

**Complaint Investigation Report**  
**Parents v. M.S.A.D. No. 15**  
May 8, 2008

Complaint # 08.067C  
Complaint Investigator: Sheila Mayberry  
Date of Appointment: February 26, 2008

**I. Identifying Information**

Complainants:     Parents  
                          Address  
                          City

Respondent:       Victoria Burns  
                          Superintendent  
                          14 Shaker Road  
                          Gray, Maine 04039

Special Education Director: Erin Chase

Student:         Student  
                          DOB: xx/xx/xxxx

**II. Summary of Complaint Investigation Activities**

The Maine Department of Education received this complaint on February 26, 2008. The complaint investigator was appointed on February 26, 2008. The complaint investigator received 224 pages of documents from the respondent and 94 pages of documents from the Parents. Interviews were conducted with the following people: Erin Chase, Director of Special Services, M.S.A.D. No. 15; Victoria Burns, Superintendent, M.S.A.D. No. 15; Parent; Gayle Fitzpatrick, the Student’s former tutor; Lora Perry, Director of Merrymeeting Center for Child Development (“Merrymeeting”); Keith Riley, former Sweetser case manager; and Tiffany Haskell, Director of the Margaret Murphy Center for Children (“MMC”). The report was submitted after the due date because of the unavailability of a witness.

**III. Preliminary Statement**

The Student is xx years old and is currently enrolled in M.S.A.D. No. 15 (“District”) and is tuitioned to attend the Merrymeeting Center for Child Development (“Merrymeeting”) in Bath, Maine, in order access his academic programming. He receives special education services under the exceptionality of Autism. This complaint was filed by the Student’s parents (“Parent” or “Parents”) alleging that the District violated the Maine Special Education Regulations (“MSER”) in a number of ways set forth below. This report was

submitted after the due date because of the difficulty in contacting a witness and the extension of time allowed to submit documents.

#### **IV. Allegations**

1. Failure to provide special education services from November 6, 2006 through March 31, 2007. MSER § 1.3<sup>1</sup>.
2. Failure to provide speech and language therapy, social work services, and occupational therapy pursuant to the Student's IEP, from November 6, 2006 through March 31, 2007. MSER § 1.3

#### **V. Summary of Findings**

1. The Student lives in New Gloucester, Maine with his adoptive parents. Historically, the Student's autism has interfered with his ability to process verbal and non-verbal language, and he has demonstrated frequent, unpredictable, and volatile behaviors over the course of his life. His challenging behaviors have resulted in changes in his educational programming, including removal from the mainstream classroom.
2. The District submitted data regarding the frequency of the Student's behavioral infractions and the time of day when they occurred. This data was presented at a PET meeting convened on November 29, 2004. The information revealed that the Student engaged in severe behavioral infractions in the morning, during meetings and specials. The lowest rate of infractions occurred during resource room time, recess, and language arts, which were held in the afternoon.
3. A PET meeting was convened on May 17, 2005 in order to discuss alternative placement options for the Student.<sup>2</sup> The team agreed that it was appropriate to find an alternative placement for the Student, and to provide interim tutoring for him. It was decided that MMC was the most appropriate option. A tutoring schedule was also agreed upon. The schedule for the rest of the school year included tutoring and the provision of related services from 1:00 pm to 3:30 pm, Monday through Friday. Extended school year services were also discussed and agreed upon.
4. Beginning in the fall of 2005, the Student began attending MMC. Bus logs indicated that for most of September 2005, he left for MMC at 12:30 pm and returned at 3:30 pm, Monday through Friday. From September 27, 2005 until the end of the school year, however, the Student left at 8:30 am and returned at 3:30 pm.

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<sup>1</sup> Regulations in effect at the time of the alleged violation.

<sup>2</sup> Although the PET minutes do not explain the reasons behind the decision to find an alternative placement, a psychological evaluation performed by Dr. Pamela D. Powers, Ph.D., noted instances of hitting a teacher, leaving the school campus unannounced, and harming animals, as precursors to the PET's decision.

