

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

23.067H – [] v. [] School

REPRESENTING THE SCHOOL: Isabel Ekman, Esq., and Jonathan Ruterbories, Esq.

REPRESENTING THE FAMILY: Atlee Reilly, Esq.

HEARING OFFICER: Rebekah J. Smith, Esq.

This hearing was held and this decision issued pursuant to Title 20-A M.R.S. § 7202 et seq., Title 20 U.S.C. § 1415 et seq., and accompanying regulations. The hearing was held on August 21, 22, 23, and 31 and September 12, 2023, via remote videoconference. Present for the entire proceeding were [], the Student’s Parent; Atlee Reilly, Esq., counsel for the Family; [], Special Education Director for [] (“School District”); and Isabel Ekman, Esq., and Jonathan Ruterbories, Esq., counsel for the School District.

Testifying at the hearing under oath were:

[], [] Clinician
[], [] Clinician
[], OQMPH, [] Health Case Manager
[], Parent
[], Expert Witness
[], School District Outreach Worker
[], Special Education Director
[], [] School Assistant Principal
[], Psy.D., Psychologist at [] Child Psychology

I. PROCEDURAL BACKGROUND

The Parents filed a request for a hearing on March 27, 2023. On April 3, 2023, a scheduling videoconference was convened and a Scheduling Order was issued setting

hearing dates for June 14 and 15, 2023. On May 19, 2023, a scheduling videoconference was convened and a Scheduling Order was issued amending the hearing dates to August 21, 22, and 23, 2023. On June 17, 2023, a Scheduling Order was issued setting the fourth hearing date for August 31, 2023. On August 8, 2023, a prehearing conference was convened and a Conference Order was issued on August 9, 2023.

On August 17, 2023, an Order on the Family's Motion to Compel was issued. On August 22, 2023, an Order on the Family's Motion to Compel a Single Document was issued.

On August 29, 2023, a Post Hearing Scheduling Order was issued. On August 31, 2023, a Post Hearing Scheduling Order was issued setting the fifth date of hearing for September 12, 2023. On September 12, 2023, a Post Hearing Scheduling Order was issued setting the deadline for closing briefs for October 5, 2023, and setting the deadline for reply briefs for October 13, 2023.

The record includes 1,261 pages of documents submitted by the Parents, identified as P-1 through P-1261, and 1,601 pages of documents submitted by the School District, identified as pages S-1 through S-1601, as well as three appendices submitted by the School District, identified as S-A1-1 through S-A1-1479, S-A2-1 through S-A2-250, and S-A3-1 through S-A3-469. All documents were admitted without objection. At the close of testimony, the parties jointly requested that the record remain open for the submission of written closing briefs. The record closed with the Hearing Officer's receipt of each party's closing brief on the agreed-upon deadline of October 13, 2023.

II. ISSUES

The issues for hearing are:

1. Whether the School District violated its child find obligations by failing to identify and evaluate the Student within the timelines required by the IDEA.
2. Whether the School District violated the IDEA in changing the Student's placement for disciplinary reasons.
3. Whether the Student is a student with a disability who is eligible for special education services.
4. Whether the School District failed to provide the Student with a free appropriate public education as a result of procedural and substantive violations.

III. FINDINGS OF FACT

Kindergarten through Third Grade. The Student had difficulty with interfering behaviors from the start of his education, which he began at [] Elementary School in [], []. (S-1435.) The Student's interfering behaviors were first reported in kindergarten, the 2014 - 2015 school year, with physical aggression. (S-1435.) The Student reported beating up another student at recess behind the bleachers. (S-1435.) While in kindergarten, the Student had one absence, 11 tardy arrivals, and one early dismissal. (S-1464.) During the Student's first grade year, the 2015 - 2016 school year, the Student and his Mother reported that he punched his Brother in the face. (S-1435.) While in first grade, the Student had three absences, 14 tardy arrivals, and five early dismissals. (S-1464.) During the Student's second grade year, the 2016–2017 school, the Student received a four-day suspension. (S-1435.) The Student later reported during his 2023 intake to the [] program in the School District and in a 2023 psychological evaluation that he began smoking nicotine and cannabis when he was seven. (S-1436.) The Student's Mother also reported that the Student stole \$100.00 from her sister when he was seven. (S-1436.) While in second grade, the Student had nine

absences, 32 tardy arrivals, four early dismissals, and a four day suspension. (S-1464.)

During the Student's third grade year, the 2017–2018 school year, the Student received a three-day suspension for property destruction and assault on the school resource officer. (S-1436.) In his 2023 psychological evaluation, the Student reported stealing his Parents' vapes, cannabis, and cigarettes when he was seven. (S-1436.)

While in third grade, the Student had 13 days of partial attendance, four absences, and a three-day suspension. (S-1465.)

Fourth Grade. During the Student's fourth grade year, the 2018–2019 school year, the Student was transferred to [] School in [], Maine. (S-1436.) The Student underwent an intake assessment at [], explained below, and began receiving therapy and medication management. (S-1436.)

In September 2018, during the Student's intake assessment at [], it was documented that the Student had been struggling with anxiety, depression, Attention Deficit Hyperactivity Disorder ("ADHD"), and sleep. (S-1436.) The Student was struggling excessively at school and had experienced physical and emotional abuse by his disabled alcoholic Father and a long history of exposure to domestic violence. (S-1436.) The Student began receiving therapy and medication management through []. (S-1436.) The Student reported that he was copying aggressive yelling behaviors from his Father; he would come to school frustrated and yell at others in his class. (S-1437.) The Student stated to the clinician that he "gets out of control" and worried about hurting family members by accident. (S-1437.) In November 2018, the Student reported physical abuse at home including being locked in a dark room by his brother, being punched in the ribs by his brother, his Mother pulling him out of bed and hitting his face

on the floor, and his Mother's boyfriend swinging him and hitting his knee on the TV. (S-1437.) The Student showed his therapist a bruise and a scrape on his knee from hitting the TV. (S-1437.) An abuse report was filed with Child Protection Services. (S-1437.) In May 2019, the Student was disciplined at school for being rude to classmates, aggressive with furniture, and trying to fix another student's e-cigarette on the bus. (S-1437.) The Student asked his therapist not to tell his Parents about these incidents because they would beat him again. (S-1437.)

While in fourth grade, the Student had five early dismissals, but no absences, tardy arrivals, or suspensions. (S-1465.)

Fifth Grade. During the Student's fifth grade year, the 2019–2020 school year, the Student attended [] [] [] School. (S-1437.) In September 2019, a crisis assessment was initiated by the School District when it was discovered that the Student was researching "fast and easy" methods of suicide online. (S-1438.) The Student reported suicidal ideation dating back four years subsequent to the death of his Grandmother and dog and a desire to be with them in heaven. (S-1438.) The Student reported firearms at both of his Parents' homes and stated that he had learned to shoot them when he was six years old. (S-1438.) Moderate risk was determined and the Student was released to his Mother's care. (S-1438.) In November 2019, a crisis assessment was conducted due to behavioral outbursts, a verbal altercation, and escalation so significant that the police were called. (S-1438.) After the Student refused to drop a pencil when directed, he approached the officer at which point he was tackled to the ground, and taken to the emergency department for assessment. (S-1438.) The Student reported that he could not control his actions when he was angry. (S-1438.)

Although a crisis stabilization unit admission was recommended, the Family declined because the Student did not want to attend due to nighttime incontinence. (S-1438.) In December 2019, the Student relocated with his Father in [] and his therapy was discontinued. (S-1438.) From January through June 2020, the Student attended [] School in [], [], and met academic expectations. (S-1438.)

While in fifth grade, the Student had two tardy arrivals, four early dismissals (two of which were noted as “left without permission”), and 10 days of suspension. (S-1466.)

Sixth Grade. The Student attended [] School for his sixth grade year, the 2020–2021 school year, through February 8, 2021. (S-1439.) The Student met some academic expectations during the first quarter but failed to meet academic expectations in any area during the second quarter. (S-1439.) On February 22, 2021, the Student reenrolled in the [] for the remainder of his sixth grade year. (S-1439.) The School District was operating on a hybrid schedule with two days a week in person and three days remote due to the pandemic. (S-1439.) In March 2021, the Student resumed therapy at school through []. (S-1439.) The provider noted poor parental management of the Student and the Student’s disregard for his own safety, resulting in injury. (S-1439.)

On April 20, 2021, the Student was assessed at [] Hospital for mental health symptoms at his Parents’ invitation. (S-1 & S-1439.) The Parents reported that the Student had struggled with behaviors over the last couple of years but over the prior few weeks had become an emotional roller coaster, with behaviors including destroying things in his Mother’s home, putting a knife to his throat, and shoving and hitting his

Mother. (S-2.) About a month prior, the Student had fractured his hand after punching a metal door because he was angry. (S-2.) The Parents reported they were waiting on a neuropsychological evaluation by Dr. []. (S-2.) The Parents also reported that the School District would allow the Student to attend only two days in person rather than the four requested due to his behaviors. (S-3.) The Student was assessed as moderate risk of self-harm along with significant mood lability, impulsivity, and aggressiveness in the home, resulting in a recommendation of inpatient hospitalization. (S-3.) The Parents reported that the Student had been recommended for a crisis stabilization unit by [] and the Parents felt that the Student required a medication evaluation, which could not be conducted in a crisis stabilization unit. (S-3.)

The Student was determined to be eligible for placement in a crisis stabilization unit and he was placed on the waiting list for a bed at [] Hospital. (S-3.) The Student remained at [] Hospital until April 30, 2023. (S-11.) During the course of his stay, he indicated that he would like to work on his anger because “everything” was a trigger for his anger and when he got angry it kept “going and going.” (S-11.) The Student reported blacking out when escalated and having an inability to remember his actions. (S-11.) He indicated he had no coping skills to address his anger. (S-11.) The Student acknowledged a history of self-injurious behavior. (S-11.) He indicated that he engaged in superficial cutting and burning when upset as well as running away from home when upset. (S-11.) On April 22, 2023, while still at [] Hospital, the Student punched the wall during an episode, causing himself minor injury. (S-12.)

The Student was noted to have met the criteria for Disruptive Mood Dysregulated

Disorder (“DMDD”) during his hospitalization with unspecified depressive disorder as a secondary diagnosis. (S-12.) During the Student’s stay at [] Hospital, the Student’s [] medication, presumably prescribed for ADHD, was increased to target impulsivity and aggression; the Student reported increased behavioral control from the change. (S-12.) Upon discharge, the Student returned to school on a partial-day transition schedule because he refused full days and began receiving community case management with [], OQMPH, of [] Healthcare. (S-1440.)

While in sixth grade, the Student missed 21 days of school, including 12 absences and nine days of suspension. (S-1468.)

Seventh Grade. The Student attended [] School for seventh grade, the 2021-2022 school year. (S-1440.) The Student experienced significant behavioral issues at school in September 2021. (S-18 to S-26.) On September 22, 2021, the Student was disciplined for insubordination and disrespectful behavior after not following a teacher’s directive to stay in class. (S-18.) When the teacher told the Student that he was going to get Assistant Principal [] if the Student did not listen, the Student replied, “Mr. [] is a **.” (S-18.) The Student was placed in in-school suspension the following day. (S-19.)

On September 29, 2021, the Student was disciplined for bringing a small razor blade to school. (S-20.) The Student was called into the office and stated that he had brought the razor blade from home to shave pencils down to the lead. (S-20.) When asked if he had any other unsafe items, the Student produced a second razor blade and a Leather-man multi-tool, which included a saw and knife blade. (S-21.) The Student’s backpack and pockets were then searched; a lighter and two tobacco vape pens were

found. (S-20.) The Student was placed in out-of-school suspension on September 29, 2021. (S-20.)

On October 4, 2021, a First Time [] Offender Plan meeting was attended by the Student, Parents, and school staff and a first-time offender plan was created to allow the Student to return to school on October 5, 2021. (S-20.) The First Time [] Offender Plan required that the Student meet with [], LCW-c, Outreach Worker for the School District, and follow her recommendations, not commit any further violations at school, complete 20 hours of community service, complete a Student Intervention and Reintegration Program class, and be subject to random bag searches. (S-29.)

