

Complaint Investigation Report
Parent & Parent v. Auburn

December 17, 2012

Complaint #13.024C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Mother
Address
City, Zip

Father
Address
City, State, Zip

Respondent: Katherine Grondin, Superintendent
60 Court St., 4th Fl.
Auburn, ME 04210

Special Services Director: Laurie Lemieux

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on October 15, 2012. The Complaint Investigator was appointed on October 16, 2012 and issued a draft allegations report on October 18, 2012. The Complaint Investigator conducted a complaint investigation meeting on November 15, 2012 (rescheduled from the original date of October 30, 2012 at the Complainant's request). On November 27, 2012, the Complaint Investigator received 33 pages of documents from the Student's mother, received a one-page memorandum and six pages of documents from the Student's father on November 30, 2012, and received an 8-page memorandum and 128 pages of documents from the Auburn School Department (the "District") on November 28, 2012. Interviews were conducted with the following: Tiffany Haskell, Administrator for Margaret Murphy Center for Children ("MMCC"); Audra Cole, special education teacher for MMCC; Roberta O'Neill, special education teacher for the District; Andrea Loeffler, M.D., the Student's pediatrician; Michelle Rock, D.O., the Student's developmental pediatrician; Holly Dixon, L.C.S.W., the Student's counselor; Ken

Hume, Director on the Board of Autism Society of Maine; the Student's father; and the Student's mother.

III. Preliminary Statement

The Student is xx years old and is currently receiving special education under the eligibility criterion Autism. This complaint was filed by the Student's mother, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to adequately consider the harmful effect on the Student when determining that the Student's placement would be at the Auburn Middle School during the 2012-2013 school year in violation of MUSER §X.2.B.

V. Summary of Findings

1. The Student lives primarily in xx with her mother and brother, after having moved there from xx on August 20, 2012. The previous year, the Student attended xx grade at the Margaret Murphy Center for Children ("MMCC"), after having attended the Winthrop Grade School prior to that.
2. An incident occurred at recess involving the Student and group of other students at Winthrop Grade School in April 2011. At an IEP Team meeting held on April 14, 2011, the Student's mother reported that the incident had caused trauma and distress to the Student, and the Team determined to provide educational technician ("ed tech") support to the Student throughout the day, along with social skills instruction and social worker consultation. The Team also determined that the Student would be introduced to middle school staff prior to the end of the year.
3. The Student's IEP Team met again on June 9, 2011 to discuss the Student's programming for the 2011-2012 school year. The Student's mother advocated for the Student to receive her educational program outside of the Winthrop School Department as she believed that the Winthrop Middle School would not be able to meet the Student's academic and social needs. The Team ultimately determined that the middle school was not then equipped to meet the Student's needs, and that the Student should attend MMCC the following year. The Written Notice of that meeting stated that the Team "discussed that the placement at MMCC should not be long term. This will give Winthrop the opportunity to develop an appropriate comprehensive program at the middle school." The Written Notice also stated that the Student's mother did not want the Student to attend middle school in the public school system: "She would like for [the Student] to be placed at MMCC for a minimum of three years or until she attends high school."
4. At a subsequent IEP Team meeting held on August 19, 2011, Sue Hunt, director of special education for the Winthrop School Department, stated that programming for the Student at the middle school would be made more difficult because the Student's special education teacher

was going to be out on maternity leave, with a substitute teacher taking her place. This created a concern that the Student's social skills issues might not be addressed correctly. The Team determined to proceed with placement at MMCC.

5. Shortly after the Student began attending MMCC, a comprehensive behavioral health assessment was performed of her by Mark Steege, Ph.D. In the report of that assessment, dated September 29, 2011, Dr. Steege described the Student's skills in the areas of daily living, personal self-care and community skills as "significantly delayed," and recorded scores on the Vineland Adaptive Behavior Scale-2nd edition that placed the Student in the 2nd percentile (significantly below typically-developing peers) based on the Student's mother's report, and 4th percentile (moderately low range) based on the Student's teacher's report. Dr. Steege reported a diagnostic impression of Autistic Disorder, and recommended behavioral health day treatment services for the Student as medically necessary and "designed to improve [the Student]'s functioning in community and daily living."

6. The Student's IEP Team conducted its annual IEP review on October 7, 2011. An IEP was developed that contained seven language arts goals, six math goals, three speech goals and five behavioral goals. The latter included: high levels of active participation; low levels of verbal protest; self-monitoring; and use of coping strategies. Services to be provided included: 35 hours per week of specially designed instruction; 60 minutes per week of speech/language services; and 30 minutes per week OT consult services.

