

Complaint Investigation Report
Parents v. Augusta

November 26, 2012

Complaint #09.031C

Complaint Investigator: Jonathan Braff, Esq.

Date of Appointment: November 25, 2008

I. Identifying Information

Complainant: Parents
Address

Respondent: Cornelia Brown, Superintendent
12 Gedney Street
Augusta, ME 04330

Special Education Director: Donna Madore

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on November 25, 2008. The Complaint Investigator was appointed on November 25, 2008 and issued a draft allegations report on December 1, 2008. The Complaint Investigator conducted a complaint investigation meeting on December 15, 2008 (originally scheduled for December 12, 2008 but continued due to inclement weather), resulting in a set of stipulations. The complaint originally requested that the Augusta School Department (the "District") pay to Good Will-Hinkley School ("GWH") the cost of the Student's tuition while he attended its residential program. At the complaint investigation meeting, the student's mother (the "Parent") amended the complaint to request reimbursement of room and board fees she paid while the Student attended the program. In light of the late amendment, the District was offered an opportunity to extend the time for submission of its response and accompanying documents, but it declined to do so. On December 17, 2008, the Complaint Investigator received a five-page memorandum, 45 pages of documents and a list of proposed interviewees from the Parent and on December 18, 2008 received 73 pages of documents and a 13 page memorandum from the District. Interviews were conducted with the following: Donna Madore, special education director; Jeff Boston, principal; Heather Gauthier, teacher; Tracy Kinney, teacher; T.J. Maines, teacher; Norman Shaw, teacher; Kathleen Fowler, educational technician; Charles Hinds, guidance counselor; Scott Hoch, psychologist; Carol Mansfield, M.D., physician; Teresa Hermida, M.D., psychiatrist; and the Parent.

III. Preliminary Statement

The Student is xx years old and was most recently found eligible for special education services under the eligibility criterion Other Health Impaired on May 25, 2007. This complaint was filed by the Parent, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Determination to dismiss the child from special education services despite evidence that he continued to have a disability that adversely affected his educational performance and needed special education services in violation of MUSER §VII.3.A;
2. Failure to adequately consider evaluations provided by the parents of the child in violation of MUSER §V.3.A(1)(a);
3. Failure to provide a free appropriate public education in violation of MUSER §II.11 and 34 CFR §300.101(a).

V. Stipulations

1. The Student became eligible for special education on October 1, 2002, in xx grade, under the category Specific Learning Disability.
2. The Student was dismissed from special education on March 24, 2006, in xx grade.
3. The Student was re-identified as eligible for special education on May 25, 2007, in xx grade, under the category Other Health Impairment.
4. The Student attended Good Will-Hinckley School from July 16, 2007 until August 29, 2008.
5. The Parent did not pay and was not billed anything for the Student's education at Good Will-Hinckley School.
6. On December 1, 2004, the District received from the Parent a report of Dr. Teresa Hermida in which the doctor diagnosed the Student as suffering from depression and anxiety disorder.

VI. Summary of Findings

1. The Student, who is xx years old and lives in xx with his mother, stepfather, sister and twin half-brothers, was initially found eligible to receive special education services under the eligibility criterion of Specific Learning Disability on October 1, 2002.
- 2 The Student was later dismissed from special education when he was in xx grade at Hodgkins Middle School ("Hodgkins") following an IEP team meeting on March 24, 2006. This decision was made by consensus of the team, with the Parent's participation.

3. The Student did reasonably well at the beginning of the following year, when he was in xx grade at Hodgkins. His first trimester report card grades were in the 80s and 90s (with the exception of French (74)), and he joined the student council.

4. On February 12, 2007, the Student went to live with his father in North Monmouth, Maine and began attending school in Monmouth. The Student was unable to get along with his father and he returned to living with the Parent and to Hodgkins on April 10, 2007.

5. After returning to Hodgkins, the Student's behavior became very challenging, resulting in one detention and three suspensions, and he was no longer having academic success.

6. On May 2, 2007, the Parent requested an IEP team meeting and provided a letter from Carol Mansfield, M.D. dated January 30, 2007, in which Dr. Mansfield diagnosed the Student as suffering from depression, anxiety and dysphoria.

7. The IEP team met on May 25, 2007 and identified the Student as eligible for special education under the category Other Health Impaired. The team developed an IEP that called for resource room support for the Student for the remainder of xx grade and, in xx grade when he would attend Cony High School ("Cony"), 200 minutes per week in the Options Behavioral Intervention Program ("Options").