In October 2021, the Student experienced additional significant behavioral issues at school. (S-33 to S-127.) On October 13, 2021, the Student's English Language Arts Teacher, reported to Assistant Principal [] that the Student was refusing to do any work in her class and was instead drawing in his notebook. (S-33.) She reported that the Student was yelling at her not to touch his notebook although she had given him options for resolving the situation himself. (S-33.) On October 14, 2021, the Student's social studies teacher, requested that School District staff process with the Student an incident in which he left for the bathroom for 20 minutes, another student was sent to check on him, and he argued when he got back that he had not been gone long. (S-35.) The Student then proceeded to burp loudly and refuse to work. (S-35.) The social studies teacher indicated that she felt they were containing the Student at best. (S-35.) The same day, the Student's math teacher, reported that the Student was in her room drawing and indicated that it was too much work to go get a computer from the library to

borrow since he had forgotten his. (S-36.) The Student then refused to stop drawing. (S-36.) On October 15, 2021, the Student, and other students, were disciplined for taking food from the backpack program and throwing grapes on the bus. (S-42.)

Also on October 15, 2021, [], [] School Principal, indicated that it was time for the team of teachers to sit down with the Student to convey clear expectations. (S-45.) His teachers felt that the Student was doing whatever he wanted and interrupting the learning of others. (S-45.) The same day, the Student went missing after not going to the classroom he indicated he was headed to. (S-48.)

On October 18, 2021, [], another [] School Assistant Principal, reported to staff that he had talked with the Student the previous Friday and discussed his challenging behaviors. (S-52.) On October 20, 2021, the Student was part of a large group singing a sexually explicit song; after they were asked to stop singing, they sang louder in front of both students and parents. (S-60.) The Student was placed in one day of out-of-school suspension and required to complete sexual harassment training upon his return to school. (S-60.)

On October 22, 2021, the Student's teachers reported significant concerns about his behaviors, including wandering from class without permission, lying about where he was, failing to bring his school laptop, arguing and being rude when asked to address his behaviors, refusing to work, continuously drawing on his body or paper, and trying to get out of class continuously. (S-66.) Principal [] reported that the staff would meet the following week to make a plan for the Student that supported his academics but held him accountable for his actions. (S-70.)

On October 25, 2021, the Student called Principal [] and Assistant Principal

[] “***holes.” (S-75.) The Student frequently arrived to class late and lied about where he had been or left early without permission. (S-58, S-76 & S-77.)

On October 26, 2021, the Student and a friend were hitting each other in the face back and forth. (S-83.) When a teacher tried to address the situation, the Student refused to give his name and stated to the teacher that he could not hear her because he was deaf. (S-83.) The Student received detention for insubordination and disrespect. (S-83.)

The Student’s Team met on October 26, 2021. (S-92.) Following that meeting, Principal [] and Assistant Principal [] met with the Student to share the plan, which was that teachers would watch the Student between classes to make sure that he got from point A to point B. (S-92.) At the end of Block 5, the Student would be picked up by a School District staff member and accompanied to the Support and Transition Room. (S-92.) The Student was not to attend the Support and Transition Room except during tutorials on Fridays, if he had done what was expected in class. (S-92.) Principal [] felt that the Student was receptive to this plan. (S-92.)

On October 27, 2021, a parent called the [] School to report that the Student and two other students had come to his house, swore at his daughter, mooned her, and told her to kill herself. (S-95.) On October 28, 2021, the Student reported to other students at school that he had been at the public library throwing cheese sticks, making a mess, and saying that he wanted to “off” himself. (S-99.) The [] School social worker assessed the Student and did not deem him a threat to himself. (S-99.) The Student was sent to the office, where he became very defensive, stated that the situation was “*** **,” and stormed out of the office. (S-99.) The Student continued swearing as he walked out of the front of the building, threw his mask on the ground, got

onto his bike, and left school grounds. (S-99.) The Student was placed in out-of-school suspension for October 28, 2021. (S-99.)

In November 2021, the Student's therapist documented anger/aggression, substance use, and multiple incidents in the community for which the Student refused to take responsibility. (S-1440.)

On November 3, 2021, the Student refused to go to class and sat down in the middle of the stairwell, refusing to move. (S-149.) When he was encouraged to go to class, the Student accused the School District staff member of "being *** dramatic." (S-149.) The Student was suspended although he argued that he had done nothing wrong. (S-149.) On November 5, 2021, the Student reported to a teacher that he had a knife on him, after which he refused to go to the office as directed. (S-161.) The Student continued to argue that he had done nothing wrong and called Assistant Principal [] a "**** ***." (S-161.) A search of the Student revealed a two-inch "dagger necklace." (S-161.) The Student was again suspended. (S-164.)

On November 10, 2021, Ms. [] contacted Assistant Principal [] to indicate that she had been working with the Family since the summer of 2021 and the situation appeared to be escalating. (S-179.) She reported that in addition to case management, the Family was receiving HCT and psychiatry services. (S-179.) Ms. [] noted that the Student's Mother could not deescalate the Student at home and they were discussing a crisis hospitalization. (S-179.) She asked about the possibility of meeting with school staff to get everyone on the same page and decrease the Student's unwanted behaviors. (S-179.) Assistant Principal [] scheduled a staffing meeting for School District staff and a few outside providers on November 16, 2021. (S-

186.)

The Student returned to school on November 17, 2021, with the prior plan in place, which was that he needed to be in his class completing work, he would have a modified schedule that included a tutorial, Assistant Principal [] would conduct a daily check in, and the Student could have a weekly incentive time with a preferred staff member if he completed his work. (S-202.)

On November 18, 2021, the Student left his classroom when asked to get materials out, he later ignored a staff member's instruction, and he later walked out of another classroom, telling the teacher to "stop following [him] like a dog." (S-205.) When he was brought to the office, the Student stated that he had done nothing wrong, said "what the ***,," and told Assistant Principal [] "not to talk to [him]" and to "shut up." (S-205.) The Student was required to spend the lunch period in the office. (S-205.)

On November 18, 2021, the Student was assessed by [] as eligible for a behavioral health home placement. (S-210.) On November 22, 2021, the Student arrived to school late and had some choice words for his Mother as he walked into school, including "****." (S-247.) The Student was then searched pursuant to his [] safety plan. (S-245.) The search yielded a lighter, vape, e-liquid for vaping, and a phone of unknown ownership. (S-245.) The Student was suspended on November 22, 2021. (S-254.)

On November 23, 2021, the Student's Mother discussed with his Maine Behavioral HealthCare Case Manager, [], the process for an IEP referral for the Student. (P-427.)

On December 3, 2021, the Student underwent a crisis assessment due to behavioral issues at home that had been escalating. (S-299.) The Student's Mother reported that his behaviors were becoming more out of control and unregulated. (S-301.) The Student reported a history of substance use, including alcohol, nicotine, and marijuana, with a one-month period of sobriety preceding the assessment. (S-301.) The Student's Mother reported that the Student was exhibiting mood swings, verbal aggression, property destruction, and throwing things at her head. (S-301.) The police were contacted but the Student left the house before they arrived. (S-301.) The assessor concluded that the Student lacked insight, denied coping strategies, and was taking part in dangerous behaviors likely to harm him. (S-302.) In addition, the Student's medications were reported to be ineffective and the recent addition of [] was making him more agitated and aggressive. (S-302.) The Student was prescribed [] for mood stabilization and his other medications were removed. (S-302.)

On December 9, 2021, the Student was admitted to [] Hospital. (S-308.)

An expulsion hearing for the Student scheduled for December 6, 2021, was postponed due to the Student's hospitalization. (S-316.) The School District asked that the Student remain out of school until the hearing could be held. (S-316.)

On December 13, 2021, [], Outreach Worker for [] School and [] School, asked the [] School Counselor if the Student had a Section 504 plan. (S-334.) The [] School Counselor responded that the Mother put an initial referral in but a meeting was not set up although the School District had tried to do so. (S-334.) Ms. [] also emailed a group of School District staff members to

update them on the Student's situation, noting that the Student's Mother was looking to initiate a special education referral. (S-353.) Principal [] asked why the Student's Mother was thinking about a special education referral. (S-353.) Ms. [] explained that the Student's Mother believed she had previously signed paperwork for a 504 plan but none was present in the Student's record. (S-348.)

The Student was released from [] Hospital on December 17, 2021. (S-371.) The Student's principal diagnosis was DMDD and his active problems were identified as Oppositional Defiant Disorder and ADHD. (S-376.)

On January 3, 2022, the Student was expelled for possession of a vape pen, lighter, and bottle of e-liquid for vaping on school grounds on November 22, 2021. (S-382.)

On January 12, 2022, [], LCSW, conducted a psychosocial assessment of the Student. (S-412.) The Student was noted to exhibit physical aggression, verbal aggression, substance use, elopement from home, and behavioral issues at school for the past several years. (S-412.) He had been hitting his Mother or peers at school and destroying property in his home when angry and arguing with his Mother to the point of swearing and yelling on a daily basis. (S-412.) The Student was smoking marijuana and tobacco daily, vaping, and using alcohol occasionally. (S-412.) The Student frequently left his Mother's home at night to hang out with friends, including going missing for two days during which he slept outside at night. (S-412 to S-413.) It was reported that the Student had observed domestic violence between his Parents. (S-420.) The Student was taking [] for ADHD, which his Mother believed helped him with symptoms. (S-420.) Ms. [] concluded that the Student was in the

precontemplative stage of change, had limited insight into his behavior, and displayed poor judgment. (S-420.) She recommended Multisystemic Therapy (“MST”) for the Student. (S-420.)

Beginning on January 12, 2022, HCT was replaced with MST and substance use treatment for the Student. (S-1441.) On January 27, 2022, the Student completed the 12-hour [] program. (S-443.)

On March 3, 2022, [], LMSW-cc, the Student’s MST provider, issued a letter to the School Committee explaining that MST is home-based and includes direct and intensive work with all Family members, with a focus on shaping the Parents’ responses to the Student and increasing responsibility among Family members to shape and change adolescent behavior. (S-512.) She noted that the goal was to decrease the Student’s illegal and aggressive behaviors. (S-512.)

In mid-March 2022, Ms. [] and Ms. [] began to discuss the possibility that the Student would attend [] School upon his return. (S-537.) Ms. [] responded that the Student could not attend a day treatment program without an IEP. (S-545.) She noted that the Student’s Mother had asked the School District several times to evaluate the Student for special education services for Section 504 accommodations but no progress had been made. (S-545.) Ms. [] indicated that she had personally heard the Student’s Mother ask for a referral in three different meetings. (S-545.)

On March 21, 2022, the Student was assessed for eligibility for [] services. (S-580.) The Student was considered to be at the contemplation stage of recovery. (S-583.) He was found not to be eligible for residential treatment but it was recommended that the Student pursue co-occurring outpatient therapy on a consistent basis to address

mental health and substance use needs as well as continue MST. (S-612.)

On April 4, 2022, the Student completed all 30 of the community service hours required due to his expulsion. (S-613.) The Student wrote a letter to the School Committee apologizing for bringing weapons and substances to school. (S-615.) He indicated that he was working on his anger, doing more chores at home, and stopped using nicotine and marijuana products. (S-615.) He reported that his new medications had helped him to slow down his thinking and use his coping skills correctly. (S-615.) The Student stated that he was taking more responsibility for his actions and promised not to bring weapons or substances to school or be disrespectful to school staff. (S-616.) By April 6, 2022, the Student had completed all parts of his reentry plan as required by the School Committee. (S-624.) The Student was readmitted to school effective April 13, 2022. (S-643.)

The Student's reentry plan included a return to the same schedule, a tutorial, and the opportunity to work with a staff member to build skills to process challenges, with monitoring by Ms. []. (S-653.) The Student would be allowed to take breaks in the hallway as long as he returned to class after several minutes, was expected to be working on academics while in class, and follow regular bathroom procedures. (S-653.) If the Student had completed his work and had not had any incidents, he could spend time with a favored staff member on Friday during his tutorial session. (S-653.)

On April 26, 2022, [], IEP Coordinator at [] School in the School District, emailed several School District staff members to report that the Student's Mother had requested that he be evaluated for special education services because she felt he had an Emotional Disturbance that was impacting him academically,

behaviorally, and socially/emotionally. (S-663 & S-722.) On May 4, 2022, the Student's IEP Team met for an initial referral/eligibility meeting (termed a "Step 1 IEP meeting" by the School District). (S-695.) The Student's Parents had initiated a referral for special education services due to concerns about his poor emotional and behavioral self-regulation. (S-1441.) On May 5, 2022, the Student was sent to the Support and Transition Room because he was not where he was supposed to be. (S-670.)