7. The Student was recorded as meeting all of her behavioral goals as of October 2012, including active participation rate of 99.9%, off-topic statements averaging less than one daily (down from an average of more than five daily), inappropriate touching averaging less than one daily (down from an average of more than three daily), and verbal protests/tone of voice averaging less than one daily (down from an average of more than two).

8. Following the relocation of the Student's mother to Auburn in August 2012, a transfer IEP Team meeting was held on September 10, 2012. MMCC staff reported on the Student's good progress, stating that they did not believe that the Student continued to require their day treatment program and was ready to return to a less restrictive setting. The Student's father was in agreement with transitioning the Student back to public school, but the Student's mother did not agree based on her observations of the Student's anxiety levels. The Team determined that another evaluation would be performed of the Student focusing on her anxiety, that Roberta O'Neill, a special education teacher for the District, would observe the Student at MMCC and speak with her teacher there, and that the Student's parents would visit Auburn Middle School ("AMS") prior to the annual review meeting in October 2012.

9. Following the transfer IEP Team meeting, Dr. Steege, together with Erin Beardsley, M.S., NCSP, conducted another assessment of the Student. In the report of that assessment, dated September 28, 2012, Dr. Steege and Ms. Beardsley described the Student's skills in the areas of daily living, personal self-care and community skills as "slightly delayed," and recorded scores on the Vineland Adaptive Behavior Scale-2nd edition that placed the Student in the 19th percentile (within the broad average range). The Student was reported to have demonstrated a consistent pattern of safe behavior for at least 6 months and a significant reduction of

interfering behaviors. This report confirmed the diagnostic impression of Autistic Disorder, but did not continue the recommendation for behavioral health day treatment services for the Student, stating that they were no longer medically necessary. Instead, Dr. Steege and Ms. Beardsley recommended that a supported transition from MMCC to AMS occur over a period of 20 to 30 days, including family members visiting AMS, AMS staff observing the Student at MMCC, and gradual increase in the Student's participation in activities at AMS.

10. On September 19, 2012, a psychological evaluation of the Student was performed by Debbie Hannigan Anctil, M.S. The evaluation included interviews with the Student's mother and father, classroom observation, review of records and administration of the BASC 2. Ms. Anctil, in her evaluation report, concluded that the Student "presents with sufficient skills to manage with a lesser restrictive learning environment. Although the initial transition may be somewhat anxiety producing for [the Student], with proper transition planning and assistance she could gain valuable skills within the social milieu as well as increasing her level of autonomy and confidence. Consideration may need to be given that this, in turn, would ultimately reduce her level of anxiety."

11. At the annual review IEP Team meeting on October 1, 2012, the Team reviewed the assessment by Dr. Steege and Ms. Beardsley, the psychological evaluation by Ms. Anctil, and two letters presented by the Student's mother from the Student's pediatricians. The Team also considered reports from MMCC staff on her classroom performance and progress towards IEP goals. Tiffany Haskell, director of the adolescent program at MMCC, stated that the Student no longer met the criteria for day treatment services and would be discharged from MMCC on October 26, 2012. The Student's father supported a transition of the Student to AMS, however, the Student's mother did not agree to this, stating that the Student's anxiety level did not support a transition at that time. In the absence of consensus, the District developed an IEP for the Student and determined that it would be delivered at AMS as the least restrictive appropriate educational setting. The district further developed a transition plan for the Student over a four-week span, involving MMCC staff conducting short visits to AMS with the Student the first week, while Ms. O'Neill observed the Student at MMCC. The second week the Student would attend AMS for two-hour blocks accompanied by MMCC staff, followed by half-day sessions at AMS the third week (again accompanied by MMCC staff), and then full days the fourth week (also with MMCC staff present).

12. The two letters presented by the Student's mother at the October 1st IEP Team meeting were as follows: one from Andrea Loeffler, M.D., the Student's pediatrician, that stated: "[The Student] has done wonderfully at MMCC, and I understand the plan is to consider transitioning her to the Auburn school system, and I have concerns about this. I would recommend consistency for [the Student] in her environment, and she will require considerable support and thoughtful preparation if changes are to be made. I would recommend completion of the present year at her current school, and then plan for the next placement during the spring semester, allowing for time for all to understand her needs and demonstrate the ability to provide for appropriate resources for [the Student];" and one from Michele Rock, D.O., the Student's developmental pediatrician, that stated: "Given [the Student]'s response to this educational intervention and placement [at MMCC], I respectfully recommend that she continue attending school at MMCC. Though I understand that doing

well at this program may indicate she may be ready to return to public school, I am concerned that a public school system will not have the resources to meet her educational needs and about how this transition could increase her anxiety.”