5. The Student's IEP, dated January 10, 2006, included goals and objectives for math, social work, occupational therapy, and speech and language therapy (which included language arts). With respect to his placement, the IEP stated, "Due to (the Student's) autism, which interferes with his language processing and being able to process verbal and non-verbal language, he requires individualized instruction targeting his specific language needs at this time."
6. On September 29, 2006, an emergency PET was convened at the request of MMC. At that meeting, MMC Director, Tiffany Haskell, informed the PET that MMC could no longer provide an appropriate program for the Student. She reported that the Student's volatile behavior had escalated to the extent that he needed more assistance than MMC could provide. She recommended that he receive programming with a strong mental health component. Examples of behavior she reported included breaking the tail off a gecko lizard (the class pet), stealing and hiding video games, and stealing a computer game memory card. She also reported an incident outside school hours when the Student intentionally drowned several baby birds in a pond. The PET determined that an alternative placement would be necessary and that tutoring would occur for the interim period. It was also determined that a psychological evaluation would be performed. The provision of related services included in the Student's IEP, including speech and language therapy, occupational therapy, and social work services, was not definitively decided upon at the meeting.
7. The District hired a tutor, Gayle Fitzpatrick, at the recommendation of the Parent, to provide interim tutoring services for the Student until an alternative placement could be found. The Christopher Aaron Counseling Center ("CACC"), a local counseling agency which provided private counseling for the Student and his family, offered the use of its facility for tutoring. Tutoring began at CACC shortly thereafter.
8. A psychological evaluation was performed by Dr. Pamela D. Powers on October 24 and 25, 2006. Her review of the Student's history noted many academic challenges in elementary school, as well as several behavioral episodes leading to a determination that he required an alternative placement. In summary, she noted that the Student's greatest deficit was in the social arena. Some of her recommendations included "...regular interaction with a small group of students at his developmental level to practice all the behaviors that are part of good social interaction. These behaviors require repetition and more repetition. (The Student) also needs further work with understanding social cues and nonverbal communication in all settings. It would be beneficial if home and school use the same language and work on the same issues so that (the Student) is doubly reinforced. As we look at (the Student) as having five to eight years until graduation, it is important to stress the area that will impede his ability to work and interact with others. (The Student) continues to have unpredictable anger outbursts. Because his behavior can occur at a moment's notice, (the Student) needs to have adult supervision close at hand."
9. During the month of October 2006, the District contacted the following institutions to determine whether any of them would be an appropriate placement for the Student:

The Collaborative School, Sweetser, and the Spurwink School Day Treatment Program.

10. In a letter dated October 30, 2006, Superintendent Burns informed the Parent that occupational therapy, speech/language therapy, and social work services would be gradually introduced into the Student's day in order to avoid overwhelming him with too many simultaneous changes. She also noted that, although the Parent had indicated to her that she was happy with the current tutoring program, the tutoring could be provided by a non-certified special education teacher for only 60 days, and that it was "imperative" that an alternative placement be found.
11. In a letter dated October 31, 2006, Lonnie Leeman, CEO of CACC, informed the District that tutoring could no longer occur at its location due to the need to utilize the space occupied by the Student's tutoring. In addition, Mr. Leeman noted that a liability risk had been raised since the tutor, Ms. Fitzpatrick, began bringing in her own son and his tutor to the tutoring sessions. Superintendent Burns informed Ms. Fitzpatrick on that same day that another location for tutoring was being secured.
12. On or about November 1, 2006, Erin Chase, the District's Special Education Director, went out on maternity leave. Superintendent Burns directly supervised the placement process until Ms. Chase returned from leave.
13. In Superintendent Burns' phone log, she reported that she met with Ms. Fitzpatrick on November 1, 2006, to inform her that the new interim tutoring location would be at the Russell Elementary School. The log noted that, later on the same day, Ms. Fitzpatrick called her and told her she was resigning due to confidentiality improprieties at CCAC. Superintendent Burns also reported that the Parent called her at 3:30 pm that day and discussed the changes in the interim tutoring location and the resignation of Ms. Fitzpatrick. Ms. Burns informed the Parent that tutoring would take place at the Russell School between 1:00 pm and 3:00 pm, starting on November 6, 2006. However, the Parent objected to the location of the tutoring, as well as the time at which it would occur. The Parent asked if Ms. Burns would reconsider Ms. Fitzpatrick for tutoring, but Ms. Burns informed her that Ms. Fitzpatrick had resigned.
14. In a letter dated November 2, 2006, Superintendent Burns acknowledged and accepted the resignation of Ms. Fitzpatrick.
15. In an email dated November 2, 2006, Stacy Strattard, the District's special services secretary, informed Superintendent Burns on the progress in locating an alternative permanent placement for the Student, as well as another location for interim tutoring. She mentioned that the Parent suggested the use of Pineland Farm, a conference center in New Gloucester. She also stated that she had been in contact with Ben Braasch, one of the District's special education teachers, about starting to tutor the Student when the need arose.