A behavioral intervention plan, dated May 11, 2022, was developed for the Student by School District Psychologist []. (S-708.) The targeted behaviors were: 1) displaying oppositional and defiant behaviors toward teachers, adults, and authority figures; 2) engaging in power struggles with others, even over perceivably small and insignificant things; and 3) choosing not to follow and comply with school and class rules, routines, and procedures. (S-708.) Several preventative strategies for staff to engage in were identified as well as positive reinforcement mechanisms. (S-709.) Consequences for non-compliance and home intervention/support strategies were included in the behavioral plan. (S-709.)

The Student's IEP Team met again on May 17, 2022, to review the Student's eligibility. (S-714.) The Team determined that more data was necessary to determine the Student's current school functioning. (S-719.) The Team discussed additional data and interventions that were necessary to determine if special education assessments were warranted. (S-718.) Team members questioned whether the Student's deficits and weaknesses were due to lack of attendance rather than a disability. (S-718.) The Team discussed the Student's defiant behaviors, which it noted occurred across settings. (S-718.) The Team determined that additional school data was needed, including an

academic assessment, psychological assessment, and classroom observation; staff would provide interventions to the Student and conduct informal observations over the next two to three weeks; and then the Team would reconvene. (S-718.)

On May 18, 2022, Ms. [] distributed the behavior plan to various School District staff members, asking that they review it by the end of the week. (P-688.) She noted that because there were a variety of staff members assisting the Student from various angles, it would be good to ensure that everyone was on the same page. (P-688.)

The Student's fourth quarter grades were two As, a B, a C, and two Fs. (S-738.) On June 18, 2022, the Student was warned for being out beyond curfew by a [] Police Department Officer. (S-765.)

On June 29, 2022, the Student underwent another crisis assessment after punching and shattering a car window. (S-768.) The Student's primary clinical impression was outbursts of explosive behavior. (S-776.) He was discharged to his Father's home. (S-776.)

While in seventh grade, the Student had 78 tardy arrivals, left early six days, was absent for 24 days, and missed 13 days of school while hospitalized. (S-1469.)

Eighth Grade. During the Student's eighth grade year, the 2022 – 2023 school year, the Student attended [] School. (S-1441.)

On August 2 and September 7, 2022, the Student received neuropsychological evaluations from [], PsyD, of [], LLP. (S-921.) Neurocognitive testing revealed below average overall intellectual abilities, below average verbal abilities and visual reasoning skills, average visual spatial abilities, and well below average working memory and processing speed. (S-933.)

On measures of attention and executive functioning, the Student demonstrated problems with attention, sustained attention, impulse control, and multi-step planning. (S-933.) The Student's Mother's ratings of his behaviors at home suggested significant difficulties with hyperactivity, self-monitoring, emotional regulation, working memory, and organization, with above average difficulties with inattention, inhibition, shifting between tasks, initiation, and planning. (S-933.) Dr. [] concluded that these findings were consistent with the Student's prevailing diagnosis of ADHD. (S-933.)

Data suggested that the Student was characterized by emotional immaturity and was depressive and anxious emotionally, with ineffective management of emotions. (S-933.) He tested as being easily overwhelmed by stressful situations and prone to impulsivity. (S-933.) He also appeared to struggle with low self-esteem, negative self-view, feelings of inadequacy, and lack of motivation. (S-933.)

The Student was noted to exhibit long-standing behavioral problems, of primary concern, with his weakness in the area of attention acting as factors that exacerbated these problems. (S-933.) The Student demonstrated a pervasive pattern of socially unacceptable behaviors, oppositional attitudes and defiant behaviors, angry mood, aggression toward people, destruction of property, deceitfulness, stealing, staying out at night without parental permission, and substance use. (S-933.) The Student was vaping daily and using marijuana a few days a week and also acknowledged using a variety of hard drugs including psychedelic mushrooms and LSD. (S-925.)

Ultimately, Dr. [] diagnosed the Student with Attention-Deficit/Hyperactivity Disorder, combined presentation; Oppositional Defiant Disorder, moderate severity; Conduct Disorder, adolescent-onset type; and Unspecified Depressive Disorder, with

anxious distress. (S-933.) She identified his behavioral problems as being of primary concern. (S-934.)

Dr. []'s recommendations included: external and high-level structure; consistency; supportive guidance; predictability; routine; interventions; self-regulation training; behavioral techniques that positively reinforce small improvement; training the Student to develop and improve developmental skills; setting clear boundaries and consequences; parental coaching; discipline strategies; participation in individual therapy for the Student; encouragement of participation in activities that provide exercise; continued work with a case management professional; managed psychopharmacological interventions; and 504 accommodations or an IEP, including a behavioral plan. (S-934-938.)

On September 8, 2022, the Student was sent to the [] Room for walking out of class, stating he was "done," and leaving the building. (S-965.) On September 9, 2022, the Student received one day of out-of-school suspension for taking his phone out, putting his head down, refusing to do any work, stating "this *** place," refusing to give up his phone, and walking out of the building. (S-965.)

On September 12, 2022, the Student received a one day out-of-school suspension for refusing to follow directives from staff, putting his head down, refusing to move, yelling, "I've *** had it with this place" and "**** this ***," and walking out of the building. (S-964.) On September 13, 2022, Assistant Principal [] began suggesting that the Student would be an appropriate candidate for the [] program in the School District. (P-749.) He noted that since the Student's return to school in May 2022, his behavior had not improved. (P-749.) Despite many interventions, the Student

continued to walk out of school and display significant profane explosions in the presence of other students. (P-749.) On September 15, 2022, the Student received a one-day out of school suspension for being found with a vape pen, calling staff members “***,” and throwing furniture. (S-964.)

On September 20, 2022, the School District issued a letter notifying the Parent that it would be holding a hearing on September 26, 2022, to determine whether the Student should be expelled from school. (S-998.)

On September 26, 2022, the [] School Department issued Findings and Conclusions from a disciplinary hearing regarding the Student’s insubordination and possession of a vape pen on school grounds on September 15, 2022. (S-1019.) The School Committee found that the Student had engaged in an infraction of School District Policy [] when possessing a vape pen on school grounds at [] School on September 15, 2022; that his removal from the school setting was necessary for the peace and usefulness of the school; and that he would be expelled from [] School indefinitely. (S-1020.) The Student had been suspended for ten full days and two partial days prior to his expulsion. (S-1441.) While in eighth grade, the Student had four tardy arrivals, three absences, “walked out” of school on two days, and was suspended for 10 full days and two partial days. (S-1470.)

On November 8, 2022, the [] Police Department was dispatched to the Student’s home for a runaway report. (S-1061.) The Parent advised the investigating officer that the Student was leaving for the [] program in the morning. (S-1061.) She stated that he was upset, was screaming and swearing, and did not want to go. (S-1061.) He had left the home with his backpack. (S-1061.) Contact was made with the

Student who indicated he would not meet with the police because they would just take him home and he did not wish to return home. (S-1061.) He stated that the [] program would not help him and he did not understand why the school would have him do the program. (S-1061.) On November 9, 2022, the Parent advised the [] Police Department that the Student had returned home late the prior night and had agreed to try to make the [] program work. (S-1063.)

On November 9, 2022, the Student was admitted to the residential [] program. (Tr. 1¹; P-845.) A progress note from November 16, 2022, indicated that the Student reported doing better and wanting to be eligible for an IEP so he could attend the [] program in the School District. (P-846.) The Student reported low motivation to abstain from smoking once he went home but was motivated to do what was necessary to be discharged from the program. (P-846.) Notes from a November 23, 2022, Team meeting indicated that the Student wanted to leave the program as soon as possible and denied any need to participate in the program. (S-848.) The Student became elevated during the meeting, left prematurely, and slammed the door. (S-848.) Although he walked down the road, he later returned and rejoined the meeting but swore at the case manager and slammed the door again. (S-848.)

On January 5, 2023, the Student became physically aggressive with a male staff member, including taking him by the shoulders and shaking him so that he hit the door frame multiple times. (S-854.) The Student disengaged at one point but returned to repeat his aggression towards the staff member. (S-854.) The staff member required medical treatment. (S-855.) The Student had been frustrated with the staff member

¹ The transcripts are referenced by day of hearing.

because he had taken away a stuffed animal that the clients were throwing around and indicated that they could have it back in the morning. (S-855.) Due to the program's zero tolerance of violence, the Student was immediately discharged from the program. (S-854.) He had been using and abusing multiple substances at the time of his admission and frequently tested positive for nicotine and THC while in the program. (S-854.)

On February 9, 2023, the School District issued a letter to the Parent indicating that the [] School Committee had voted to allow the Student to attend the [] program while his expulsion was in effect. (S-1127.) From March 3, 2023, through March 27, 2023, the Student was placed in the [] program. (S-1441.) He brought alcohol into the program on his first day of attendance, although he was otherwise noted to be an active participant. (S-1150.) By his third day in the program, he began to refuse to do work and take time in the break space to reset. (S-1152.) On his fifth day in the program, he refused to work and left the program. (S-1154.) On March 10, 2023, the Student refused to comply with expectations and was asked to leave the building.

(S-1160.) The [] Police Department's social worker was contacted, who arrived with an officer. (S-1160.) The Student was asked to leave the property but refused, at which time he was considered to be trespassing; he then left the property and returned, demanding a ride home. (S-1160.) The Student was then arrested for trespassing and he attempted to assault the arresting officer. (S-1160.)

The Student returned to the [] program on March 16, 2023. (S-1168.) On March 20, 2023, the Student continued to play music after being asked to stop; repeatedly swore; talked about touching body parts and other students doing sexual acts with one another; refused to hand over his computer; and refused to leave class when asked to do

so. (S-1170.) The Student's anger culminated in his throwing a full water bottle with force at a clinician. (S-1173.) The police were called and the Student was suspended from the program because he had been causing issues on a daily basis. (S-1173.)

On March 24, 2023, Special Education Director [] received the due process hearing request filed by the Family. (Tr. 5.) The following school day, March 27, 2023, Special Education Director [] gave the Parent an updated consent to evaluate form. (S-1247.) This consent form included a psychological assessment and a classroom evaluation; it did not, however, include the academic assessment that was called for in the first consent for evaluation. (S-1247.)

On April 10, 2023, a [] Police Department Mental Health First Responder met with the Student due to a report that he was assaulting someone regularly. (S-1273.)

The Student was provided tutoring after his removal from the [] program. (S-1433.)

[] **Evaluation.** On May 19, May 30, and June 1, 2023, the Student was assessed by [], Psy.D, NCSP, of [] Child Psychology. (S-1433.) Dr. [] issued a Psychological Evaluation Behavioral Assessment of the Student on June 3, 2023. (S-1433.) The Student was referred for evaluation by his Parents and his education team to determine whether he had an Emotional Disturbance that was impacting his learning and to better understand the factors causing his interfering behaviors. (S-1433.)

The evaluation concluded that the Student struggled with emotional and behavioral self-regulation with a longstanding pattern of significant interfering behaviors in the home and school settings. (S-1457.) The Student was noted to have accessed

crisis assessments, inpatient psychiatric hospitalizations, inpatient substance use treatment, psychopharmacological treatment, and the full array of available community-based therapeutic supports. (S-1457.) The pattern of interfering behaviors, however, had only worsened over time with the number and intensity of the Student's interfering behaviors steadily growing, despite interventions. (S-1458.) The Student presented with historical risk factors, social/contextual risk factors, and individual/clinical factors that were associated with increased risk for continued aggression and antisocial behavior. (S-1458.)

Dr. [] acknowledged that the Student had previously been diagnosed with ODD and DMDD, but noted that the two diagnoses were overlapping and mutually exclusive. (S-1458.) Dr. [] opined that the previous diagnosis given by Dr. [] of ODD, moderate severity, was the appropriate diagnosis, on the basis that the Student did not exhibit temper outbursts of three or more times per week, the average for an individual with DMDD. (S-1458.) Dr. [] also noted that she had spoken with Dr. [] to review her prior diagnoses of the Student and discuss which was a more appropriate fit. (S-1458.)