8. The IEP team met again on June 13, 2007. The Student had received failing grades for his third trimester. The Parent reported that she was unable to control the Student at home, that she feared for the safety of her infants, and that she found prescription pills in the Student's bedroom that were not prescribed for him. She told the team that she had applied for residential placement for the Student at GWH and asked the District to pay for the cost of his education there.

9. The IEP team rejected the Parent's request that the District pay for a residential treatment program, finding that the previously formulated program was appropriate and that a residential program was not the least restrictive educational setting. As the Student had to attend summer school in order to make up the failed classes, the team amended the IEP to include provision of a full-time educational technician to support the Student through summer school. The IEP team also drafted a behavior plan to be implemented during that time.

10. During the course of the summer school program, the Student successfully completed the schoolwork required of him, and even helped some of the other students with their work. He occasionally engaged in disruptive, non-aggressive behavior, but was easily redirected. He also failed to attend several days, and the Parent was warned that the Student was in danger of not being able to complete the program if there were more absences. The Parent reported that the Student was acting out at home, that she couldn't handle the Student and, ultimately, that she was sending the Student to GWH.

11. The Student was admitted to GWH's residential program on July 16, 2007, before the end of the summer school program. His summer school teachers and principal considered the

quantity and quality of the work the Student had completed, determined that he had met the school year's academic requirements, and advanced him to the xx grade.

12. On September 10, 2007, an IEP team meeting was held at GWH. The team included a representative of SAD #49 where GWH was located. At the meeting, the District explained to the Parent the difference between placement in a private school by a public agency and by a parent. The District told the Parent that as the Student was parentally placed at GWH, he was only entitled to an Individual Services Plan, which was then developed at the meeting. The Parent told the team that there was a scholarship fund available to the Student that would financially enable her to send the Student to GWH.

13. On April 24, 2008, the District received a letter from the Disability Rights Center by which the District was put on notice that the Parent was rejecting the placement offered in the May 25, 2007 IEP, and would be enrolling him in GWH at public expense.

14. The Parent wrote to the District on May 23, 2008 requesting reimbursement to GWH by the District for the costs of the Student's educational program for the 2007-2008 year. Enclosed with this letter were two letters from Teresa Hermida, M.D., a child/adolescent psychiatrist, dated February 6, 2008 and April 24, 2008, respectively.

15. In the February 6 letter, Dr. Hermida wrote that the Student was showing signs of pre-morbid bipolar disorder, that there had been concerns that he was increasingly a danger to himself and others, and that "[u]nless he receives direct and constant care in a residential setting...it is likely that he would be in constant crisis with the risk for multiple hospitalizations during outpatient care." In the April 24 letter, Dr. Hermida wrote that the Student was under treatment for a mood disorder, that he had a history of aggression in multiple settings, including the classroom, and a history of running away when frustrated. Dr. Hermida opined that the Student would be a safety risk in a public school setting, and recommended a structured behavioral setting.

16. The Student was hospitalized at Acadia Hospital from July 4 through July 8, 2008 due to suicidal ideations. While there, he was diagnosed as having Oppositional Defiant Disorder and a Mood Disorder NOS.

17. Pursuant to a consent for evaluation signed by the Parent at a meeting between the Parent, her attorney and the District, a psychological evaluation was performed on the Student by Scott Hoch, Ph.D. on July 24 and 31, 2008. Dr. Hoch put forth the following diagnoses for the Student: Oppositional Defiant Disorder, Conduct Disorder, Substance Abuse, Parent-Child Relational Problem, Mood Disorder NOS, rule out ADHD, rule out learning disorder. Dr. Hoch described the Student as "a bright student whose academic performance is sometimes below average and that he frequently needs to be encouraged and supported to work up to his ability level." Dr. Hoch recommended an academic program: with a small student to staff ratio; where the Student would not be expected to complete homework; where the teacher could act as both instructor and mentor; where there was a very supportive and structured classroom setting; where the opportunity to get in trouble with authority figures would be minimized; and where the Student's oppositional defiant behavior would not

immediately result in a call home to his mother or a suspension. Dr. Hoch also recommended family counseling for the Student's family, multi-systemic therapy within the Student's home and a substance abuse counseling program for the Student.

18. During the evaluation, the Student told Dr. Hoch that he did not like GWH and would love to go to a public high school. He stated that he broke rules at GWH so he would get kicked out of that school. He attributed his suicidal ideation to his perception that he would have to stay at GWH and that he wanted to come home.