16. In an email dated November 3, 2006, Superintendent Burns informed Ms. Strattard that the Parent chose not to send the Student for tutoring on November 6, 2006 because she was objecting to the Russell School location and the time of day for the interim tutoring. Ms. Burns noted that she informed the Parent that the time of day was necessary because that was the only time a certified special education teacher could tutor. She also informed the Parent that a PET meeting was being scheduled for November 13, 2006
17. In a letter dated November 4, 2006, Ms. Fitzpatrick clarified her statement of resignation to Ms. Burns. She indicated that she could no longer tutor the Student if Mr. Leeman from CCAC was involved in the Student's program due to his unprofessional conduct. She wrote, "You stated that the current IEP requires Mr. Leeman's involvement. If that should change, I am more than willing to assist this particular child in his educational program."
18. In a letter dated November 5, 2006, the Parent informed Superintendent Burns that CACC was no longer treating the Student and that the family's relationship with CACC had been terminated. She also informed Ms. Burns that the Student had not received any social work services. She recounted statements made by Ms. Chase at the PET meeting on September 29, 2006, at which she informed the Parent that: 1) the Student would only receive two of the six hours for special education required in his IEP; 2) that CACC would provide a behavior specialist and a social worker; and 3) that no related services in the IEP would be provided. She stated that it was only after the PET meeting that Stacy Strattard informed her that a schedule for speech and language and occupation therapies would be set up.
19. The Parent also stated in the letter dated November 5, 2006 that she objected to the Russell School for tutoring because the Student had a previous negative experience there. She referred to a telephone conversation on November 3, 2006 that the two of them had held regarding the tutoring location. "I explained to you that when (the Student) was expelled from the Dunn School, he spent months at this location [Russell]. The tutoring session resulted in violent, verbal behaviors, reduction in education goals, he actually lost ground academically and we also had severe behaviors at home. You seemed surprised to hear this but stated this was to be the new location." The Parent also raised concerns about the lack of transition to a new tutor and no behavior specialist assigned to him. "There will be no consistency to provide for a smooth transition." She also stated that, "His new hours will be 1pm to 3pm. When I reminded you that (the Student) is a morning person, he cooperates and learns best in the early morning. (sic) You again stated that this was the only time available for this tutor." The Parent also pointed out that the District had not provided any academic material to the tutor since his tutoring began. "All material, books, and technical equipment were provided by his parents and/or his tutor." She stated that, "Yes, I refuse the above noted. My son will continue to be tutored by Mrs. Fitzpatrick. His 2-hour sessions will continue in the AM and we can discuss the additional services needed at the PET."