With regard to Dr. [] diagnosis of Conduct Disorder, adolescent-onset, Dr. [] agreed with the diagnoses that a more accurate diagnosis would be Conduct Disorder, childhood-onset, with limited prosocial emotions. (S-1459.) Dr. [] referenced the Student's disordered conduct prior to the age of ten years, including theft of an item of nontrivial value, the theft of \$100 from his aunt at the age of seven, engaging in physical aggression in the earliest grades, and his suspension in third grade due to physical aggression and property destruction. (S-1459.)

The Student has experienced at least eleven adverse childhood experiences spanning the categories of abuse, neglect, household dysfunction, and community dysfunction. (S-1459.) As a result of these experiences, the Student was manifesting evidence of chronic and significant internal dysregulation. (S-1459.) The Student's state of dysregulation reflected activation of the stress response system, which was intended to respond to brief, acute stressors and which often became chronically activated for children living with adversity. (S-1459.) For the Student, that dysregulation manifested as both internalizing and externalizing behaviors. (S-1459.) The Student was in a chronic state of sympathetic arousal and presented with a wide array of clinically significant behavioral and mental health concerns that spanned a number of disorders without conforming to full criteria for all of them. (S-1459.)

Dr. [] found the Student to have restless energy that could easily be a manifestation of chronic sympathetic arousal, but not to be inattentive or impulsive. (S-1459.) In light of the Student's presentation within the context of the significant adversity that he has faced, Dr. [] was not able to confirm an ADHD diagnosis. (S-1459.)

The Student's longstanding pattern of significant interfering behaviors was multifaceted. (S-1460.) The adversity that the Student had experienced throughout his life, his ongoing risk factors, and his learned behavior put him at significant risk of continuing to cause harm to himself and others. (S-1460.) In order to arrest this otherwise self-perpetuating cycle, Dr. [] opined that several interventions be utilized: Parent Management Training, MST, and Cognitive Behavioral Therapy; effective treatment of the Student's substance use; a function-based positive support plan

at school emphasizing the Student's needs for clear structures and boundaries and including a differential reinforcement protocol to guide his team in providing minimal reinforcement contingent upon interfering behaviors, maximal reinforcement contingent upon replacement behaviors, and minimal verbal interaction during incidents; and settings and supports at school that provided maximal structure and predictability to employ clear routines and procedures, explicit expectations, active teaching and acknowledgement of appropriate behaviors, and a consistent and firm response to problem behaviors. (S-1460.)

[] **Assessment Addendum.** On June 30, 2023, the Student was again assessed by Dr. []; she issued a Psychological Evaluation Report Addendum on August 8, 2023. (S-1514.) Some of the assessments planned for the Student's evaluation had not been completed at the time of the initial report and one of the instruments administered to him in the first assessment was deemed invalid. (S-1514.) The Student's IEP Team had requested additional testing of the Student's psychological and behavioral functioning. (S-1514.)

During this assessment, the Student offered additional information about his life. (S-1514.) The Student emphatically stated his belief that he does not have a disability, does not need an IEP or a Section 504 Plan, and does not need or want help. (S-1515.) The Student denied having a defiance disorder and believed that he did not have any problems or diagnoses. (S-1514.) The Student acknowledged his long history of substance use reporting that he used to be addicted to opiates, smoked pot 40,000 times a week, and used his vape pen in front of his Mother. (S-1515.) The Student denied that this history had contributed to his difficulties; he blamed others for his problems. (S-

1515.)

The Student discussed his history of stealing from his Parents and his Sister. (S-1515.) The Student acknowledged that he hits his Mother and defies her rules regarding being out at night. (S-1515.) The Student reported engaging in risk-taking behaviors. (S-1515.)

The Student reported a lack of remorse or guilt as well as a lack of empathy. (S-1515.) For example, the Student stated that his Mother was an “****” and would not get any sympathy from him. (S-1515.) The Student stated that he did not care what others think about him and justified his aggressive behavior by blaming others. (S-1515.) The Student stated that the reason he punched the hole in the office wall at the Juvenile Community Corrections Center was because his Corrections Officer was a “****.” (S-1516.)

The Student reported a number of emotionally and physically self-harming behaviors such as trying to hang himself from a tree when he was 10 or 11 years old and regularly calling himself a “****” and a “****.” (S-1516.) The Student stated that if he told a licensed therapist the “true ***,” that he would end up in Long Creek, a mental hospital, or an insane asylum. (S-1516.) Nevertheless, the Student continued to deny wanting or needing treatment or support, stating that he wanted to be left alone. (S-1516.)

When Dr. [] explained to the Student that the reason for the additional assessment was because one of the measures in the earlier assessment was invalid, he stated that when she emailed him the questions, his Mother answered them for him. (S-1516.) The Student also stated that nothing he said during the first assessment was true

and that he just “wanted to be cool” and piss off his Mother. (S-1516.)

Prior to this second assessment, records from [] substance use program were made available for Dr. [] review. (S-1516.) The Student acknowledged using tobacco-related products and tested positive for THC upon admission. (S-1516.) While residing at the treatment facility, the Student engaged in many of the same interfering behaviors. (S-1516.) Specifically, [] documented a pattern of rule-breaking, sexual harassment with “gay comments,” defiance, theft, elopement, verbal aggression, physical aggression, and possession of contraband. (S-1516.) While it appears that the Student showed signs of improvement during his time at [], he was discharged on January 6, 2023, subsequent to assaulting a staff member who attempted to restrict access to his stuffed animal. (S-1516.)

The Student was found to have elevated responses to the Response Negativity Scale of the Millon Adolescent Clinical Inventory, Second Edition (“MACI-II”). (S-1517.) The Student endorsed a relatively large number of problematic thoughts, feelings, and behaviors across a broad range of content areas. (S-1517.) The assessment of the Student’s Emotional Functioning, including information provided from his Mother’s perspective, indicated that the Student generally does not show signs of remorse and avoids expressing his feelings. (S-1517.)

The Student’s responses to a personality assessment indicated that his strongest personality pattern was Unruly which indicated that he seeks autonomy; acts out in an antisocial manner; resists following rules; displays a rebellious attitude that often leads to conflicts with his Parents, school staff, and legal authorities; and takes risks and acts in irresponsible and impulsive ways. (S-1518.) The Student’s second most elevated

personality pattern was Discontented which indicated that he engages in passive-aggressive acts aimed at indirect venting of anger and conflict; his moods and behaviors are unpredictable and volatile; he has a tendency to act in sullen, irritable, and oppositional ways rather than addressing conflicts clearly; and he believes that he is misunderstood and unappreciated by others. (S-1518.)

The Student's third most elevated personality pattern was Aggrieved, which indicates that he has a tendency to be his own worst enemy, act in self-defeating ways, demean himself, thwart the efforts of others to help him, bypass opportunities for pleasure in favor of suffering, be drawn to relationships in which he will suffer, and blame himself for problems. (S-1518.) The Borderline Tendency scale reflected unstable and labile affect, frequent and intense mood swings in response to interpersonal matters, vacillating perceptions of self and others, an immature sense of self, suicidal thoughts, and non-suicidal self-injury, which indicates a moderate level of disturbance. (S-1518.)

The Student's responses suggested that he has a history of significant disappointments in personal and Family relationships as well as deficits in academics and peer relationships, leading to periods of marked behavioral, cognitive, and affective dysregulation. (S-1518.)

Dr. [] concluded that the Student's profile was characteristic of an adolescent who struggles with numerous inner conflicts which result in unpredictable behaviors, labile moods, changeable thoughts, and identity confusion. (S-1518.) A primary source of his difficulties was due to his ambivalence between maintaining a dependent submission to others versus asserting autonomy and independence. (S-1518.) His impulsive tendencies led to poor decisions and risky acting-out behaviors. (S-1518.)

His moods were variable and wide-ranging, including periods of euphoria interspersed with periods of dejection, apathy, anger, and resentment. (S-1518.) An immature, uncertain, and wavering sense of self and identity added further challenges, as well as the variable and unstable nature of the Student's way of behaving, thinking, and feeling. (S-1518.) The Student's lack of inner cohesion increased his probability of becoming distraught and overwhelmed and these paradoxical actions, thoughts, and feelings served as both cause and effect of the Student's difficulties. (S-1518.)

The Student's testing indicated that he tended to judge situations based on his emotions and was spontaneous and melodramatic. (S-1519.) The Student's situation was further complicated by the underlying conflict he has between his reliance on others and his wish to be more autonomous. (S-1519.) The mixed emotions the Student experienced led to challenging interactions of a push-and-pull nature where he exhibited stubborn contrariness, willful resistance, and persistent irritability. (S-1519.)

The Student exhibited impulsive hostility, oppositional behavior, and an angry mistrust of others, intermixed with a poor sense of self and self-destructive inclinations. (S-1519.) The Student believed only alert vigilance and vigorous counteraction could prevent the malice of others. (S-1519.)

The Student's desire to vindicate past grievances led to his wish to gain power and demean others. (S-1519.) He often lost his temper, was irritable, acted in a passive-aggressive manner, and avoided displaying warmth, gentleness, or intimacy. (S-1519.) The Student was inclined to inspire discomfort and anger in others. (S-1519.) He presented with a constant negativity and nonconformity that led to self-condemning and sorrowful thoughts. (S-1519.)

The Student had fluctuating attitudes, erratic and uncontrolled emotions, a general irresponsibility, a lack of dependability, and was impulsive, unpredictable, and explosive. (S-1520.) The Student's repeated conflicts and failures lead to a pained and desperate existence and in turn led to self-destructive thoughts, self-injurious behaviors, and suicidal gestures. (S-1520.) Dr. [] anticipated that the Student would have considerable difficulty negotiating life's transitions in school, at home and in relationships. (S-1520.)

The Student was inclined to act thoughtlessly, irresponsibly, carelessly, and imprudently without taking into account the consequences of his behavior. (S-1520.) The Student struggled to endure the tedium of school routines or day-to-day responsibilities due to his tendency to be easily bored and restless. (S-1520.)

The Student had few feelings of loyalty and felt others cannot be trusted. (S-1520.) The Student sought gratification in undermining the pleasures and expectations of teachers, peers, or Family and overtly displayed intentional contrary and oppositional behaviors. (S-1520.) What distinguishes the Student was his resentful manner and the regularity with which procrastination, inefficiency, and obstinate behavior can be evoked. (S-1520.)

The Student reported pervasive feelings of low self-esteem, dissatisfaction, and a negative sense of self. (S-1520.) The Student anticipated falling far short of aspirations by harboring self-doubts and maintaining a pessimistic outlook and was often defeated before even getting started or taking a chance. (S-1520.)

The Student's Family problems were more severe than most and he reported a feeling of estrangement. (S-1521.) His responses indicated that both the Student and

other Family members have issues with frustration tolerance and anger control and conflicts within the Family are likely to be a central focus of the Student's difficulties. (S-1521.)

The Student's strong sense of rejection from peers was a major source of distress for him. (S-1521.) His self-confidence had been shaken to the point of doubting his likability and he withdrew in a self-protective manner. (S-1521.)

The Student's responses were indicative that he had engaged in rebellious and antisocial activities for some time and was irritable, hostile, and acts out. (S-1521.) He has little concern about the impact of this behavior and consequences did not seem to serve as a deterrent to him. (S-1521.) The Student's determined defiance often coexisted with self-destructive tendencies. (S-15121.)

The Student displayed a deficient frustration tolerance, poor impulse control, and frequent outbursts that ranged from verbal barrages to destruction of property and physical assaults. (S-1521.) The Student's reactions to his frustrations could be intense, impulsive, and disproportionate. (S-1521.) The Student's chronic disruptive actions and his limited remorse contributed to his troubles with Family and peers. (S-1521.) The Student's reactions were likely to become so intense, dangerous, or frightening that authorities were called. (S-1521.)

The Student could become volatile or aggressive when drinking or using certain drugs. (S-1522.) A chronic level of anger and irritability tended to be enhanced by drinking and drug use and set off sudden outbursts and dangerous confrontations. (S-1522.)

The Student indicated protracted periods of dysphoria, severe agitation, and

erratic moods as well as rapid shifts occurring between self-deprecation, despair, agitation, and futility. (S-1522.) Circumstances that imposed constraints beyond his control could render him powerless to contain feelings of rage. (S-1522.)