13. The IEP developed for the Student contained two speech goals, two learning strategy goals, five reading goals, two writing goals and two math goals. Services to be provided included specially designed instruction five times per week in the special education setting for 4 ½ hours and speech/language services two times per week for 45 minutes. Supplementary aids and services included staff supervision at all times, small group instruction and breaks as needed to reduce anxiety or provide sensory input. The Student would receive (with staff support) health, family and consumer science, PE, writer’s workshop, community time, core groups, homeroom, lunch and recess in the regular education setting.

14. During an interview conducted by the Complaint Investigator with Tiffany Haskell, Ms. Haskell stated the following: She is the School Administrator for MMCC. She is responsible for reviewing referrals to MMCC and making the determination whether the child should attend the program. As the program is relatively small, she has many opportunities to observe each of the students in the program.

When she received the referral for the Student in the summer of 2011, she went, along with Ms. Beardsley and Ms. Cole, to observe the Student at the Winthrop summer program. The Student was clearly a student with autism, but was high functioning without significant interfering behaviors. The Student followed directions from the teacher. The only indication she observed of social skills deficits was somewhat stilted speech and some twirling on the playground. It was clear that this was not a typical referral with the purpose of reducing a child’s interfering behaviors.

It was also clear from the documentation that was provided and from conversations with Sue Hunt at Winthrop that this referral was a one-year placement only. Ms. Hunt had become the special education director just a few weeks earlier, and had discovered that the middle school special education teacher was going on maternity leave and that the social worker didn’t have a social skills group in place for the Student. Ms. Hunt made the referral after deciding that Winthrop was not going to be able to put a program together for the Student in the coming school year. That this was a short-term placement was also made clear to the Student’s mother. She had the sense that the Student’s mother was not happy with public school programming for either of her children, and that this had something to do with a bullying incident earlier in the year. She doesn’t know the details of that incident, and she never saw anything in the Student’s behavior that seemed related to that incident.

There was no transition period for the Student when she started at MMCC, and she’s the easiest student MMCC has ever served. There was some inappropriate self-touching early on, but the Student was told it was inappropriate, was asked to stop doing it, and she stopped. There was never any intensity to it. She has never observed any significant level of anxiety in the Student, and certainly nothing like what the Student’s mother has described happens at home. Early on, the Student made some comments about not wanting to move to be with her father in xx, but this seemed normal and appropriate under the circumstances.

The Student was placed in the “clubhouse” classroom, which is their middle school program. There are five other students in the class, all of them boys. They are all verbal, but two of the students are not able to benefit from small group instruction, so when the Student has small group instruction there are only three other students with her. The boys in the Student’s class are not very social; they need to be prompted to have conversations. The Student has said “I wish I had friends who could talk.” She believes that the Student deserves to have the opportunity to be with her social peers. There are things that the Student should be working on in a social skills group, but not at the level of the other children in her social skills group at MMCC.

In August 2012, she wrote to the Student’s mother to make sure she understood that transition to a less restrictive setting was going to be addressed at the next IEP Team meeting. The Student’s mother called her a few days later and sounded panicky, asking her whether someone was trying to pull the Student out of the MMCC program. She assured the Student’s mother that no one was making her do anything, that it was the obligation of MMCC to consider a lesser restrictive setting and that in her opinion the Student didn’t need the level of intervention provided at MMCC.

Two or three weeks later, the Student came to school one morning and said that she had moved to xx. This meant that there needed to be a transfer IEP Team meeting within 10 days. At the meeting, the Student’s mother expressed surprise that the subject of transition to AMS was being discussed, even though she had made it very clear to the Student’s mother that this was going to be on the agenda. One morning around that time, the Student came to school in the morning and asked her “Do you like me? Am I going to leave Margaret Murphy?” The Student’s mother must have said something to her, because she is certain no one at MMCC said anything to the Student about her leaving. The Student also told her on the morning of September 7, 2012 that her mother wanted her to stay at MMCC but her father did not.

The Student’s behavior has been fine all of September, October and November. Originally, she had determined to discharge the Student on October 26, 2012, and she had worked out a transition plan with the District. When the Student’s mother filed this complaint, all of that got put on hold. Now the Student will be discharged on December 21, 2012, and she doesn’t know what will happen with transition.

15. During an interview conducted by the Complaint Investigator with Audra Cole, Ms. Cole stated the following: She is a special education teacher for MMCC, and has been the Student’s teacher since she came to the program. When the Student was referred to MMCC, she went with Ms. Haskell to observe the Student at Winthrop. The Student seemed happy and on task. She observed a group reading lesson and the Student was very attentive. During recess, the Student didn’t interact very much with the other children and she did a little twirling, but one of the teachers came over to talk to the Student and the Student seemed happy. After recess, the Student was doing some seat work. She was on task and independent; when she didn’t know how to do something, she asked appropriate questions.