20. In a letter dated November 6, 2006, Superintendent Burns acknowledged the Parent's concerns in the letter dated November 5, 2006. She stated that she was open to discussing a different location for tutoring, but noted that she wanted to start tutoring as soon as possible and that the space at the Russell School was open. She reminded the Parent of the PET meeting on November 13, 2006 and told her that Dr. Powers might be present.
21. A PET meeting was convened on November 13, 2006. The minutes of the meeting stated that, "Mom terminated the tutoring services that were being provided by MSAD 15 at the Christopher Aaron Counseling Center. She is now providing a vacant apartment for Gayle Fitzpatrick to tutor (the Student). Ms. Fitzpatrick resigned as (the Student's) tutor for MSAD 15. Also, she is not certified in Special Education and according to the Maine State Regulations that would prevent her from legally tutoring for longer than 60 calendar days. Ms. Fitzpatrick then reported that she was not given material from Margaret Murphy until recently." The minutes summarized the agreement to transition speech and language therapy and social work services into the Student's new schedule. Ms. Burns reported to the team that since Ms. Fitzpatrick resigned from the District, Mr. Braasch was hired as the Student's tutor. (The Parent) stated that she wanted to have Ms. Fitzpatrick continue as the Student's tutor, and if possible, she could be supervised by a certified special education teacher. However, Dr. Opuda, the District's education consultant who facilitated the meeting, stated that after 60 days of tutoring, Ms. Fitzpatrick would no longer be eligible to tutor the Student under Maine Special Education Regulations. It was determined that IEP goals and objectives would be created, to include information from MMC and Ms. Fitzpatrick's tutoring work. Also, goals and objectives would be created for related services, including speech/language services, occupational therapy, and social work.
22. The PET also discussed the options for the location of the Student's interim tutorial services. Several options were discussed, including the Russell school, the public library, the fire station, and various town offices. The District also offered either the middle school or high school buildings, both of which had separate classrooms that were away from other students. Tutoring could be provided in the afternoon after students had left. The minutes reflect that the Parent rejected these options because "she feels that the high school or middle school is not a good space because of (the Student's) desire to be a part of his school aged peers. (The Parent) also disagreed with the suggestion of using the high school after hours because (the Student) does not work well in the afternoons." Dr. Opuda noted that no information had been provided confirming that the Student had difficulties during afternoon times. It was agreed that a notice of options would be sent to the Parent for review.
23. The PET also considered permanent placement options for the Student. The Team acknowledged that The Collaborative School was not appropriate. The Parent felt that two other options, Sweetser in Saco and the Spurwink Day Treatment Center in South Portland, were too far for the Student to travel without being medicated, which she would not allow. It was determined that the Spurwink Day Treatment Center in

Auburn (“Spurwink-Auburn”) was an option for placement and the Parent would visit the facility.

24. In a letter dated November 14, 2006, Dr. Meg van Achterberg, M.D., notified the District that she had been the Student’s psychiatrist for two years. The letter recommended that, in finding a permanent placement for the Student, she believed that the Student should be “educated in a setting with peers who also have autistic spectrum disorders, by educators who have understanding of these disorders. (The Student) needs intensive, repetitive social skills training along with standard academic learning.”
25. In a letter dated November 17, 2006, Superintendent Burns notified the Parent that, after investigating possible sites for tutoring and the provision of related services, the one that she recommended was the District’s high school. She also stated that the District was offering a certified special education teacher two hours daily from 2:00 p.m. to 4:00 p.m. Related services would be scheduled one half hour before or after the tutoring sessions.
26. On November 21, 2006, Dr. Opuda left a message with Dr. van Achterberg asking her to contact him regarding her letter dated November 14, 2006. Thereafter, the Parents refused to allow the District to have any contact with Dr. van Achterberg.
27. In a letter dated Monday, November 27, 2006, the District notified the Parents of a PET meeting scheduled for Friday, December 1, 2006. The Parent reported that she was not given timely notification of the PET meeting.
28. A PET meeting was held on December 1, 2006. The minutes of the meeting noted that the Parent declined interim tutoring services because she felt that the high school was not an appropriate location for tutoring and that the time of day for the tutoring was inappropriate. She stated that a more appropriate time would be from 8:00 am to 12:00 pm, during normal school hours. The District declined the Parent’s suggestion that tutoring sessions be held at an empty apartment next to hers, or that space be rented at Pineland Farms. The District also responded that tutoring sessions between the hours of 2:00 pm and 4:00 pm were appropriate, given that there was no evidence to the contrary, and MMC did not report any issue regarding a deterioration of his behavior in the afternoons when he attended there.
29. Other matters discussed by the team were efforts to find a permanent placement for the Student. Superintendent Burns related that she had been notified by the staff at Spurwink-Auburn that the Parent had informed them that she was not interested in placing the Student there. The Parent stated to the team that it was her belief that there was no program for autistic children at that facility. The team agreed that there may have been a miscommunication and agreed that the Parent would visit the school with Ben Braasch, the District’s special education teacher.