Dr. [] opined that the Student's responses represented his longstanding presentation of disruptive and rule-breaking behaviors and confirmed his pattern of being angry, irritable, argumentative, defiant, and vindictive. (S-1523.) The Student's Mother's responses confirmed his tendency to lack remorse and disregard the feelings of others. (S-1523.) She concluded that the recommendations in the original psychological evaluation report were supported by the new data. (S-1523.)

IEP Team Meetings. On June 15, 2023, the Student's IEP Team met for an initial referral/eligibility meeting. (S-1494.) The Team reviewed Dr. [] report in detail. (S-1495.) Although the Student had been offered tutoring services for two hours per day, he had attended only six sessions since March 24, 2023. (S-1495.) The Student would report that he had slept late or forgotten the session when he missed a session. (S-1495.) The Student was working on eighth grade subject matter and put in a good effort on the occasions when he did attend. (S-1495.) The meeting notes indicate that unfortunately the School District did not have current academic levels for the Student. (S-1495.)

Dr. [] expressed concern that the Student had learned that the rules did not apply to him due to a failure to implement consistent discipline and reinforce expectations. (S-1495.) She noted an incident when he violated the rules of house arrest but experienced no consequences, expressing concern that every time an event like that occurred, the Student learned that he could act with impunity and without any

repercussions for his actions. (S-1495.) The Student had expressed the belief that he was entitled to act inappropriately when someone else acted in a way he did not agree with, generally by exerting authority. (S-1496.)

Dr. [] explained, as indicated in her report, that she could not find any evaluations that supported either the ADHD diagnosis or the anxiety diagnosis that the Student had received in the past. (S-1496.) She also could not find support for Disruptive Mood Dysregulation Disorder. (S-1496.) She supported the diagnoses of Oppositional Defiant Disorder and Childhood Onset Conduct Disorder, both of which were behavior disorders. (S-1496-1497.) Dr. [] noted the Student's longstanding pattern of not respecting authority within the legal system, his Family system, and the school system. (S-1496.) The Team discussed whether to wait for the Student to complete all the rating scales that Dr. [] had requested, but determined they had sufficient information to move forward with determinations. (S-1496.)

Dr. [] led the IEP Team through two forms: The Emotional Disturbance eligibility form promulgated by the Cumberland County Special Education Directors and the Maine Department of Education Adverse Effect Form. (S-1496.) The Team found that the Student exhibited social maladjustment as demonstrated by a persistent pattern of violating social norms and had a history of truancy and substance abuse; he had a long standing struggle with authority and was easily frustrated and impulsive; and his behavior was under his control. (S-1496.) The Parents disagreed, stating that because the Student demonstrated behaviors that impacted his ability to access his learning, he met the criteria for an Emotional Disturbance, which could exist alongside a diagnosis of social maladjustment. (S-1496.) Dr. [] indicated on the Adverse Effect form that there

were some adverse effects on the Student from his behaviors but the Team determined that there was no adverse effect on educational performance resulting from the Student's disability. (S-1493.)

Because no consensus was reached, Special Education Director [] made a determination on behalf of the Team that the Student did not qualify for special education because his behavior was caused by a social maladjustment. (S-1496.) The Family's attorney noted that the Student required special education eligibility to access residential treatment that the Family felt he needed. (S-1497.)

On August 11, 2023, the Student's IEP Team met for review of the addendum to Dr. [] report. (S-1596.) Dr. [] explained that she had changed the assessment plan because some of the Student's previous rating scales had been deemed invalid due to the Student's indication that he had not been the person who completed them. (S-1597.) She had also chosen a different rating instrument that was more difficult to anticipate what answer the evaluator might want. (S-1597.) The results showed that both the Student and the Parent found that the Student did not feel guilty when he had done something wrong, did not admit to being wrong, and generally did not show remorse for his actions or show his feelings. (S-1597.)

Dr. [] noted that she and the independent evaluator engaged by the Family had reached similar conclusions. (S-1597.) She reviewed the criteria for a DMDD diagnosis with the Team. (S-1597.) School staff noted that at both [] School and the [] program, the Student would be fine until asked to do something he did not like, at which point he would push back or refuse. (S-1597.)

Dr. [] discussed a possible behavior plan that would start with intense

positive rewards and give the Student controlled choices so he had control in the process. (S-1599.) She noted that she had found no research that special education would assist a student with a conduct disorder such as the Student. (S-1599.)

The Parent and the Family's attorney expressed their belief that the Student met the criteria as a student who qualifies for special education as a student with an Emotional Disturbance. (S-1597.) The School District staff believed that the Student had a social maladjustment and did not meet the criteria for an Emotional Disturbance. (S-1597.) Given the lack of agreement, Special Education Director [] reiterated the previous determination that the Student did not qualify for special education as a student with an Emotional Disturbance. (S-1597.)

On August 17, 2023, [], LMSW-cc, School District Counselor, emailed Ms. [] to report that if she had thought the Student needed special education, she would have had conversations with his Mother about that and would have noted that in her case file, but she had not done so. (S-1601.)

Testimony of Student's Mother. The Student's Mother testified that the Student had primarily lived with her since entering school except for a period when he lived with his Father in [] during COVID. (Tr. 1.) She indicated that the Student had been diagnosed with ADHD at the age of four or five. (Tr. 1.)

The Student's Mother testified that the Student struggled with attention and was quick to anger when redirected at school, and that the same behaviors were going on at home. (Tr. 1; P-992.) The Student's Mother contacted [] about counseling services for the Student when he moved from [] to Maine because she knew that he did not do well with transitions. (Tr. 1.)

In October 2019, when the Student was slapping himself in the face, digging his nails into his face and bumping his head against the wall at school, the Student's Mother was beginning to see these same self-harming behaviors at home. (Tr. 1; P-116.) She testified that when the Student became angry to a certain level, she found it concerning. (Tr. 1.) The Student's Mother explained that when the Student was running and hiding at school, he was also exhibiting these behaviors at home, especially when he was fighting with his Brother. (Tr. 1; P-118.)

The Student's Mother reported that she called crisis during remote learning during COVID because the Student attempted to hurt himself with a knife at home. (Tr. 1; P-209.) She testified that on April 30, 2021, there was a meeting with the clinician, Assistant Principal, and school counselor regarding a safety plan and a crisis plan and they discussed how to keep the Student safe in school and how to try to help him get through the day without any meltdowns. (Tr. 1; P-241.)

The Student's Mother explained that the Student was struggling during COVID due to school changes and remote learning and that his behaviors were becoming increasingly out of control and dysregulated. (Tr. 1; P-286.) She reported that she felt unable to keep him safe during the day as she was working out of the home. (Tr. 1; P-286.) She reported that the Student was becoming physically aggressive towards her and other children, engaging in property destruction, telling lies, and being manipulative. (Tr. 1; P-286.)

The Student's Mother testified that she first attempted to initiate an IEP referral process for the Student on November 23, 2021. (Tr. 1; P-427.) She indicated that as of March 2022, the Student was feeling depressed due to being out school. (Tr. 1; P. 594.)

She also testified that she was unable to leave the Student home by himself due to his self-harming behaviors. (Tr. 1.) She explained that the Student was not doing any schoolwork or doing anything he was supposed to be doing on-line and that she tried to engage him in housework. (Tr. 1.) At 2:15 every day, the Student would run out the door to meet his friends at the bus stop who were coming home from school. (Tr. 1.)

The Student's Mother testified that in May 2022, she shared the same concerns as the Team about the Student such as evidence of his anxiety and depression, concerns about his anger, and concerns about his emotionality and mood swings. (Tr. 1; P-693.) She stated that living with the Student at that time was like walking on eggshells and that she was afraid of how loud he was going to yell or how upset he was going to become because she felt she could not control what he was doing. (Tr. 1; P-694.)

She testified that she reached out to the school in September 2022 to check on the IEP process because she was really worried about him starting eighth grade with no supports in place. (Tr. 1.) She felt that the Student would not make it successfully throughout the day and stay in school. (Tr. 1.) She was told by the school that they had 45 days to get the IEP in place. (Tr. 1.)

The Student's Mother testified that with some of the Student's struggles of handling himself in the house and handling himself around her, she has had to call the police. (Tr. 1.) She testified that the Student's outbursts occurred almost daily during the time of Dr. [] assessments in May and June 2023. (Tr. 1.) She explained that the note within Dr. [] report stating that his outbursts were limited to one to two times per month is incorrect and she was referring to the past. (Tr. 1.)

The Student's Mother testified that she did not agree with the IEP Team's

determination that the Student was not eligible for special education services in the category of Emotional Disturbance. (Tr. 1; P-963.) She stated that the Student has not returned to school in the School District since his September 26, 2022, expulsion. (Tr. 1.)

Testimony of [] [], LCPC, worked with the Student when she was a [] school-based clinician in the [] School. (Tr. 1.) She found the Student to be extremely personable, smart, and funny. (Tr. 1.) She also found that the Student had difficulty following rules and once he was dysregulated, he took a while to calm down and deescalate. (Tr. 1.)

Testimony of []. [], LMSW-cc, [] School Department Counselor, testified that she worked with the Student in her prior role as a [] School-Based Clinician. (Tr. 1.) During her treatment of the Student in 2018, he indicated that he was worried he would hit his Mother by accident due to his anger issues. (Tr. 1; P-55.) Ms. [] believed that most of the Student's behaviors stemmed from his observations of Family members' behavior, particularly his Father. (Tr. 1.) At school, the Student had difficulty staying in his assigned room, taking responsibility for his actions, complying with authority, and was manipulating others. (Tr. 1.)

Testimony of []. [], Case Manager II with Maine Behavioral Health Care, testified that she had served as the Student's case manager since May 2021. (Tr. 1.) She indicated that the Student was engaging and open but struggled with emotional regulation and taking accountability for his actions. (Tr. 1.) Ms. [] noted that the Student's Mother had indicated in March 2022 that the School District had indicated that it could not move forward with a special education referral until the Student returned to school. (Tr. 1; P-610.) Ms. [] indicated that when she was

interviewed by Dr. [], she felt that the most important service that the Student required was substance use treatment. (Tr. 1.) She agreed that efforts to curb the Student's behaviors had not been successful and she had asked for him to be assigned a juvenile corrections officer. (Tr. 1.) Ms. [] indicated that she had no diagnostic authority nor would it have been appropriate for her to express an opinion as to the Student's need for special education, but she had observed the Parent ask in three different meetings for the Student to be considered for special education services. (Tr. 1.)

Testimony of []. [], Assistant Principal of [] School, testified that he worked with the Student extensively. (Tr. 2.) He indicated that the School District utilized a wraparound services approach that included Response to Intervention services, Student Assistance Team meetings, Multi-Tiered Systems of Support Team meetings, and special education referrals. (Tr. 2.)

Assistant Principal [] testified that the Student Assistance Team was designed to address anything that might be impacting a student's ability to get to school, be present in school, or access what they need to at school. The Student Assistance Team would discuss issues such as attendance, development of behavioral incentive plans, issues at home, issues with substance abuse, and issues with domestic violence. At times the Team would make a Department of Health and Human Services referral or provide parents with supports. The Student Assistance Team was always considering whether special education was needed. The Multi-Tiered Systems of Support Team, on the other hand, provides a best practice framework for educators aimed at students who are struggling academically.

Assistant Principal [] explained that the Student was discussed by the Student Assistance Team most weeks while he was a Student at [] School. (Tr. 2.) The Team discussed what behaviors and patterns staff were seeing, what supports he needed, and how things could be done differently to improve his attendance and participation. (Tr. 2.) The Student Assistance Team never made a referral to special education services for the Student because it did not perceive that he was a student with a disability who might be eligible for special education services. (Tr. 2.) The Student Assistance Team perceived that there were a lot of factors negatively impacting the Student's attendance, including things going on at home, substance abuse, and that the Student was acting in a calculated manner when presented with a task or exertion of control by an adult. (Tr. 2.) As a result of the Student Assistance Team's discussion of the Student, behavior and incentive plans, as well as accommodations, were put into place. (Tr. 2.)