The Student wasn’t typical of the children at MMCC, but she believed that they could provide appropriate programming for the Student – they could work on social skills, peer interaction and body awareness issues. She understood that MMCC was only an interim placement for

the Student. Academically, they have been working on reading comprehension and word problems for math. The Student functions at around the same academic level as the other students in her class – some are at higher levels and some lower.

Socially, they have been working on eye contact, initiating and maintaining conversation, following the thread of a conversation, how to enter an ongoing conversation, tone of voice (the Student is not necessarily aware of her inflections of speech) and awareness of her body through space. She has seen the Student improve in these areas; she is one of the stars of the speech group and social skills group. There aren't many children in the whole building who are at the Student's level. There are a few older children who are at the Student's approximate social level, but they are boys and have no interest in engaging in social conversation with a middle school girl. The Student was reading a book based on letters from a child who called herself "Friendless." The Student asked her "Am I friendless?" and "Are you my friend?" She thinks that the Student, with a little guidance, is capable of having friends, but it's hard to teach her about how to do that when the Student is not in those sorts of situations. The teaching has to take place in the moment.

When the Student started at MMCC, the Student made a few comments about not wanting to move again, but she has not seen any other signs of anxiety. There have been some changes in personnel at MMCC, but the Student showed no signs of anxiety relating to those changes. When the Student missed the bus recently, the Student asked her "Is it my fault?" When she told the Student it wasn't her fault, the Student was fine and played on the swing until she could be driven home. She has been giving the Student more independence, and the Student seems to thrive on it.

She thinks that MMCC can't provide to the Student what she needs and wants in terms of social interactions, so that the Student can reach her full potential socially. If the Student is going to have a job when she's older, she has to learn how to respond to social situations in the moment. MMCC doesn't have a peer base for the Student where she can learn that. Peer pressure is difficult, but children have to learn to deal with it. The Student also needs to learn how to interact with boys her own age, and MMCC has a very non-typical student population.

She is familiar with the program at AMS, and she did her student teaching there. She also spoke with Ms. O'Neill about what the Student's program would be like there, and she observed Ms. O'Neill's classroom. She also worked on the Student's IEP together with Ms. O'Neill. Ms. O'Neill's class appeared to be appropriate for the Student. The children all seemed to be helping each other, looking out for each other. They were having conversations and asking questions. There were staff members in the room providing support with a small number of students, so it did not feel like it would be overwhelming. The interaction with the regular education environment is limited and supported by staff. There was behavior tracking taking place, like there is at MMCC, so the Student would be comfortable with that. There were two girls in the class that were interacting together so that you could tell they were friends. It was evident that the children understood that they all needed help at times and so were willing to help each other. It was a very forgiving, nurturing environment. She thinks that the Student is ready for classes in the regular education environment and that she'll be

excited about that. She saw that there would be many opportunities for activities involving art, music and theater which the Student would enjoy.

16. During an interview conducted by the Complaint Investigator with Roberta O’Neill, Ms. O’Neill stated the following: She is a special education teacher at AMS. Under the Student’s IEP, she would be attending her class. It is a self-contained class, and she teaches reading, vocabulary, math and science, with the students taking social studies in the regular education setting. There are currently nine students in the class, four girls and five boys. The students present a wide range of disabilities, including autism, learning disabilities and anxiety-related disorders. The students also present a range of cognitive abilities, including some who are solidly average in ability but who experience anxiety that prevents them from being successful in the regular education environment. There are two ed techs in the classroom at all times, though the plan is to have a third ed tech present to keep an eye on the Student when she joins the class.

In early November, she went to MMCC to observe the Student. She observed the Student at lunch and during a classroom lesson. In the lunchroom, the Student was at a table with one male student and a staff member. The Student was the only female student in the lunch room. The Student was very quiet, not initiating conversation but responding when prompted by the staff member. There was no interaction between the Student and the other student at her table. In the classroom, there were a total of four students. Each of them had their own work space and was working with their own instructor. All the students appeared to be quietly doing their work, with no interaction among the students. She didn’t observe any indication of anxiety in the Student in either setting.

After observing the Student, reviewing her records and attending two IEP Team meetings, she believes that her classroom would be a really good fit for the Student. She could easily meet the Student’s academic needs. The Student has expressed a desire to have female friends, and attending her class would give her the opportunity to interact with the four other girls in the class, as well as branching out to the other girls in the team. Her class is part of Team Katahdin, a xx grade team with 64 students, and her students mix with the rest of the team for social studies and lunch, as well as for problem solving, team building and social project activities. All the girls in her class sit together at lunch time, along with other girls from the team. Her students are sweet, kind and helpful to each other; if they see a student sitting alone at lunch, they will sit with that student.