30. In a letter dated December 1, 2006, Stacy Strattard, the District's Special Services Secretary, confirmed with the Parent that she would be visiting Spurwink in Auburn on December 22, 2006.
31. In a letter dated December 7, 2006, Superintendent Burns summarized the Parent's concerns regarding the District's contact with Dr. van Achterberg. Superintendent Burns stated that through the District's consultant, Dr. Opuda, the District was attempting to clarify Dr. van Achterberg's letter dated November 14, 2006 regarding placement matters. The District believed that the doctor had been given a release to discuss the status of the Student based upon the receipt of her letter. Ms. Burns stated that she now understood from the Parent's statement at the PET meeting on December 1, 2006 that the District was not to have any contact with Dr. van Achterberg, but if that changed, she requested that the Parent contact the District.
32. In a letter dated December 14, 2006, Superintendent Burns reminded the Parent of the invitation to visit Spurwink-Auburn school with the Student on December 22, 2006. She also reiterated the offer of interim tutoring for the Student.
33. On December 22, 2006, the Parent briefly visited the Spurwink-Auburn school without the Student, according to an email from Stacy Strattard to Erin Chase.
34. In a letter dated January 16, 2007, Ms. Chase, who had returned from maternity leave, requested that the Parent contact her in order to move forward with placement decisions as well as discuss the District's offer of interim tutoring services.
35. In an email dated January 31, 2007, Ms. Chase reported to Superintendent Burns that, based upon preliminary information, the Spurwink-Auburn school option appeared to be an appropriate placement for the Student, but that the Parent had not been in contact with the District after her visit to that school on December 22, 2006.
36. On or about January 23, 2007, the Disability Rights Center (DRC) notified the District that it was representing the interests of the Student and requested his educational records.
37. In a letter dated February 12, 2007, Ms. Chase stated to Katrina Ringrose, a DRC advocate, that the District wanted to move ahead with a permanent placement for the Student and reiterated the District's offer to provide interim tutoring.
38. In an email dated February 21, 2007, and again on March 5, 2007, Dr. Opuda requested possible PET dates from Ms. Ringrose to discuss efforts by the District to locate a permanent placement for the Student. Ms. Ringrose responded on March 6, 2007, affirming that the DRC was working with the family and inquired about "what educational options the district would like to present at PET meeting for (the Student)."



39. In a reply email dated March 7, 2007, Dr. Opuda stated to Ms. Ringrose, “The school has offered tutoring with a certified special education teacher experienced with autism and behavioral challenges and related services as an interim option. the (sic) school has proposed placement at the Spurwink program in Auburn as well as at Spurwink – S. Portland and Sweetser. Mother has declined to follow-up on the Spurwink-Auburn and insists that S. Portland and Saco are too far. The Mental Health Collaborative indicates that he sounded appropriate but they do not anticipate any opening in the near future. The student has been out of program since he was discharged from Margaret Murphy and his uncertified tutor resigned in late October. The special education director has tried to set up meetings with the mother but she is non-responsive. The mother has not filed a home schooling request although we understand that she may be doing so. Does the parent want to access the public school services? I’ll call you after 2:00 pm today.”
40. In an email dated March 8, 2007, Dr. Opuda further reported to Ms. Ringrose that the District continued to offer the Student tutoring during the afternoon with a certified special education teacher and related services. He also stated that the District would explore offering morning tutoring with a different qualified provider. He stated that, although the District would explore developing its own local autistic program, it would like to have the Student participate in the in-take visit at Spurwink-Auburn so it could be determined whether it was an appropriate placement. The District was also willing to explore other placement options, such as Sweetser and Spurwink in South Portland. He then suggested dates for a PET meeting. Ms. Ringrose responded on March 13, 2007, stating that she would be speaking to the Parent and would follow up with Dr. Opuda thereafter.
41. In an email dated March 20, 2007, Dr. Opuda summarized to Ms. Ringrose the efforts and offerings that the District had made to place the Student. He noted that that the Parent had been nonresponsive to the District’s efforts and urged a response to proposed dates for a PET meeting. In an email response dated March 21, 2007, Ms. Ringrose stated that the matter was moving forward to litigation.
42. In an email dated March 21, 2007, Dr. Opuda asked Ms. Ringrose whether the Parent was interested in attending a PET meeting. In a response email dated March 28, 2007, DRC attorney Diane Smith stated that she was “not clear what a PET will accomplish at this time, unless you have information that I do not. So please let me know. It’s my understanding that the district has not offered tutoring at a time that the student can access it. So, the argument that the family is needlessly keeping the student home from school doesn’t make sense to me. They would very much like for him to access tutoring and have asked for it repeatedly. (The Parent) shared this information about the timing of tutoring previously with you.” She also noted that the family spoke with the Spurwink-Auburn staff and were informed that there were no openings for the Student. She requested to be notified if any other options became available. Dr. Opuda responded by email on March 29, 2007, asking whether a PET could be arranged to review all the options for placement.