Behavioral incentives included the opportunity to visit the [] Room, visiting with a favored staff member, ice cream on Fridays, time to work on building projects, time in the gym, frequent motor breaks, and time to draw. (Tr. 2.) The Student was intentionally given more choices so that he could feel some control. (Tr. 2.) He indicated that the Student was never referred for special education services during those meetings because Team members did not suspect that the Student had a disability that was causing an adverse effect or impacting his ability to engage in education. (Tr. 2.) The Team members believed that the Student was acting out based on outside factors and was engaging in calculated behavior. (Tr. 2.)

Assistant Principal [] opined that the Student always had to feel that he was in control. (Tr. 2.) School staff members observed that if the Student felt like he was in control, he did not exhibit negative behaviors. (Tr. 2.) The Student did not, however, like to be told what to do and he did not like authority to be exerted over him. (Tr. 2.) School District staff would attempt to get the Student to perform work and would have to choose which battles to pick with him. (Tr. 2.)

He did not recall a period during which the Student was limited to two days a week when the School District was employing a hybrid schedule even though the Parent had requested that the Student attend four days a week. (Tr. 2.) He noted that the Student frequently self-dismissed from school and most of the time once the Student became escalated, School District staff could not deescalate him despite multiple interventions. (Tr. 2.) The incident that caused the Student's most recent expulsion involved aggressive behavior, throwing a chair, and punching glass in front of other students. (Tr. 2.)

Assistant Principal [] testified that the Student's behavioral incentive plan included time in gym and art, motor breaks, and rewards such as pencils and ice cream. (Tr. 2.) He testified that the School District's general practice is to provide parents who ask about special education with the referral paperwork. (Tr. 2.)

Testimony of [] . [], Outreach Worker for the [] School and [] School, testified that she worked with the Student during various re-entries into the School District. (Tr. 4.) Pursuant to the Student's early 2022 reentry to the School District, Ms. [] worked with him to complete a Student Intervention and Reintegration Program that included an educational

component around substance use, with the opportunity for the Student to look at his environment and behaviors related to substance use. (Tr. 4.) She observed during her remote video conferenced meetings with the Student when he was at his Mother's house that there were a lot of arguments and tension between them and the situation seemed chaotic. (Tr. 4.)

Ms. [] was hopeful when the Student was admitted to [] that he would get help with his substance use. (Tr. 4.) When she spoke with him while he was there, he was excited about his progress. (Tr. 4.) She opined that the School District put a significant amount of time and effort into working with the Student and putting in place the supports he needed. (Tr. 4.)

Testimony of []. [], M.Ed., Director of Special Education, testified that the Student first came to her attention on March 14, 2022, when the Student's Mother contacted her requesting a referral to special education on the basis of an Emotional Disturbance. (Tr. 5; S-560.) The Student was expelled at the time. (Tr. 5.) Special Education Director [] testified that the Student needed to be in a learning environment for an observation but the Student did not have to return to school to begin the special education referral process. (Tr. 5.)

After the Step 1 meeting on May 4, 2022, which was within six days of the written parental referral request, the Student's Mother executed a consent to evaluate. (Tr. 5.) Special Education Director [] looked into the Student's referral when she had not received an evaluation by the deadline of October 27, 2022. (Tr. 5.) Once the Student was admitted to the [] program on November 9, 2022, the evaluation process ended because the Student was then residing in a different school district. (Tr. 5.)

The School District did not communicate with the new school district even though Special Education Director [] believed that the new school district was unaware that it was required to complete the Student's evaluation. (Tr. 5.)

Special Education Director [] was not aware until March 24, 2023, when she received the due process request in this matter, that the evaluation had not been finalized. (Tr. 5.) Another parental consent for evaluation form was provided to the Student's Mother and executed on March 27, 2023. (Tr. 5.) Special Education Director [] testified that she requested the updated evaluation form because she realized at that time that the prior evaluation had not been completed. (Tr. 5.) She noted that there were questions about whether the Student had received an academic evaluation while residing in the [] program. (Tr. 5.)

With regard to the Student's attendance in the [] program in March 2023, the purpose of an expelled student coming to the [] program was to allow for access to education so expelled students do not fall behind, developing a reentry plan, working with the students, and advocating for them. (Tr. 5.) Special Education Director [] was actively involved with the Student while he was in the [] program because she was present in the program three days a week due to staff shortages during the period that the Student attended. (Tr. 5.)

Although the Student initially did well in the [] program, he began refusing to do the work and trying to engage other students in the program, whom he was friends with, to leave the program with him. (Tr. 5.) The Student then began taking pictures of the teacher in the classroom and then making derogatory comments and sharing the pictures with other people. (Tr. 5.) The Student was removed from the program on

March 20, 2023, because his negative impact on the functioning of the program had become extreme and there was a sharp trajectory of the increase of the behaviors getting more aggressive and involving more students. (Tr. 5.)

Special Education Director [] testified that she did not feel any of the special education supports in the program were helpful to the Student as the Student did not agree with any rule, direction, or task. (Tr. 5.) The Student would call Special Education Director [] colorful names, run up and down the stairwell, and cause major disruptions to the program. (Tr. 5.)

Special Education Director [] testified she did not observe impulsive behavior by the Student while he was in the [] program. (Tr. 5; S-1361.) The Student did not have a problem initiating tasks and could stay engaged. (Tr. 5.) His extreme behaviors were in response to a rule he did not agree with or a task he did not want to do. (Tr. 5.) About one month after the Student was discharged from the [] program, he was given two hours of tutoring a day. (Tr. 5.) The Student began not showing up for his scheduled tutoring sessions. (Tr. 5.) It was determined that even the one-on-one direct instruction in a private setting was not successful for the Student. (Tr. 5.)

Testimony of []. [] Ph.D., testified as an expert witness for the Family. (Tr. 2.) Dr. [] reviewed Dr. [] evaluation and other records regarding the Student. (Tr. 2.) Dr. [] did not meet or evaluate the Student independently. (Tr. 2.) He testified that it was extremely difficult if not impossible to ascertain the Student's motives when he was engaging in certain behaviors. (Tr. 2.)

Dr. [] noted that a diagnosis of depression appeared in multiple places in the Student's record. (Tr. 2.) He testified that he would have given more weight to the indicators of depression that appeared in Dr. [] testing of the Student. (Tr. 2.) He noted that a substance use disorder could be a habitual pattern that would not be resolvable unless the Student's depression was under control. (Tr. 2.)

Dr. [] indicated that the Student could have both a conduct disorder and depression. (Tr. 2.) He opined that the Student would benefit from a school-wide behavioral support plan, to include consistent and firm responses that could be ensured only in a special education classroom. (Tr. 2.) Dr. [] testified that a student who was not being successful after Tier I and Tier II supports had been implemented should be referred to special education, part of Tier III supports, because such students required interventions and supports that were clearly not available for all students in a school. (Tr. 2.)

Dr. [] testified that using the social maladjustment clause to rule out eligibility under an Emotional Disturbance category is not best practice. (Tr. 2.) He agreed that he was not qualified to make a diagnosis of the Student, having not assessed the Student himself. (Tr. 2.)

Dr. [] also testified that he felt that Dr. [] report minimized the references to depression and anxiety that appeared on the Student's MACI-II testing. (Tr. 3.) He opined that Dr. [] focused on evidence of externalizing disorders rather than internalizing disorders. (Tr. 3.) He concluded that Dr. [] report did not accurately depict the results of the MACI-II evaluation of the Student. (Tr. 3.) Dr. [] acknowledged that he is not qualified to administer the MACI-II and that Dr. []

was entitled to make diagnoses based on her clinical interview of the Student, behavioral observations in the assessment environment, and other information sources she evaluated. (Tr. 3.)

Testimony of [] []. [] [], Psy.D., testified extensively regarding the outcome of her Psychological Evaluation and Functional Behavioral Assessment of the Student. (Tr. 3.) She initially became involved in the Student's evaluation at the Family's request. (Tr. 3.) Dr. [] created a timeline of the sequence of the Student's events for diagnostic conceptualization and to look at which behaviors appeared first and when, which diagnoses were made and when, and to get a sense of what was happening in the Student's life. (Tr. 3.) Dr. [] developed the timeline based on the information she received in the cumulative records, interviews with the Student, interviews with the Student's Mother, and interviews with the community case manager. (Tr. 3.)

Dr. [] felt that a deep dive into the Student's history was necessary in order to contemplate his psychological well-being and behavioral presentation and to understand the order of events, which could help determine, for example, whether substance abuse caused mental health symptoms or vice versa. (Tr. 3.) She noted that successful treatment of substance abuse disorder could alleviate symptoms that appear depressive. (Tr. 3.)

Dr. [] found that the Student was engaged in interfering behaviors very early in life as well as pretty significant acting out behaviors. (Tr. 3.) Dr. [] explained that interfering behaviors are behaviors that are interfering with the Student's ability to do things that he needs to do in life and be successful at home, at school, and in

the community. (Tr. 3.) Dr. [] testified that the Student is likely to engage in interfering behaviors when someone places an expectation or a directive upon him, when he feels like someone is attempting to control him, and also when he has conflicts with peers and siblings. (Tr. 3.)

Dr. [] testified that second grade was when the Student began using substances, stealing, and encountering the discipline system at school. (Tr. 3.) She observed that moving forward, the Student's interfering behaviors became more and more frequent and intense over time. (Tr. 3.)

Dr. [] observed a pattern of the Student being very reactive to his Mother with lots of emotional reactivity between them, which was a stressful environment for the Student to live in despite the Mother's best intentions to get him back on track and return to school. (Tr. 3.) Dr. [] noted that the Mother routinely attempted to exert control and the Student consistently exerted counter control. (Tr. 3.) Dr. [] impression was that it was not unusual for things to get physical when people are frustrated with each other in the Student's home. (Tr. 3.) Dr. [] testified to the harm that physical discipline can do to the relationship between a parent and a child, such as contributing to feelings of not being loved or accepted and provide a model for how to react to frustration. (Tr. 3.) She testified that such experiences can cause a child to have difficulty trusting adults, trusting authority, and feeling safe. (Tr. 3.)

Dr. [] noted that the Student's results on the Structured Assessment of Violence Risk in Youth indicated an enormous amount of risk across categories but very few protective factors. (Tr. 3.) He had been on a trajectory of violating social norms and using substances. (Tr. 3.) Dr. [] explained that the purpose of the evaluation

overall was to figure out what they need to do to change the Student's trajectory by minimizing the risks and increasing his protective factors. (Tr. 3.)

Dr. [] testified that diagnoses given during the Student's hospitalizations did not seem based on evaluations but rather a reflection of what providers thought was going on with the Student and to provide a documentation necessary for billing, rather than formal assessments or formal interviews. (Tr. 3.) Dr. [] believed that there was a lot of contradictory information in the records, such as the Maine Behavioral Health Report, which incorrectly diagnosed DMDD and ODD together. (Tr. 3.)

Dr. [] spent approximately 40 hours creating the report. (Tr. 3.) She was not required to utilize rating scales but they were helpful additional sources of information that were not diagnostic. (Tr. 3.) Given the diagnoses she concluded were appropriate for the Student, all factors had to be taken into account to determine an appropriate treatment package. (Tr. 3.) She noted the advantage of being in residential treatment, not within the context of community, with consistent expectations around the clock and providers who could give a container where boundaries are held. (Tr. 3.) She opined that special education services would not provide the Student with the services he needed but MST would be effective. (Tr. 3.) Dr. [] feels that there is a mismatch between what special education has to offer and what kids like the Student need. (Tr. 3.) She testified to her belief that the three-tiered behavior plan developed for the Student by [], the School District Psychologist, was an appropriate and useful plan for him in the school setting. (Tr. 3.) She acknowledged at hearing that she was unaware of whether the IEP Team had completed academic assessments of the Student as called for in the eligibility determination plan created by the Team. (Tr. 4.)

Dr. [] noted that in her interview, Ms. [] expressed significant concerns about the Student's substance use and had information that he was using any substance that he could get his hands on in the community. (Tr. 3.) Dr. [] concluded that the best way forward for the Student was substance abuse treatment based on the Student's conscious choice to engage in problematic behaviors. (Tr. 3.) She did not rely on the Student's reporting of his substance use, which was inconsistent and contradictory at times. (Tr. 3.) Instead, Dr. [] relied on Ms. []'s reporting and other information in the record. (Tr. 3.) She felt that Ms. [] was meeting with the Family on a regular basis, was going into the home, and also had access to collateral information. (Tr. 3.)