She had planned to set up a calendar for the Student when she started attending her class, and considered doing a “social story” for the Student that would describe what would happen throughout the day. The Student could look at it whenever she needed to, to help alleviate any anxiety that accompanied her transition. She has not actually met or spoken with the Student, and as far as she knows, no one from the District has told the Student that she might be leaving MMCC or coming to AMS.

17. During an interview conducted by the Complaint Investigator with Andrea Loeffler, M.D., Dr. Loeffler stated the following: She has been the Student’s pediatrician since April 2010. She doesn’t see the Student as a particularly anxious child, although changes are

difficult for her. The Student's anxiety is not outspoken, but is more like an OCD-type anxiety. The Student's judgment and insight are not level all the time; she misses nuances of a situation, and can blame herself for misunderstandings. This self-blaming can cause the Student to spiral and perseverate on those feelings. In addition to information she has received from the Student's mother, she has also spoken with Dr. Rock frequently about the Student, and has spoken with Ms. Haskell of MMCC. She understands that the Student has done very well at MMCC.

The Student's mother has been really concerned with the plan to transition the Student to AMS. She has told the Student's mother that she is not qualified to comment on whether or not the Student should be transitioned to another educational setting, but that she could speak to what will support the Student in the moment to make her as comfortable as possible with such a transition. She offered to review the transition plan, but the Student's mother told her that she didn't have it. She spoke with Ms. Haskell and told her that changes were hard for the Student, and any transition should be planned around a natural break if possible. She would also caution against too lengthy a transition – at some point the Student could become confused as to which setting she belonged in.

She thinks that a gradual transition plan over a four-week period, with people familiar to the Student at both ends of the transition, would be very appropriate for the Student. She doesn't know what supports would be available to the Student in her classroom or while the Student was being transported, so she can't comment on that. She has discussed the possibility of the Student leaving MMCC with the Student's mother in the presence of the Student; she doesn't know if the Student was listening.

18. During an interview conducted by the Complaint Investigator with Michele Rock, D.O., Dr. Rock stated the following: She is a developmental pediatrician, and has been working with the Student for about three years. She usually sees the Student every six months, and has had frequent contact with her counselor, Ms. Dixon. Her principal concern is with making sure that the Student is getting the supports she needs. The Student experiences anxiety, and that is why the Student is working with Ms. Dixon.

The Student has been successful at MMCC, and it seemed like a good placement for her. The Student has said to her things like: "I love going there. It's the best school for me. It's the only place I can be safe." The Student's conversation, as with children who have autism generally, tends to sound scripted. She is not sure where the Student gets her scripts. The Student's ability to interpret incidents is very limited.

When the Student's mother told her in September 2012 that the Student might have to leave MMCC, she tried speaking with the Student about it but the Student wouldn't talk about it; the Student hadn't even begun to process this information. She wrote the letter of September 19, 2012 because it didn't appear that the Student had been well prepared for this change so as to be able to succeed with the transition. She believes that the Student is capable of functioning in a public school setting, but she is concerned about the transition. One of the big issues for the Student is her inflexibility, and there needs to be a lot of preparation in order for change to be successful. She had no information about the program at AMS other than

that it's a public school program. She has spoken with many other parents who have had difficulty with public schools, including some from Auburn.

She suggested to the Student's mother that it was not unreasonable to give the AMS program a try, and asked her why she was opposed to it. One of the concerns was that there wouldn't be enough social thinking curriculum in the program. She asked the Student's mother to send her more information, including the IEP and the transition plan, and told her that she wouldn't make any other comments or recommendations until she has a chance to look at them. She hasn't received any of this information.

She thinks that a transition plan over a four-week period, with people from MMCC accompanying the Student during the transition, sounds like a typical plan developed by MMCC and sounds reasonable for the Student. She would encourage the Student's mother to work with such a plan. She thinks that the concerns of the Student's mother are about public schools in general – that there is a trust issue involved.

One problem with MMCC is that the program offers limited opportunities for social skills development because of the types of students who attend the program. The Student's mother tries to provide other opportunities for the Student to interact with peers, but the best opportunities for those interactions are in a school setting where student spend so much of their time. There is plenty of literature to suggest that children with autism benefit from interactions with children in a mainstream setting.

