parents do not elect to place the student at a private school unilaterally, the PET shall meet as soon as possible to finalize placement in a local public high school day treatment program or the District's Zenith program, and make any refinements necessary to the IEP. The program shall begin as soon as possible after that meeting.
2. The District is not responsible for the cost of the student's placement at Moonridge.

3. The District is not responsible for the cost of the student's placement in a therapeutic, residential treatment program.

So ordered by the Hearing Officer,

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SHARI B. BRODER. ESQ.  
Hearing Officer