43. In a letter dated March 22, 2007, addressed “To Whom It May Concern,” Dr. van Achterberg stated that she was concerned that the Student had been out of a formal school placement most of the academic year. “I understand that his school system has offered (the Student) tutoring in the high school after the regular program has ended. However, for (the Student) this arrangement is not suitable as he has consistently not learned and performed well in the afternoons. (The Student) absorbs and retains information best in the morning.”
44. Efforts were made by the District to contact Dr. van Achterberg. However, at no point did the Parent submit a release of information to allow her to discuss her medical opinion and evidence to support her concern with the District.
45. In a memo dated April 2, 2007, the District notified the Parents of a PET meeting scheduled for April 5, 2007.
46. In a letter dated April 2, 2007, DRC attorney, Diane Smith indicated that if there were no new options for a permanent placement presented to the Parents, then a PET meeting, which had been scheduled for April 5, 2007, would not be productive. She also believed that mediation, which the District had suggested, would also not be productive if new placement options were not going to be considered.
47. A mediation session was held on April 18, 2007 to resolve the issues relating to the Student’s placement. Although no agreement was reached, other informal discussions between the District, the Parents and DRC took place thereafter. The IEP team was convened on May 8, 2007 and ultimately agreed to place the Student in a “Bridge” program created for the Student at Merrymeeting in Bath. The program was planned to “bridge the gap” for the Student between the end of the school year and the beginning of the 2007-2008 school year. At that point he would enter Merrymeeting’s day treatment program. Related services would also take place at Merrymeeting. There was consensus on this plan. The Student began the Bridge program on May 14, 2007.
48. In an interview with the complaint investigator, Erin Chase, Special Education Director for the District, stated that, although the Student’s discharge from MMC had been unexpected, the PET immediately set up an interim tutoring schedule for the Student at CCAC. Related services were to follow him there as well. She reported that CCAC chose not to continue the tutoring location for reasons outside of the control of the District. Shortly before she went out on maternity leave, she was informed that the tutor, Gayle Fitzpatrick, had resigned. Ms. Chase stated that, until she returned from her leave in January 2007, she was not directly involved with the Student’s programming. However, when she returned, she immediately contacted the Student’s family to see if she could persuade the Parents to move forward on placing the Student in a permanent placement, as well as handle the issues regarding his interim tutoring. She stated that the Parents were not cooperative and were unresponsive to her efforts. In her opinion, it was not until the DRC became involved that she saw forward movement on these issues. The District continued to offer

tutoring to the Student. The offer was to have the Student's tutoring and related services provided at the Gray-New Gloucester High School in the afternoon after school. The Student would be monitored at all times. The room location was separated from the other classrooms and next to a remote entrance to the building. She stated that the Student would not have had any contact with other students. With respect to the timing of the tutoring, there was no objective evidence that the Student could not access his tutoring during the afternoon hours. Because the tutor was available during that time, that is when the District offered the tutoring.