19. During an interview conducted by the Complaint Investigator with Holly Dixon, L.C.S.W., Ms. Dixon stated the following: She has been providing counseling to the Student's family since March 2012. The sessions take place once per week, usually with the Student, the Student's mother and the Student's brother. The focus generally is on family dynamics issues, and more on the Student's brother than on the Student. She has also worked with the Student on anxiety-related issues, mostly concerning the Student's father and to a much smaller degree about school issues; she generally tries to avoid talking about school-related issues. She has noticed an increase in anxious behavior on the Student's part starting around 2 ½ months ago, but it's hard to know what is causing this. The Student's anxiety seems to come from an internal process, and it's hard to get from the Student what she's thinking about that causes the anxiety.

She has spoken with the Student about the bullying incident at the Winthrop school. The Student recalled that the other children said things to her that made her uncomfortable, but the Student didn't understand the sexual nature of those things, didn't understand what those things meant. The Student remains afraid of some of the children involved because they got in her space and called her names. The Student's physical anxiety increased somewhat when they were discussing these things, but it's hard to gauge how upsetting it was to her.

She has had conversations with the Student's mother about the Student leaving MMCC. She knows some of the details of the transition plan, and has concerns about how it will be implemented. She would prefer that such a transition begin at the start of the school year; she would have been less concerned if it had begun in mid-September, but ideally it would start

when school started. The Student doesn't adjust well to change, and any change has to be introduced gradually. She doesn't know what supports would be in place for the Student at AMS, so she can't really comment on the adequacy of the transition plan. Any transition for the Student needs to be structured and consistent in order to be successful. The Student needs consistency in who are her teachers and ed techs, and this is often a problem in the public schools.

20. During an interview conducted by the Complaint Investigator with Ken Hume, Mr. Hume stated the following: He sits on the Board of the Autism Society of Maine. He does not have a background in education, having received degrees in business and organizational development. He has attended several IEP Team meetings as an advocate for the Student's mother, both in Winthrop and Auburn. The IEP Team decision to place the Student at MMCC was made both because Winthrop didn't have a program for the student at its middle school and because of the bullying incident that occurred there.

He observed the Student at MMCC sometime last year. She seemed comfortable in the setting and responded well to her teachers. He saw it as a very positive experience for the Student. He has not visited AMS, but he believes that the Student could not be successful in a placement there based on the letters from Dr. Loeffler and Dr. Rock. At the IEP Team meeting on September 10, 2012, it didn't sound like AMS was equipped to handle a child such as the Student, because there were things that they couldn't do as well or the same as MMCC.

Assuming that the Student's transition from MMCC to AMS was required, he has no opinion as to whether or not the transition plan that was developed by the IEP Team would be adequate to address the Student's needs.

21. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: The incident at Winthrop involved a group of 10 children with one ringleader. They called the Student names and told her to give them oral sex. The Student had anxiety before the incident, but it was heightened afterwards. Due to the Student's increased anxiety, the Student started counseling with Ms. Dixon. The Student repeatedly says the name of the ringleader. The Student rubs her breast and sits in an "M" position. The Winthrop school district downplayed the whole situation, and when she visited AMS, Ms. Macklin told her that there was nothing about the incident in the Student's file. If the District is ignoring what happened to the Student, then they won't be able to meet her needs.

The Student is always asking for reassurance about her staying at MMCC. The Student says she doesn't want to go to AMS because there may be someone like the ringleader there. She hasn't told the Student that she may be leaving MMCC, but she asks the Student "If you left MMCC, how would you feel?" The Student says "I don't want other children bullying me. I want to stay at MMCC." The Student knows that her father wants her to leave MMCC because her brother told her so; she doesn't know whether the Student's father told the Student directly.

She believes that the decision to move the Student out of MMCC comes from the District. She can't understand why MMCC wants to discharge the Student. During the summer, Ms. Cole told her that the Student would be staying at MMCC. In August or September she received a letter from Ms. Haskell saying that the subject of the Student's transitioning to a less restrictive setting was going to be discussed at the next IEP Team meeting, but when she spoke to Ms. Haskell about it Ms. Haskell told her not to worry. Ms. Haskell said it was a letter that goes to all parents, and that the Student wasn't leaving MMCC. Around the same time she got a phone call from Ms. Macklin telling her that MMCC was going to discharge the Student.

At the September 10, 2012 IEP team meeting, Ms. Haskell said that the Student no longer qualified for day treatment services, but MMCC continued to bill the District for them anyway. She knows that the IEP Team took what the Student's father said at the meeting into consideration, but she doesn't understand why he should have any input to the decision since he hasn't seen the Student for months. The Student's father will always speak against whatever it is that she wants. At the IEP Team meetings, she feels a lot of hostility from District staff. This causes great concern for her, because these are the people that are going to be teaching her daughter; she doesn't want them to be the Student's role models. She believes that people can disagree without being unfriendly.