19. Dr. Hoch, discussing in the evaluation report the Student's behaviors that led the Parent to place him at GWH, states that while the Student showed an increase in academic and behavioral problems in xx grade, his behavior at home had significantly deteriorated. He cites in this regard "significant parent-child interaction problems," such as the Student's lying and stealing at home and swearing and yelling at his mother. Dr. Hoch records that on the admission note at GWH, the Parent reported concerns about the safety of her young children and the rest of her family.

20. In a report from GWH dated July 28, 2008, the GWH staff recommended a program more restrictive than GWH for the Student, stating that he was often out of program, exhibited a high level of disrespect, destroyed property, refused to engage in therapy and was "doing what it takes to get out."

21. On August 19 and 29, 2008, the IEP team met to discuss Dr. Hoch's evaluation and discuss the Student's xx grade program. The team developed a public school IEP for the Student, under which he would attend Options for 1600 minutes per week with 100% supervision. The IEP was amended on September 18, 2008 to reduce Options to 1200 minutes per week and reduce the amount of supervision.

22. From the date of November 25, 2007 (one year before the date of filing of this complaint) until the Student left GWH in August 2008, the Parent paid GWH a total of \$2,676.08 for the Student's room and board.

23. During an interview conducted by the Complaint Investigator with Heather Gauthier, Ms. Gauthier stated that during summer 2007 she was the summer school director and was one of the Student's teachers. The Student also had an educational technician with him throughout the day. Together with Jeff Boston, the school principal, Ms. Gauthier worked on expectations and a behavior management plan for the Student before the program started. Ms. Gauthier stated that up until the time he was removed from the program by the Parent, the Student was completing all of his work, was ahead of the rest of the students and even helped some of the others. His work was also of good quality, and it was the quality as well as the quantity of the work he completed that led the District to pass him from xx grade even though he was removed from the summer program before it ended. As to the Student's behavior, Ms. Gauthier stated that she had no problems with this prior to the July 4th vacation. Afterwards, he exhibited some annoying behaviors, such as calling out. She never told the Parent that the Student was in danger of being terminated from the program due to his behavior; although it was frustrating, she could handle his bad behavior. Ms. Gauthier did talk to the Parent after

the Student had had a couple of absences about the possibility of his being removed from the program in connection with his attendance. Ms. Gauthier was surprised when she learned that the Parent was sending the Student to the GWH residential program. She didn't believe that the Student's behavior was such that it required residential treatment. She assumed that there must have been something going on at home.

24. During an interview conducted by the Complaint Investigator with Kathleen Fowler, Ms. Fowler stated that she took over from Tom Devlin as the Student's educational technician in the summer program at the end of June, and remained in that position until the Student was removed from the program. She stated that the Student required very little assistance with his school work. Ms. Gauthier further stated that she had very little problem with the Student's behavior; that although he sometimes engaged in disruptive behavior, she found it easy to redirect him. She did not observe the Student engaging in any aggressive behavior. Ms. Fowler said she called the Parent a few times during the summer to talk about the Student's attendance, and warned that continued absences could result in his being terminated from the program. Reportedly, the Parent shared things with her about the student's behavior at home, saying "He just won't listen" and "I can't handle him." Ms. Fowler said she was shocked when the Parent told her that the Student was being sent to GWH because the Parent couldn't handle him anymore; she hadn't seen the kind of behavior from him that would warrant that placement. Ms. Fowler stated that as the special education secretary for the District during the regular school year, she is familiar with Options and the type of students attending it. She stated her opinion that Options would have been an appropriate placement for the Student, providing some freedom but enough structure and a place to go when he needed support. She said he would have gotten one-on-one support in that program of the same kind from which he benefitted during the summer.

25. During an interview conducted by the Complaint Investigator with Charles Hinds, Mr. Hinds stated that he was the Student's guidance counselor at Hodgkins, and is presently filling that role at Cony. He saw the Student often during xx grade. He said that the Student started out doing well that year, and was particularly pleased that he was on student council. At some point that year, the Student told Mr. Hinds that he was not getting along with his mother and was going to live with his father. Mr. Hinds spoke with the principal in Monmouth who told him that the Student started off doing well there, but then things became problematic. When the Student returned to the District, he told Mr. Hinds that he came back because he was having trouble with his father. According to Mr. Hinds, the Student was in "pretty rough shape" and had a "chip on his shoulder." He started getting in trouble and then refused to change. Mr. Hinds said he saw the Student's behavior getting out of hand and that he needed support. He urged the Parent to push for the Student to be identified as needing special education. Mr. Hinds believed the Parent was seeing worse behavior from the Student than what the District was seeing, but he never thought that the Student needed a residential program. He was familiar with Options, and he thought that should be given a chance to work before the Student was sent to a residential program. Mr. Hinds said that at the beginning of this year, the Student said he wanted to return to GWH, but that once he accepted that was not going to happen, he settled in and is now doing fairly well.