With regard to Dr. [] criticism of her utilization of the outcome of rating scales, Dr. [] testified that rating scales are not diagnoses. (Tr. 3.) She explained that they provide a piece of information that is added to the collective picture. (Tr. 3.) Although there were indicators of depressive symptoms in the Student's rating scales, she felt that that result was fully attributable to the aspect of ODD that is an angry and irritable mood. (Tr. 3.) Dr. [] noted that irritable mood would be persistent with depression but an angry, irritable mood that is episodic like the Student's was more consistent with ODD. (Tr. 3.) Dr. [] testified that the Student was instrumental and that his behavior was designed to achieve a specific outcome suggestive of ODD whereas outbursts occurred exclusively within the context of an emotional response. (Tr. 3.) The records are well-documented that the Student engaged in interfering behaviors outside the context of an intense emotional response as well as when he was emotionally aroused. (Tr. 3.)

Dr. [] acknowledged that it might be assumed that a depressive disorder is at play if suicidality is present, but a differential diagnosis process required looking at all the information and finding the best diagnosis to explain what was happening. (Tr. 3.) Dr. [] noted that non suicidal self-injury typically functioned to either allow people to escape uncomfortable thoughts and feelings or escape stimulation to allow them to feel something. (Tr. 3.) A conduct disorder such as the Student's includes risk seeking behaviors, sensory seeking behaviors, and a higher level of input. (Tr. 3.) Dr. [] also noted that although Dr. [] diagnosed the Student with depression, she described him as pleasant, cooperative, and euthymic, with good eye contact and appropriate affect. (Tr. 3.) During her evaluations, Dr. [] noted that the Student's demeanor was animated, he was quick to share his experiences, he was happy to tell stories about things and his side of events, and he exhibited a range of facial expressions. (Tr. 3.) She also noted that Dr. [] utilized a testing assistant and did not have the Student's educational or medical records. (Tr. 3.)

Dr. [] testified that she could not find any evidence that the diagnosis for ADHD was the result of any kind of diagnostic evaluation with the exception of Dr. [] evaluation. (Tr. 3.) She stated that ADHD is characterized by hyperactivity, impulsivity, and inattention. (Tr. 3.) In order to be diagnosed the Student would have had to have met six of the criteria and the Student met two criteria in one category and three criteria in another category, leading her away from an ADHD diagnosis. (Tr. 3.) She also stated that the Student exhibited cognitive impulsivity which is associated with conduct disorders as opposed to motor impulsivity which is associated with ADHD. (Tr. 3.)

Dr. [] believes that the Student has presented as treatment resistant to crisis response, inpatient hospitalization, HCT, MST, and school-based counseling. (Tr. 3.) She believes that treatment resistance is typical for individuals with behaviors in the family of disorders which are characterized as disruptive impulse control and conduct disorders. (Tr. 3.)

Dr. [] opined that the way to handle and address the Student's risks would be residential treatment for substance abuse. (Tr. 3.) Dr. [] testified that a treatment program for the Student must be multifaceted and take all of these different things into account. (Tr. 3.) She believes that the advantages of being in residential treatment for substance abuse would be that he will not be living in the context of a home where there are substances being used or living within the community where there are substances being used. (Tr. 3.)

IV. DISCUSSION AND CONCLUSIONS

A. Burden of proof.

Although the Individuals with Disabilities Education Act ("IDEA") is silent on the allocation of the burden of proof, the Supreme Court has held that in an administrative hearing challenging an IEP, the burden of persuasion, determining which party loses "if the evidence is closely balanced," lies with the party seeking relief.

Schaffer v. Weast, 126 S.Ct. 528, 537 (2005).

B. Whether the School District violated its child find obligations by failing to identify and evaluate the Student within the timelines required by the IDEA.

Parents' Argument:

The Parents contend that the School District observed clear signs of the Student's disability and need for special education services from the time that the Student enrolled in the School District in the fourth grade. In addition, the Parents note, although the School District initiated an evaluation at the end of the Student's seventh grade year, it was not completed until the end of the Student's eighth grade year. The Parents argue that the School District's child find violation is ongoing and the evaluation process has taken an unreasonably long time, noting that there are still no current academic levels identified for the Student, thus rendering the evaluation process incomplete.

School District's Argument:

The School District argues that it did not violate its child find obligations by failing to identify and evaluate the Student within the timelines required by the IDEA. The School District maintains that it did not have any reason to believe the Student was a student with a qualifying disability under the IDEA. In fact, it contends, the School District's child find process worked well for the Student, who was discussed weekly by the Student Assistance Team, which developed and put into place numerous behavior and incentive plans for the Student during his time at [] School. The School District maintains that none of the three prongs necessary to implicate the child find duty were present because the School District had no reason to suspect that the Student had a disability, no educational provider for the Student believed that he needed special education services, and the Student was not referred to special education by the Student's Mother, or any other provider, until the spring of 2022.

The School District argues that it was not able to evaluate the Student within the 45-school day deadline because he was admitted to the [] program within another

school district. The School District concludes that even if it violated its child find obligations in relation to the Student, it was a harmless error that did not result in the denial of FAPE because the Student does not qualify for special education.

Analysis:

School districts are responsible for maintaining and implementing policies and procedures to ensure that all children with disabilities are identified as follows:

Each [School District] shall maintain and implement policies and procedures to ensure that all children residing in the jurisdiction between the ages of 3 and 20 years, . . . children who have the equivalent of 10 full days of unexcused absences or 7 consecutive school days of unexcused absences during a school year, . . . and who are in need of special education and related services, even though they are advancing from grade to grade, are identified, located, and evaluated at public expense.

MUSER IV.2.A.

Courts have explained that the child find duty is implicated when a three-pronged factual scenario occurs. See Doe v. Cape Elizabeth Sch. Dep't, 382 F. Supp.3d 83 (D. Me. 2019). The District Court for the District of Maine held in Doe that the three-prong factual scenario is: “first the child is a child with a disability enumerated in the statute or the school has reason to suspect the child is impaired with such a disability; second, the child’s disabling condition adversely affects the child’s ‘educational performance’; and third, special education services may be needed to address the child’s disability.” Id. at 99 (citing Mr. I. ex rel. L.I., 480 F.3d 1, 13 (1st Cir. 2007)).

Moreover, an evaluation of a student for special education services must be conducted within a specific timeframe, as follows:

The initial evaluation must be conducted within . . . 45 school days of receiving parental consent for the evaluation . . . and must consist of procedures to determine if the child is a child with a disability and to

determine the educational needs of the child.

MUSER V.1.A(3)(a)(i).

Assistant Principal [] testified to the frequent discussion of the Student during Student Assistance Team meetings. The Student was not discussed during meetings of the Multi-Tiered Systems of Support Team, which addressed students struggling academically. Student Assistance Teams are aware of the need to make special education referrals when appropriate but did not perceive that the Student required such a referral. The Student Assistance Team assessed a variety of factors negatively impacting the Student's attendance, including things going on at home and substance abuse, as well as his difficulty conforming to school rules. The Student Assistance Team discussions led to the development of behavior and incentive plans, as well as accommodations, for the Student.

As such, the School District attempted to meet the Student's needs as it perceived them, which was primarily behavior-related and which it did not have reason to believe were disability-related, and therefore no violation of the School District's child find duty occurred.

With regard to whether the School District complied with the 45-school day timeline for an evaluation, although the Student's Mother discussed with Ms. [] the process for an IEP referral in November 2021 and School District staff had an email exchange in December 2021 indicating that although the Student's Mother had put in an initial referral, no meeting had occurred despite efforts to schedule one with the Mother. The written record does not provide any further insight into whether a referral was actually made.

On April 26, 2022, a School District IEP Coordinator informed School District staff that the Mother had requested that the Student be evaluated for special education services. On May 4, 2022, the Student's IEP Team met for an initial referral/eligibility meeting. The IEP Team met again on May 11, 2022, at which time it determined that more data was necessary to fully evaluate the Student's eligibility. The full referral form was completed on May 25, 2022. The Student's Mother returned the executed consent for evaluation to the School District on June 6, 2022. As such, the evaluation was due to be completed on October 27, 2022.

The Student was expelled on September 26, 2022, but the School District continued the evaluation process. Although [], the School District's Psychologist, attempted to conduct an evaluation of the Student in the fall of 2022, she did not complete the process. Ms. [] conducted a file review, including the independent evaluation done by Dr. [], and spoke to the Student's teachers. Although Special Education Director [] testified that Ms. [] attempted to have the Student come in for further evaluation, which was challenging because he could not be on school grounds. Special Education Director [] also testified that Ms. [] had difficulty scheduling a time for her to meet with the Student, the Family disputes that characterization and the written record does not provide any documentation of efforts Ms. [] might have made in this regard. The deadline of October 27, 2022, passed without a completed evaluation.

The Student was admitted to the [] program on November 9, 2022, at which time the Student was no longer the responsibility of the School District but was a State agency client residing in another school district. The School District did not,

however, reach out to the Student's new school district to inform them of the need to complete the Student's evaluation nor did it forward the referral information or evaluation process conducted as of that time to the new school district. Furthermore, when the Student was removed from the [] program on January 6, 2023, a development that School District staff were aware of, the School District did not resume the performance of the evaluation.

When she received the due process hearing request on March 24, 2023, Special Education Director [] realized that the evaluation had not been completed and she began to investigate what had occurred. She provided another parental consent for evaluation form to the Student's Mother, but did not include the academic evaluation that had been called for in the initial consent form despite the fact that there were questions about whether the Student had received an academic evaluation while residing in the [] program. Thereafter, the IEP Team met and Dr. [] was engaged to conduct an evaluation of the Student, which she issued on June 3, 2023.

As the Parents point out, however, even though the original informed consent obtained by the School District included an academic evaluation, as of the June 15, 2023, IEP Team meeting, the School District did not have current levels of academic performance for the Student.

As such, although extenuating circumstances existed with the Student's expulsion and then his enrollment in the [] residential program, rendering him the responsibility of another school district, the School District failed to complete the evaluation within the required 45-school day time line required by MUSER V.1.A(3)(a)(i). The School District began the evaluation in June 2022 but it did not

resume the evaluation when the Student was discharged from the [] program in January 2023 and has still not fully completed the evaluation because it has not conducted an academic assessment.

C. Whether the School District violated the IDEA in changing the Student's placement for disciplinary reasons.

Parents' Argument:

The Parents argue that the School District had knowledge that the Student was a student with a disability within the meaning of the IDEA prior to both the Student's expulsions in January 2022 and September 2022, which constituted disciplinary changes of placement. The Parents argue that by October 22, 2021, multiple teachers expressed specific concern about the Student's pattern of behavior, which were communicated to other School District staff members as well as outside providers. The Parents argue that despite the knowledge that the Student was a student with a disability, the School District has subjected him to two expulsions, including one that continues, without the benefit of the procedural safeguards in the IDEA.

School District's Argument:

The School District argues that it did not violate the IDEA when it changed the Student's placement for disciplinary reasons when it expelled the Student in January 2022 and September 2022 because the Student had not been identified as eligible for special education services at the time of the expulsions and thus, he was not entitled to manifestation determinations. Moreover, the School District argues that even if it were on notice that the Student was a student with a disability at the time of the expulsions, its

failure to convene a manifestation determination prior to expulsion was harmless error because the Student remains unqualified for special education services.

Analysis:

Students with disabilities are entitled to a manifestation determination with any change in placement due to a violation of a code of student conduct as follows:

Within ten school days of any decision to change the placement of a [student] with a disability because of a violation of a code of student conduct, the [School District], the parent, and relevant members of the Student's IEP Team (as determined by the parent and the [School District]) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine –

- (a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (b) If the conduct in question was the direct result of the [School District's] failure to implement the IEP.

MUSER XVII.1.E; 34 CFR 300.530. This protection extends to students who have not yet been identified for services where the School District had knowledge that the student was a student with a disability. 20 U.S.C. § 1415(k)(5)(A).

Students who have not yet been determined eligible for special education may request a manifestation determination in certain circumstances:

A child who has not been determined to be eligible for special education and related services . . . and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (B) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

MUSER XVII.5.A. A school district is deemed to have knowledge that a student is a student with a disability if before the behavior that precipitated the disciplinary action occurred the parent expressed concern that the student was in

need of special education and related services or requested an evaluation of the child. MUSER XVII.5.B(1) and (2).