The Student has made a lot of progress at MMCC, and it's because she feels safe there. When she visited AMS, she wasn't convinced that the District had a program that was adequate for the Student. Ms. Macklin, who took her around that day, was unable to answer many of her questions. Ms. Macklin said several times "I don't have to sell you on our program; we meet state requirements." She observed a class (it might have been a social skills class) where, during snack time, one of the students took out her snacks and threw them in the trash. No one noticed. Another of the students just walked out the door by himself and said he was going to the bathroom. She wants more attention paid to the Student than that. The Student was attacked in Winthrop when she was at her locker unsupervised. At MMCC, the Student has one-on-one "eyes on" support throughout the day. The District isn't prepared to meet the Student's needs because they don't even recognize that the Student was assaulted; if they understood that they would understand why the Student has so much anxiety.

Her concerns about the transition to AMS are not about the transition plan itself, but about the program that the District has for her at AMS. The District has been providing transportation for the Student to attend MMCC. There have been two incidents when the bus driver didn't pick up the Student, once when the bus broke down and once when the Student wasn't outside waiting when the bus pulled up to the school. In addition, the bus has repeatedly gotten the Student to school late. The District has never done anything to address this. She has tried to find out whether the Student would be able to participate in a music program, because the Student enjoys playing an instrument. She has been unable to find out who is running the band program at AMS. She was first given the name of a teacher who is no longer there. She then was given the name of another teacher but, after first saying he was going to be the new band director, that teacher then said he wasn't. The Student has many opportunities at MMCC to go out into the community, where she can have social interactions. She was told

there won't be any outings at AMS. The Student is also active in the Special Olympics, but she won't be able to do that at AMS.

The District has not made an attempt to put together an appropriate program for the Student. They gave her a one-size-fits-all general curriculum. They should have taken the time to get to know the Student and prepare a program that met her needs. It wasn't until the November 6, 2012 IEP Team meeting that they answered her questions about the program. This shows that the District wasn't adequately prepared before that.

She is not concerned about the Student's opportunities for social interaction with her peers at MMCC because she provides many such opportunities for the Student outside of school. The Student goes horseback riding, participates in Special Olympics activities, is involved with the Salvation Army, and attends many, many activities at her church. In the public school environment, the Student's social skills may not be adequate to enable her to deal with the social situations she will encounter there.

She thinks that Dr. Steege and Ms. Bearsley, when they included the Vineland scale in the comprehensive assessment of September 2012, should have had her complete that rating scale as well as the Student's teacher, as they did in the previous year's assessment. She also doesn't think that Ms. Ancil should have interviewed the Student's father as part of her evaluation; his comments were irrelevant as he has had so little recent contact with the Student.

22. During an interview conducted by the Complaint Investigator with the Student's father, the Student's father stated the following: He has visited both MMCC and AMS. He spent most of the day at MMCC in February 2012, observing the Student in her classroom. She was in a group of four or five other students, all of them boys. The Student was clearly the highest functioning of the children in her class. Most of her social interactions were with one of the boys who seemed close to the Student's level, and there was some banter between them. The Student seemed comfortable and he saw no signs of anxiety, but she wasn't being challenged socially.

He visited AMS for about 90 minutes on September 10, 2012, the day of the IEP Team meeting. He saw Ms. O'Neill's classroom. There were about eight students, a mix of boys and girls. There was a cluster of children who seemed to be around the Student's level, and there were two girls in particular who seemed to be high functioning, and he thought they would be good for the Student socially. There was a lot of social interaction within the class, and there was plenty of supervision. He thought the placement there would be fine for the Student. He thought all along that the goal was to return the Student to a program that would allow her to access the regular education environment. This was what the professionals recommended, what the law says (that students should be in the least restrictive environment), and it was his own belief that the Student should have more opportunities for social interaction as long as she had the support she needed to be safe. He felt that the Student would get the support she needed to be safe at AMS, where there was an ed tech in the classroom and the plan was that an ed tech would keep an eye on the Student when she was out of the classroom.

He thinks that the Student's mother wants to protect the Student from corrupting influences at the public school, from learning about sex, drugs and drinking – the things that go with becoming a teenager and moving towards adulthood – and from pop culture. The Student's mother may have genuine concern for the Student's safety based on the incident at Winthrop. While the Student asked him questions after the incident that he knew were related to what had happened, he never detected any anxiety in the Student around the incident; he doesn't think she understood that the other students were making fun of her.

He doesn't generally see anxiety in the Student, who is more apt to show frustration about not getting her way. He thinks that the Student's mother is promoting anxiety in the Student by telling her she might not be safe at AMS. He never told the Student that she might have to leave MMCC. Ms. Haskell reported to him that the Student said to her "I don't want to leave MMCC. My mother wants me to stay, but my father doesn't."