26. During an interview conducted by the Complaint Investigator with T.J. Maines, Mr. Maines stated that the Student in xx grade was in his home room and in his social studies class. He said that the Student was doing pretty well in the first trimester, but then his behavior started to escalate. He engaged mainly in annoying behavior, pestering other students or failing to follow through on things. The Parent told Mr. Maines that she was having a really hard time with the Student at home. He recalled the Parent said some things about the Student that were not nice, and that she threatened the Student with sending him to live with his father. After she did send the Student to his father and then he returned to the District, he came back even more “off the wall.” He seemed to be angry at being bounced back and forth by his parents, and acted like he was trying to get in trouble. He was talking back to teachers. Mr. Maines remembers at the May 25, 2007 IEP team meeting the staff looked at Dr. Mansfield’s letter and wondered why they hadn’t seen it sooner. He recalled the Parent asking about GWH. Mr. Maines has had students who ended up at GWH, and he said those students were “violent and crazy.” He didn’t believe the Student fit the profile of the students at GWH, and was surprised the Parent was even thinking about that placement. Mr. Maines didn’t think that what the school was doing for the Student towards the end of the year was working, but he didn’t believe that residential treatment was appropriate. He believed the Student needed more structure and more one-on-one instruction. He was not sufficiently familiar with Options to know whether that would be a good placement.

27. During an interview conducted by the Complaint Investigator with Tracy Kinney, Ms. Kinney stated that the Student was in her regular education math classroom during xx grade. Ms. Kinney was out on maternity leave during that year from some time in January, 2007 until mid-May, 2007. She co-taught the class with Angie White, a special education teacher. Ms. Kinney said that Ms. White became more attentive to the Student’s needs as the year progressed, making sure that he understood directions and helping him with organization. Ms. Kinney said that the Student did not stand out in her mind as a significant behavior problem. She recalled that before she went out on leave, the Student’s behavior could be at times confrontational, and she occasionally met with the Parent to discuss his behavior. She didn’t remember his behavior being remarkable after she returned in May. She didn’t believe that the Student was out of control, but felt that he needed support and a behavior plan. She does not recall the Student ever being threatening, or posing a risk of harm to other students or himself. Ms. Kinney recalled a meeting in May to review the Student’s program and discuss transition to high school. At the meeting, the Parent was very clear that she didn’t want the Student in her home anymore and wanted a residential placement. Ms. Kinney felt that the Parent had made up her mind and didn’t want to hear about other choices. Ms. Kinney thought that Options was more than adequate, as it would provide support and help him with handling frustration.

28. During an interview conducted by the Complaint Investigator with Jeffrey Boston, Mr. Boston stated that he was principal of Hodgkins during the years that the Student attended there. Mr. Boston didn’t remember any problems with the Student during his xx grade or the first trimester of xx grade. After that there were some problems with the Student’s behavior. Mr. Boston recalled that the Student went to live with his father in the middle of the year because of problems he was having at home. When he returned, his behavior at school did not improve. Mr. Boston did not, however, feel that the Student was so out of control as to

require a residential program. Mr. Boston had seen much worse behavior from other students at the school, whereas the Student had shown that he was capable of controlling himself if he had some support. Mr. Boston was somewhat familiar with Options and thought that it would have been a fine placement for the Student.

29. During an interview conducted by the Complaint Investigator with Norman Shaw, Mr. Shaw stated that since September he has been the Student's case manager at Cony. He described the Student as "delightful," and said he has had no real difficulties with his behavior. Specifically, the Student has not displayed any volatility, tantrums or cursing at Cony. The only behavior issue Mr. Shaw is working on with the Student is work avoidance. Mr. Shaw believes the Options program is working for the Student and that his behavior at home is improving as well. Mr. Shaw is in frequent contact with the Parent, and reports that the Parent seems to be pleased with how things are going.