49. In an interview with the complaint investigator, Superintendent Burns stated that, while Ms. Chase was on maternity leave, she herself was directly involved in addressing the placement issues of the Student. With respect to interim tutoring, she stated that once the Parent informed her that the Russell School was not a good fit for the Student's tutoring based upon his past experience there, she offered several options, none of which the Parent chose. She stated that the Gray-New Gloucester High School was the final option because of the remote access of the entrance to the classroom where tutoring would take place. She did not understand why the Parent was not in agreement with this choice. Although the Parent presented options, such as an apartment next to her that was available or the Pineland Farm Conference Center, Ms. Burns felt that the high school option was just as appropriate and not a risk due to potential liability issues. With respect to the time of day that tutoring would be provided, the Parent never allowed any District staff representative to contact the Student's psychiatrist for consultation on this matter. Ms. Burns added that no information was provided to suggest the Student had trouble learning in the afternoons. Therefore, the District believed that it was making the correct decisions with respect to its tutoring offers.
50. In an interview with the complaint investigator, Tiffany Haskell, director of MMC, reported that there was no data or other evidence suggesting that the Student's behavior deteriorated in the afternoon while he was at MMC. She reported that academic programming ended between 3:00 pm and 3:15 pm. She stated that direct environmental triggers were not correlated with the time of day.
51. In an interview with the complaint investigator, Lora Perry, Director of Merrymeeting, where the Student was placed in May 2007, stated that Merrymeeting had designed a program for the Student in order to accommodate his needs. She noted that when he started the program, he was not a "morning" person. However, he eventually transitioned in the program well thereafter.
52. In an interview with the complaint investigator, the Parent reported that when the Student's tutoring ended at CCAC, several options for an alternative setting were suggested by the District, none of which she believed were appropriate. She stated that the Gray-New Gloucester High School was an inappropriate setting because she believed that the Student would be in contact with students staying after school for athletics. She believed that this would have triggered the Student's behavior in negative ways. She also stated that the Student would have to have been escorted to

the bathroom, which was a signal to him that he had done something bad. She reported that MMC had escorted him under certain circumstances when his behavior became an issue. She believed that the Student would think the same thing if he was being escorted to the bathroom. In addition, the afternoon timeframe was not well suited to the Student's learning. She stated that he was a better learner in the mornings. She believed that the statement provided by Dr. van Achterberg should have been enough to warrant a change in the hour of day for his academic programming. She also reported that she felt that her concerns were not heard in the PET meetings.

53. In an interview with the complaint investigator, Gayle Fitzpatrick, the Student's tutor, stated that there had been a misunderstanding of her intentions to tutor the Student. She stated that she wanted to continue to tutor the Student after the CCAC location had been terminated. She stated that she did not resign from tutoring the Student. However, she informed the superintendent that she could not work with the staff at CCAC because she had concerns about CCAC's policies regarding confidentiality. She felt that she could no longer work at that location. She stated that the Parent hired her privately while the District and the Parents were sorting out placement issues. She taught the Student at her residence and sometimes at the Parents' home.
54. In an interview with the complaint investigator, Keith Riley stated that he worked for Sweetser as the Student's case manager from approximately January 2006 until July 2007. He made home visits once or twice a month and more if needed. He recalled the Parent's objection to the options the District suggested for interim tutoring after he was released from MMC. He recalled that the Parent voiced concerns that the locations suggested were very public and that the Student would not react well in those settings. He stated that the Student did not behave well when he was exposed to large groups or public places, such as the grocery store. The Student would become overwhelmed. It was a huge undertaking for him to go into a public school, for example. He also recalled an IEP meeting during this time period when the team discussed that the Student performed better in the mornings and the afternoons were more of a calming time for him. He did not believe that the Parents' concerns regarding the time of day for tutoring were heard by the PET team. He was present at an IEP meeting when the District's consultant presided over the meeting. In his opinion, the issue regarding the time of day for tutoring was not fully discussed. He also felt that, given the Student's diagnosis, mornings were typically better than afternoons for the Student to access services.

## VI. Allegations

**Allegation No. 1:** Failure to provide special education services from November 6, 2006 through March 31, 2007. MSER § 1.3<sup>3</sup>. **NO VIOLATION**

Preliminarily, the above allegation is refined to include only the provision of interim tutoring services through the alleged period of time. The Parents acknowledged

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<sup>3</sup> Regulations in effect at the time of the alleged violation

that the issues of this complaint do not include the District's efforts in finding an alternative placement for the Student after he was discharged from MMC.