Although an evaluation was underway by the time of the Student's second expulsion, the Student has not been identified as a student with a disability at the time of his expulsions in January and September 2022. Nevertheless, the Student was in the process of being evaluated at the time of his September 2022 expulsion, which rendered the Family eligible to request a manifestation determination pursuant to MUSER XVII.5.A and B. The Family, however, did not request a manifestation determination at the time of the expulsion and ultimately the Student was not identified as a student with a disability by the IEP Team.

As such, the School District did not err in conducting manifestation determinations that are required by MUSER VII.1.E for students with disabilities when the Student was expelled in January and September 2022.

D. Whether the Student is a student with a disability who is eligible for special education services.

Parents' Argument:

The Parents maintain that the Student meets the definition of having an Emotional Disturbance as defined by the IDEA. The Parents argue that the Student is a Student with a disability under the Emotional Disturbance criteria because he has exhibited as least one of the enumerated conditions over a long period of time and to a marked degree; this condition has had an adverse effect on the Student's educational performance; and is such that he needs special education and related services in order to access his education.

The Parents contend that there is significant support in the record that the Student has been exhibiting inappropriate types of behavior under normal circumstances. The Parents argue that there is a longstanding and well documented adverse effect on the Student's educational performance from his Emotional Disturbance. The Parents maintain that the Student needs special education and related services because general education interventions have clearly been inadequate. Finally, the Parents argue that the School District's use of the "social maladjustment" provision of the IDEA is not supported by the facts or the law.

School District's Argument:

The School District argues that the Student is not eligible for special education services because he is a socially maladjusted student who does not have a separate, independent emotional disability that would qualify him for special education services. The School District cites the definition of social maladjustment adopted outside of Maine and maintains that the Student's behavior fits clearly into the widely-accepted definition of social maladjustment. The School District notes that the record establishes that the Student had behavioral problems at home and in school but there is no evidence that his behaviors were the product of a disability or that he could not control them.

The School District maintains that the Student does not have depression, ADD, DMDD, or another Emotional Disturbance. The School District also argues that the Student has a lengthy history of substance abuse, which is not a recognized disability under the IDEA. Finally, the School District argues that even if the Student had an Emotional Disturbance, he does not require special education and thus does not meet the criteria for eligibility under the IDEA.

Analysis:

MUSER VII.2.E defines the Emotional Disturbance category of eligibility for special education services as follows:

- (1) Definition. Emotional Disturbance means a condition which exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance:
 - (a) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - (b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - (c) Inappropriate types of behaviors or feelings under normal circumstances;
 - (d) A general pervasive mood of unhappiness or depression;
 - (e) A tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term does not apply to students who are 'socially maladjusted,' unless it is determined that they have an emotional disability. [34 CFR 300.8(c)(4)]

There are not further definitions of the term in regulation or statute although courts and hearing officers have grappled with interpretation of the term in a series of cases. In Springfield v. Fairfax County School Board, 134 F.3d 659 (4th Cir. 1998), the Fourth Circuit Court of Appeals held that a student's juvenile delinquency did not reflect a serious Emotional Disturbance. Id. at 664. The Court noted that the hearing officer understood the term "socially maladjusted" to mean "continued misbehavior outside acceptable norms." Id. The Court referenced a definition used by a hearing officer in a California matter, which was that social maladjustment consisted of "'a persistent pattern of violating societal norms with lots of truancy, substance . . . abuse, i.e., a perpetual struggle with authority, easily frustrated, impulsive, and manipulative.'" Id. (quoting In re Sequoia Union High Sch. Dist., 1987-88 EHLR Dec. 559:133, 135 (N.D. Cal. 1987)). The Court noted that a psychologist evaluating the student had conducted a battery of

tests and concluded that the student in that matter displayed a disregard for social demands or expectations although he understood them. Id. The Court concluded that the “most consistent diagnosis” for the student was a conduct disorder, which supported a finding of social maladjustment. Id. A conduct disorder, the Court explained, was “marked by a pattern of violating societal norms and ‘is often associated with . . . drinking, smoking, use of illegal substances, and reckless and risk-taking acts.’” Id. Moreover, the Court noted, courts and special education authorities had routinely declined to equate conduct disorder or social maladjustment with serious Emotional Disturbance. Id. The Court in Springer indicated that reason for the carve out from Emotional Disturbance for social maladjustment because a definition that equated “simple bad behavior” with serious Emotional Disturbance would exponentially enlarge the burden IDEA places on state and local education authorities. Id. at 664. In Parents v. Bath School Department, 107 LRP 8792 (Me. Doe. No.06.041H) (August 7, 2006), the definition of social maladjustment in the In re Sequoia Union High School District decision was adopted.

In Hansen v. Republic R-III School District, 632 F.3d 1024 (8th Cir. 2011), the Eighth Circuit Court of Appeals defined social maladjusted students as students who “have difficulty taking responsibility for their actions. They have very little or no remorse. They know the rules but still continue to want to break them . . . their behavior is by design, and they use their behavior to manipulate the situation to get their needs met.” Id. at 1030. The Court identified the ability of the student in that matter to control his behaviors, and turn them on or off, as evidence of a social maladjustment rather than an Emotional Disturbance. Id.

The State of Vermont has adopted a definition of social maladjustment in regulation that mirrors the factors set forth in Springfield: “A social maladjustment is a persistent pattern of violating societal norms, such as multiple acts of truancy, or substance or sex abuse, and is marked by struggle with authority, low frustration threshold, impulsivity, or manipulative behaviors.” State of Vermont Special Education Rules Section 2362.1(c)(2).

Looking at the individual factors that suggest social maladjustment, the Student has had difficulty with school attendance for many years. As early as kindergarten and first grade the Student was coming in tardy up to 14 times which then jumped to 32 times tardy in second grade as well as nine absences, four dismissals, and his first suspension which lasted four days. By fifth grade, the Student began self-dismissing and also received 10 days of suspension. By sixth grade, the Student was missing over 20 days of school including 12 absences and nine days of suspension. By seventh grade, the Student had 78 tardy arrivals, left early six days, and had 11 non-hospitalization related absences. During the Student’s eighth grade year, which he attended for only approximately a month, the Student had four tardy arrivals, three absences, walked out of school on two days, and was suspended for 10 full days and two partial days. The Student frequently self-dismissed from school.

In addition, the Student also has a history of substance abuse potentially dating back as far as age seven. This culminated in his admission to the [] program at age [], during his eighth grade year. At the time of his admission, the Student had been using and abusing multiple substances and he frequently tested positive for nicotine

and THC while in the program. Ultimately, the Student was discharged from [] due to his assault upon a staff member.

Ms. [] and Ms. [], both of whom worked with the Student extensively, were very concerned about his substance abuse and considered it one of his primary needs to be addressed. Although she did not rely on his own report of substance use because it was inconsistent, Dr. [] relied on the report of Ms. [], who had been working with the Student and his Family since the summer of 2021 and who expressed significant concern about the Student's substance use, and other information in the record, including his possession of substance use related materials at school. Dr. [] concluded that the Student's substance abuse was a major factor in his behaviors. In fact, Dr. [] concluded that this was such a central issue that she recommended that the best way to handle the Student's risks would be residential treatment for substance abuse, which would remove him from environments in which substances were used and available.

With regard to frustration, by fourth grade, upon his transfer to the School District, the Student was displaying aggressive yelling behaviors when he was frustrated at school. Dr. [] evaluation noted the multiple references in the record to the Student's deficient frustration tolerance and poor impulse control, which resulted in frequent outbursts ranging from verbal barrages to destruction of property to physical assaults. Dr. [] 2022 evaluation also noted the Student's impulsiveness as well as his behavioral problems that were of primary concern. Those behaviors included aggression towards people, destruction of property, deceitfulness, stealing, and staying out at night without parental permission.

Looking at the factors of struggles with authority and manipulation, the Student was perceived by School District staff members to exhibit oppositional behavior primarily when he was faced with an exertion of control by an authority figure. Assistant Principal [], who worked very extensively with the Student to address his behaviors, opined that the Student was engaging in calculating behaviors when violating school policies. Assistant Principal [] concluded that the Student appeared to need to feel in control and exhibited negative behaviors when authority was exerted over him. Many times, school staff had to choose which battles to pick with the Student when seeking to get him to do work or follow school rules, because they understood that any exertion of control could provoke a negative behavior from the Student.

The Student also exhibited work refusal in the [] program and engaging in oppositional behaviors that became more aggressive and involved more students as his time in the program progressed. Special Education Director [], who worked with the Student directly in the [] program, observed that he did not have difficulty initiating tasks or staying engaged but he exhibited extreme behaviors when asked to conform to a rule with which he did not agree or to undertake a task that he did not want to do.

Dr. [] evaluation noted behavioral reports of the Student arguing with adults, refusing to comply with requests or rules, blaming others, and becoming annoyed easily. She noted his oppositional attitudes and defiant behaviors. Dr. [] evaluation similarly found that the Student had little concern about the impact of his behaviors and consequences did not seem to serve as a deterrent. He was noted to have had a longstanding presentation of disruptive and rule-breaking behaviors including being

argumentative and defiant. During his evaluation by Dr. [], the Student had expressed the belief that he was entitled to act inappropriately when someone else acted in a way he did not agree with, generally by exerting authority. Dr. [] noted the Student's longstanding pattern of not respecting authority within the legal system, his family system, and the school system. Of note, the behavioral support plan for the Student targeted the following related behaviors: 1) displaying oppositional and defiant behaviors toward teachers, adults, and authority figures; 2) engaging in power struggles with others, even over perceivably small and insignificant things; and 3) choosing not to follow and comply with school and class rules, routines, and procedures.

As such, the record supports Dr. [] diagnoses of Oppositional Defiant Disorder and Conduct Disorder, childhood-onset, which do not fall within the Emotional Disturbance category of eligibility.

As the Parents correctly note, the definition of Emotional Disturbance in Maine regulation allows for contemplation of the possibility that a student could have both social maladjustment and an Emotional Disturbance. Dr. [] evaluation, however, concluded that the Student did not have a separate Emotional Disturbance in addition to ODD and Conduct Disorder. She specifically ruled out DMDD as a disorder, which cannot co-occur with ODD, and also determined that a diagnosis of depression was not supported. Dr. [] noted that irritable mood would be persistent with depression but an angry, irritable mood that is episodic like the Student's was more consistent with ODD than DMDD. She noted that a conduct disorder such as the Student's includes risk seeking behaviors, sensory seeking behaviors, and a higher level of input. Dr. [] also observed that although Dr. [] diagnosed the Student with

depression, Dr. [] described him as pleasant, cooperative, and euthymic, with good eye contact and appropriate affect; she utilized a testing assistant; and she did not have the Student's educational or medical records. Dr. [] concluded that the depression scores in the rating scales she administered were fully attributable to the angry, irritable mood feature of ODD.

As such, the record supports a conclusion that the Student is not eligible for special education services as a student with an Emotional Disturbance and the School District did not commit a violation by failing to identify him as such in June 2023.

E. Whether the School District failed to provide the Student with a free appropriate public education as a result of procedural and substantive violations.

Parents' Argument:

The Parents argue that as a result of the procedural and substance violations, which are ongoing since the Student remains unidentified for special education services, the Student has been denied a free appropriate public education.

School District's Argument:

The School District argues that because the Student is not eligible for special education services, the School District cannot be determined to have denied him a free appropriate public education.

Analysis:

As discussed above, the Student is not eligible for special education services based on the evaluation information in the record amassed to date. Although the School District committed a violation of its responsibility to conduct an evaluation within 45

school days, as concluded in Section B., it did not result in a violation of the Student's right to a free appropriate public education.

V. ORDER

Although the School District did not commit substantive violations, it violated its obligation to evaluate the Student within the timelines required by the IDEA. The Student's IEP Team is directed to meet as soon as possible to develop a plan for conducting an academic assessment of the Student as called for in the original evaluation plan of June 2022 and reviewing such assessment as it relates to the Student's eligibility for special education services in as timely a manner as possible, but no later than 45 school days from the date of the IEP Team meeting.



Rebekah J. Smith, Esq.
Hearing Officer