30. During an interview conducted by the Complaint Investigator with Carol Mansfield, M.D., Dr. Mansfield stated that as the Student's physician, she was convinced in the Spring of 2007 that the Student required a residential treatment program. She felt that with the "amount of hell" the Student was giving his mother and stepfather, the parents really had no choice. The Student at that time was belligerent and abusive to his parents and had started to bring drugs into the home. He was also performing poorly at school. Dr. Mansfield described the Student as one of her worst adolescent medicine patients in terms of the degree of his oppositional behavior and defiance. Dr. Mansfield was not familiar with Options, but she did not think this placement would be satisfactory because the Student needed to get out of the home. She further believed that without the residential component, the Student would not have been able to benefit from his educational program. This was based in part on her concern with the Student's drug abuse. She was not in contact with the Student during the time he was at GWH, but heard from the Parent that GWH was having a problem with the Student running away. She has seen the Student since he returned from GWH, and she described him as more relaxed. Dr. Mansfield related that the Parent reported to her that the Student was doing much better.

31. During an interview conducted by the Complaint Investigator with Scott Hoch, Ph.D., Dr. Hoch stated that his first contact with the Student was when he conducted a psychological evaluation in July, 2007, while the Student was at GWH. He stated that the Student's behavior while at GWH didn't reach the level of dysfunction one would expect if he had been unable to function in the traditional school system. Dr. Hoch further reported that the staff at GWH didn't feel he needed to stay there either clinically or educationally. The staff told him that what the Student needed was support and structure, and that they were putting too much energy into tasks like making sure the Student had his pencil. Dr. Hoch also felt that the GWH staff too often engaged with the Student in his defiant behavior, and that this merely escalated the conflict. Dr. Hoch described the Student as very likeable, but felt that he was craving attention. He noted that on the couple of occasions when the Student threatened to hurt himself, it was via a phone call to the Parent. In reviewing the Student's records and after interviewing the Student and the Parent, Dr. Hoch formed the impression that after the Student came back from the attempt to live with his father during xx grade things began to fall apart, especially at home but also at school. Dr. Hoch believes that the Student's bad

experience trying to live with his father, coupled with the Parent's having new babies, greatly increased his need for attention. The Student was stealing money at home, and lying to and fighting with the Parent. The Parent discovered prescription pills (not the Student's) in the Student's room. There was also an incident involving the Student making one of the twins dizzy that had the Parent fearful for the children's safety. At that point, as the Student was finishing xx grade, Dr. Hoch believes that Options was the least restrictive appropriate placement for the Student. Dr. Hoch is very familiar with Options; he has worked for the District since 1984, and has had many patients who attended the program.

32. During an interview conducted by the Complaint Investigator with Teresa Hermida, M.D., a psychiatrist, Dr. Hermida stated that she first saw the Student as a patient on two occasions in May, 2004, and then again in August 2007. Once the Student began attending GWH, Dr. Hermida became a consultant to the GWH staff. Dr. Hermida stated her opinion that in August 2007 the Student required residential treatment. Her greatest concern was the rapid deterioration the Student had undergone in the prior six months. His behavior and performance at school had been getting steadily worse, despite counseling and additional medication. Her main concern, however, was that the Student was out of control at home, and was unable to follow even basic rules. The Student was in constant severe fights with the Parent and his step-father, involving threats, screaming and domination behavior, and he was generally refusing to accept authority. Dr. Hermida described the behavior as more extreme than the typical child with Oppositional Defiant Disorder. Dr. Hermida considered this behavior to represent a burgeoning mood disorder, and was perhaps a precursor to Bi-Polar Disorder. In speaking with the staff at GWH, Dr. Hermida believed they changed their view of the Student over the 2007-2008 school year as a result of his rage behavior and frequent running away. While at GWH, the Student was started on a new medication, Abilify, which helped him with his anger and impulse control. By April 2008, the Student's mood had stabilized and his behavior was more of the Oppositional Defiant Disorder-type. By the end of the year, the staff was extremely angry at and frustrated with the Student, the Student felt the same towards them, and Dr. Hermida believed GWH was no longer therapeutic for the Student. She was disappointed that GWH was not more therapeutic for the Student than it was, but continues to believe the residential part of the program was appropriate. Dr. Hermida was somewhat familiar with Options. She believes its behavior management model would not have worked for the Student in September 2007 because he, at that time, was unable to appreciate the consequences of his actions at the moment he took them. He had no "time-line ability." In her recent visits with the Student, Dr. Hermida described him as looking like a "different kid." She felt he was now able to anticipate consequences and therefore to work for a reward. She thought that some of the improvement may have been simply the result of the normal maturation process.

33. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated that the setting the Student was in during xx grade was not meeting his needs. His behavior started to decline at the beginning of xx grade, when he was no longer in special education and no longer had supports in place in the classroom. He was failing classes. He was very stressed out about his schoolwork, and when the Student is stressed he employs avoidance behaviors, such as arguing with teachers and getting kicked out of the class. The Parent believes he was unable to control his aggression at that time, and needed a structured

setting. The Parent stated that she did not believe the Student was engaging in drug use during the xx grade. The Parent described his behavior during this period as “off the charts” – rude, aggressive, risky and potentially dangerous. She believed his behavior problems interfered with his ability to learn. She felt he required direct instruction in a small group setting, plus help with handling his aggression and emotions. The Parent claimed that she supplied the District with a January 30, 2007 letter from Dr. Mansfield, containing the diagnoses of depression, anxiety and dysphoria, on the day it was written. She believes that this letter, together with the Student’s struggles in the first part of xx grade plus his history of behavior problems and previous diagnoses, should have caused the District to take action sooner than the May 25, 2007 IEP team meeting. Although the IEP crafted at that meeting had a behavior plan component, she didn’t think the staff at Hodgkins was capable of implementing it. The Student’s grades did not improve after the IEP was put in place. The Parent stated that at the June 13, 2007 IEP team meeting, she told the team that the program they put in place did not provide enough supervision, that the Student needed 100% supervision. She said that at that time students at Cony were able to leave the building during the day, and that there were problems with students going into the woods and drinking. She was certain that the Student would be one of those students if he was ever unsupervised. The Parent also told the IEP team that the Student needed day treatment services, and she was told the district didn’t offer day treatment services. The Parent stated that she told the team she had visited Options with the Student, and that she believed the Student required a more restrictive setting. Finally, she told the team that she had applied to have the Student admitted to GWH, was waiting to hear if he would be accepted, and asked if the District would pay for the educational expenses of that program. The Parent believed this was sufficient to put the District on notice that she was rejecting the IEP and was expecting the district to pay for his education at GWH. The Parent did not believe the summer school program for the Student was successful at all. She did not believe that the Student was given any meaningful work to do, or that he did whatever work he was supposed to. She did not believe that the Student helped other students with their work. She did not believe that he had an educational technician assisting him. She stated that she was introduced at the start of the program to Mr. Devlin as a behavior specialist that would be able to support the Student when he was feeling stressed, but that she received phone calls from him as well as from Heather Gauthier saying that the Student’s behavior was out of control and the staff couldn’t handle him. She claimed that Mr. Devlin called her with 8 days remaining in the summer program to say that they were going to dismiss the student from the program if his behavior didn’t approve. She also stated that she understood that Mr. Devlin left the summer program mid-way through. The Parent said she never heard of or from Karen Fowler. The Parent acknowledged that Options was working reasonably well for the Student this year, but asserted that it would not have worked for him last year. She stated that he is now in a much better place than he was last year. She described attempts being made this year to increase the amount of time the Student spends in regular education classrooms, but said that when this caused the Student’s stress level to increase he was returned to the Options classroom. With respect to the Student’s experience at GWH, the Parent believes that there was less emphasis there on discipline for every incident of bad behavior and more on helping the Student get back on task, an approach she has been encouraging the staff at Cony to utilize. She believes the Student also learned at GWH that rules were not something he only had to deal with when living with her, but that there will be rules everywhere he goes.