Maine Special Education Regulations (MSER), § 1.3, entitle each student with a disability an equal opportunity to receive a free appropriate public education (FAPE) that emphasizes special educating and supportive services designed to meet his or her unique needs. If the District's program is designed to address the Student's unique educational needs, is reasonably calculated to provide him some educational benefit, and comports with his IEP, then the District has offered a FAPE, even if the student's parents preferred another program, and even if the alternative program would result in greater educational benefit. *Hendrick Hudson Bd. of Educ. v. Rowley*, 458 U.S. 176, 207-208 (1982)

In this case, the PET reasonably handled an emergency situation when the location of the Student's interim tutoring at CACC was abruptly terminated on October 31, 2006. Although the District attempted to continue tutoring without any gap, the proposed location and time of day at the Russell School were rejected by the Parent. The PET met on November 13, 2006, to determine where his tutoring could continue while the District looked for a permanent placement after his discharge from MMC. The District offered numerous locations, all of which were rejected by the Parent for various reasons. When it was suggested that the high school or middle school could be options, the Parent noted that the Student's desire to be a part of his school-aged peers could make it a difficult place for him. Upon the suggestion that the tutoring take place after normal school hours, when most students had left, the Parent stated that the Student did not perform well academically in the afternoons, thereby rejecting both locations. Taking the Parents' concerns into account, the PET ultimately decided that the physical location for the tutoring would be at the Gray-New Gloucester High School. The specific classroom offered in the high school was away from other classrooms. It was next to a remote entrance to the school. Therefore, the Student would not be in direct contact with other high school students. Also, he would have a certified special education teacher and be escorted at all times. This was necessary because of his volatile behaviors which could become a safety risk to himself and others. The offer to provide tutoring at the high school was formalized in a letter to the Parent dated November 17, 2006. The District continued to offer this setting throughout the course of this dispute. The Parents never accepted the offer, but independently hired Ms. Fitzpatrick who continued to tutor the Student privately at her own home.

The Parents' objection to the time of day when the interim tutoring was offered was not supported by any objective evidence. It was not until March 22, 2007 that the Parents had the Student's psychiatrist, Dr. van Achterberg, submit a letter to the District stating that it was her opinion that tutoring in the afternoon at the high school was "not suitable as he has consistently not learned and performed well in the afternoon. (The Student) absorbs and retains information best in the morning." However, no evidence was submitted to support this opinion and the Parent refused to allow the psychiatrist to

have contact with the District or its consultant to discuss the matter.<sup>4</sup> The District provided evidence that there had never been an issue raised regarding the Student's performance in the afternoons. In addition, MMC Director, Tiffany Haskell, reported that the Student performed well in the afternoons while he attended MMC.

Therefore, the Parents have not provided sufficient evidence to find that the physical placement at the Gray-New Gloucester High School, from 2:00 pm to 4:00 pm was an inappropriate, unreasonable location or time for the Student's tutoring. No violation is found.

**Allegation No. 2;** Failure to provide speech and language therapy, social work services, and occupational therapy pursuant to the Student's IEP, between November 6, 2006 through March 31, 2007. MSER § 1.3 **NO VIOLATION**

The Student was receiving occupational therapy, social work and speech and language therapy as part of his IEP while he attended MMC. Once he was abruptly discharged from MMC on September 29, 2006, the PET quickly met and determined that interim tutoring would take place at a CCAC until a permanent placement could be found. The related services were not fully discussed at the PET meeting on September 29, 2006. However, during October 2006, the Student received one session of occupational therapy at CCAC. In an effort to reintroduce other services, the Parents and the District agreed that the services should be slowly included into his programming in order to have a smoother transition. They agreed that services would be added in two week intervals. Superintendent Burns made it clear in her letter dated October 30, 2006 to the Parents that the District was in the process of creating a schedule of these services to accommodate the Student's transition needs. Unfortunately, CCAC informed the District that it was no longer able to allow the Student's tutoring to take place at its facility. Once again, the Student's program was interrupted and a new location was needed. As stated above, however, the District and the Parents could not agree on a location or a time for programming to take place. The District offered related services one half hour before or after the tutoring sessions at the high school. Erin Chase stated that it was the intent of the District to provide related services at the same location as the tutoring.

Therefore, since there is no evidence that the location and time offered for the provision of related services were inappropriate or unreasonable, there is no violation.

### **Correction Action Plan**

No corrective plan is required.

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<sup>4</sup> It is noteworthy the Dr. van Achterberg discussed only her concerns about the time of day and not the physical location of the tutoring.