34. During an interview conducted by the Complaint Investigator with Donna Madore, Ms. Madore stated that she is the special education director for the district. Ms. Madore said that during the first trimester of xx Grade, the Student was doing fairly well; that his grades were good and that although there were some problems with behavior, the staff was working on finding an approach that worked with the Student. She felt that the school lost whatever momentum they were building when the Student left to live with his father. Ms. Madore understands that the Student received no services from his school at Monmouth, and when he returned he was “a different kid.” Until that time, the Student had never stood out as a significant behavior problem. Shortly after the Student’s return in April, along with the marked increase in behavior problems (his first disciplinary write-up was in May), Ms. Madore received from the Parent the January 30, 2007 letter from Dr. Mansfield. When she reviewed the letter she determined that the Student should be readmitted to special education under the category “Other Health Impairment”, and Ms. Madore assembled the IEP team for the May 25th meeting. At the meeting, the Parent related that she suspected the Student was taking pills and was “huffing.” He was also hanging around with another student who was known to be a drug user. The team discussed the appropriate placement for the Student for xx grade. There was a day treatment program in the District, the Cony Behavior Intervention program (“CBI”), which was self-contained with 100% supervision. It was the consensus of the staff that the Student’s behavior was not sufficiently severe to warrant that degree of restriction. The team agreed upon placement in Options, where Ms. Madore felt that teacher Norman Shaw would be able to connect successfully with the Student. The Parent asked about GWH, and Ms. Madore responded that she didn’t think a residential treatment program was the least restrictive appropriate placement; she believed Options was appropriate for the Student. She stated to the Investigator that she has sent other students to GWH, and that the Student was not like them. The other students were severely emotionally disturbed children, with behaviors such as spitting on teachers and playing with their feces. As the Student was reentering special education, the law required the Parent to indicate her consent, which she did by signing a District form “Special Education Consent for Placement.” At the June 13, 2007 IEP team meeting, the Parent told the team that she couldn’t handle the Student anymore and she advised the team she had applied for the Student to be admitted to GWH. The Parent said she would pay for the residential component of the expenses at GWH and asked whether the District would pay for the educational component. Ms. Madore again said she did not believe that placement to be the least restrictive appropriate one. Ms. Madore never understood the Parent’s decision was based on her rejecting the IEP, but rather on her need to get the Student out of her house. After having met with staff members of GWH in August 2008, Ms. Madore is not certain that GWH was successful for the Student. She believes that he acquired some bad behaviors from other students there. While the Student’s behavior has greatly improved since his return to the District, Ms. Madore feels he has lost confidence in himself. The staff at Cony is working to try to build up his confidence.

VII. Conclusions

Allegation #1: Determination to dismiss the child from special education services despite evidence that he continued to have a disability that adversely affected his

educational performance and needed special education services in violation of MUSER §VII.3.A;

Allegation #2: Failure to adequately consider evaluations provided by the parents of the child in violation of MUSER §V.3.A(1)(a)

NO JURISDICTION FOUND

These allegations both concern the District's dismissing the Student from special education in March 2006, more than a year before the filing of this Complaint. MUSER §XVI.4.B(3) provides that a complaint must allege a violation that occurred not more than one year prior to the date the complaint is received, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services. As the District restored the Student to special education in May 2007, the violation (assuming there was one) cannot be said to be continuing. Neither is the Parent requesting compensatory services. These allegations are therefore outside the jurisdictional time limit.

Allegation #3: Failure to provide a free appropriate public education in violation of MUSER §II.11 and 34 CFR §300.101(a).

NO VIOLATION FOUND

The Parent seeks reimbursement of both the educational expense associated with the Student's attendance at GWH and the room and board expense associated with the residential program. Reimbursement of parental expenses for private school placement is available as a remedy under IDEA, but requires a showing by the parent that the public school failed to provide appropriate services and that private placement was a suitable alternative. *See School Comm. of Burlington v. Department of Ed. of Mass.*, 471 U.S. 359, 369, 85 L.Ed. 2d 385, 105 S.Ct. 1996 (1985); *C.G. and B.S. v. Five Town Community School District*, 513 F.3d 279 (1st Cir. 2008). More specifically, reimbursement to a parent for the cost of a private residential program, including room and board, may be available where such placement was necessary to provide special education and related services to the student with a disability. *See Abrahamson v. Hershman*, 701 F.2d 223 (1st Cir. 1983). In other words, reimbursement for a residential placement will only be required where the student, because of his disability, cannot be anticipated to benefit from instruction without such a placement. *Independent School Dist. No. 284 v. A.C.*, 258 F.3d 769 (8th Cir. 2001). Specifically where the disability is emotional in nature, the school district can be required to pay the costs of a residential program providing the student's emotional problems prevent him from making meaningful educational progress. *Mrs. B v. Milford Board of Ed.*, 103 F.2d 1114 (2d Cir. 1997).

A review of the facts uncovered during this investigation demonstrates that the program offered to the Student by the District was appropriate, and that residential placement was not required in order for him to benefit from his instruction. There is no question that the Student's behavior in his third trimester of xx grade was interfering with his education, as attested to by his failing grades and several suspensions. This does not, by itself, lead to the conclusion that the Student required a residential placement in order to benefit from his education. Every member of the Student's IEP team other than the Parent was very clear that

the level of misbehavior they were seeing from the Student was not of the order that suggested residential placement was necessary. The team also decided against the District's CBI day treatment program as being unduly restrictive for a student with the types of behavior problems exhibited by the Student. While the IEP team agreed that the Student required additional support and supervision in order to be successful, they believed that he could get the help he needed in the less restrictive Options program. Several of those persons interviewed were personally familiar with both the program and the Student, and they believed that the educational setting was appropriate.

At the same time, it is equally clear that the Student's behavior at home had reached levels unacceptable, and perhaps dangerous, to the Parent, her family and the Student. A conclusion that the Student needed to reside outside the home in order to work on his behavior in the home setting, however, is different than a conclusion that he required a residential placement in order to work on his behavior in the school setting. By all reports, the Student's experience so far at Options has been generally positive; he is comfortable and has found reasonable success there. According to the Parent, the District has been flexible in increasing or decreasing the amount of time the Student spends in Options versus the regular education classroom as the Student's needs dictate. Although it is difficult to use the Student's experience in xx grade as a measure of how successful he would have been in xx grade, the encouraging reports are nonetheless of some significance.

Of more predictive significance is the Student's experience in the District's summer program in 2007. The IEP team, at the meeting of June 13, 2007, crafted a behavior plan and program for the summer that included supports similar to those that the Student was to receive at Options. Both the Student's teacher and educational technician in the summer program reported that the Student completed all his academic work and that it was of good quality. They also found his occasional misbehavior to be relatively mild and generally manageable. The Parent's account was quite different, of course. She stated that there was no educational technician in place, yet the Investigator spoke to Ms. Fowler who had that job. The Parent could not recall ever hearing of Ms. Fowler, yet Ms. Fowler said she spoke to the Parent on multiple occasions. Most importantly, the Parent claimed that she received a phone call from Mr. Devlin (who was the Student's educational technician before Ms. Fowler took over) eight days before the end of the summer program saying that the Student was in danger of being dismissed from the program due to his behavior. Aside from the fact that Mr. Devlin was no longer working for the District at the time in question, both Ms. Fowler and Ms. Gauthier were very clear that no such warning was ever issued; to the contrary, the Parent was warned that the Student could be dismissed if there were more absences. The Student's apparent success in the summer program buttresses the belief that he could have been successful in Options.

Moreover, to the extent that there were valid arguments to be made both for placement at Options and for residential placement, Ms. Madore was correct when she said that the team was constrained by law to choose the least restrictive educational setting. See MUSER §X.2.B (“[S]eparate schooling...shall occur 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.”) This is not a situation where the school district

offered no plan to deal with a student's worsening behavior. *Cf. Mrs. B v. Milford Board of Ed., supra.* The IEP team rightfully believed that Options should first be given a chance to work before sending the Student to a more restrictive environment.

As previously indicated, the Parent, in order to be entitled to reimbursement, had to prove both that the District's offered program was not appropriate and that the alternative placement secured by the Parent was appropriate. Even had there been a determination that the Student should be in a residential setting, that wouldn't mean that GWH was the appropriate educational environment for him. Both Mr. Maines and Ms. Madore spoke of personal experience with students who were sent to GWH, and both drew a sharp distinction between the type of behavior exhibited by those students and that of the Student. The extent to which the program at GWH was successful for the Student is also questionable. It is certain that by the end of his year there the GWH staff had determined that it was no longer appropriate for the Student. Although the Parent praised the program for emphasizing teaching the Student over disciplining him, it was the impression of both Dr. Hoch and Dr. Hermida that the staff had become too emotionally engaged in the Student's confrontational behavior. This was further corroborated in the report issued by GWH at the end of the year. Dr. Hermida further expressed disappointment that the program was not more therapeutic than it was. It is true that the Student returned to the District in much better shape than when he left, but this appears to be the result of multiple factors: change in medication; normal maturation; gaining perspective on the relative costs and benefits of following rules in the Parent's home; and increased ability to anticipate consequences of behavior. While the Parent believes the Student acquired some coping skills at GWH, Ms. Madore believes he acquired some additional negative behaviors and suffered a loss in self-confidence.

Based on the conclusion that the District offered appropriate services to the Student, the Parent is not entitled to be reimbursed any expenses associated with his placement at GWH. It should be noted in this regard, however, that the Parent did not incur or pay any tuition expense while the Student attended GWH, but seeks to have the District pay to GWH a tuition expense that was never billed to her. Thus the Parent is not seeking "reimbursement," because the student's private school education was without cost to her. Neither the federal law nor its Maine counterpart authorizes, as a result of a parental complaint, the directive to a school district to retroactively pay a private school for tuition not charged to the parent.

VIII. Corrective Action Plan

None is required.