VII. Conclusions

Allegation #1: Failure to adequately consider the harmful effect on the Student when determining that the Student's placement would be at the Auburn Middle School during the 2012-2013 school year in violation of MUSER §X.2.B

NO VIOLATION FOUND

Initially, it should be noted that MMCC has made its own determination that it will discharge the Student. MMCC is a private school, and cannot be forced to maintain a student in its program for whom it believes the program is not appropriate. The issue for the Student's IEP Team at all relevant times was whether the Student required a day treatment program such as that provided by MMCC, not whether she required placement specifically at MMCC.

The Student's mother, in challenging the District's decision to change the Student's placement from a private day treatment program to a public school self-contained special education classroom with some opportunity to be in the regular education environment on a daily basis, suggests that the program provided to the Student at MMCC is superior to the program that would be offered at AMS. This, however, is not the standard which governs the review of an IEP in a due process review. Rather, the standard by which a student's educational program is to be measured is that it must offer a program "reasonably calculated" to deliver "educational benefits." *Hendrick Hudson Bd. Of Educ. V. Rowley*, 458 U.S. 176, 207, 102 S. Ct. 3034, 73 L.Ed. 2d 690 (1982). As explained by the Court in *C.G. and B.S. v. Five Town Community Sch. Dist.*, 513 F. 3d 279, 284 (1st Cir. 2008), this obliges a school district to "provide an adequate and appropriate education. The IDEA does not place school systems under a compulsion to afford a disabled child an ideal or an optimal education." Thus, complaints by the Student's mother about such things as the lack of band class or Special Olympics programming at AMS speak only to whether the program at MMCC was preferable in some way to that at AMS, not whether the AMS program was adequate and appropriate.

Perhaps more importantly, the IDEA has stated an unambiguous preference for having students be educated with their non-disabled peers to the “maximum extent appropriate.” (MUSER §X.2.B). See *Hampton School District v. Dobrowolski*, 976 F. 2d 48, 50 (1st Cir. 1992); *Ciresoli v. M.S.A.D. #22*, 901 F. Supp. 378 (D. Me. 1995). In making the determination as to the placement which is appropriate for a given student, however, the law requires that consideration be given to “any harmful effect on the child” of that placement (MUSER §X.2.B), and it is here that the Student’s mother claims that the District violated the law. The central question in this case, therefore, is whether the District, in determining to place the Student in the less restrictive setting at AMS, failed to duly consider the harmful effect of that change in placement on the Student.

The Student’s mother bases her claims that the change in placement would be harmful to the Student on the Student’s anxiety, which the Student’s mother relates primarily to the incident at Winthrop Grade School. Not only has the staff at MMCC failed to observe the level of anxiety which the Student’s mother claims for the Student, but the Student’s providers also do not support the Student’s mother’s description. Dr. Loeffler described the Student as not particularly anxious. Ms. Dixon stated that to the extent that her sessions with the family focus on the Student’s anxiety (which was not to a great extent), those discussions mostly concern relations with the Student’s father and are rarely school-related. Although Ms. Dixon described the Student as being afraid of some of the children involved in the incident, she did not believe that the Student fully understood the nature of the incident.

Whatever the extent of the Student’s anxiety around the incident, it is clear that the Student’s mother had ample opportunity to present to the IEP Team her concerns about the Student’s anxiety. Although the District did not ultimately agree with the Student’s mother that the Student’s anxiety necessitated that the Student remain at MMCC, the District did develop a gradual transition plan over a four-week period, with the Student being supported by staff from MMCC, that was intended to address potential anxiety surrounding the transition. In addition, the IEP developed for the Student included staff supervision at all times and breaks as needed to reduce anxiety or provide sensory input. None of the persons interviewed were of the opinion that the transition plan, in and of itself, was inadequate to support the Student’s transition. Indeed, even the Student’s mother conceded that it was the program at AMS, and not the transition plan, that she was concerned about.

As to that program, none of the persons interviewed stated an opinion that the program was not adequate for the Student’s needs. The letters obtained by the Student’s mother from Drs. Loeffler and Rock expressed generalized concerns, and were not based upon any reasonable familiarity with the program actually being offered at AMS.

Ms. Cole, who has been the Student’s teacher since the Student began attending MMCC and who is very familiar with the program at AMS, stated her belief that the Student was ready to transition to the AMS program. Dr. Rock, despite her generalized concerns about whether a public school program could provide adequate programming for a student such as the Student, encouraged the Student’s mother to give it a try. Both Ms. Cole and Dr. Rock recognized the benefits to the Student of the increased opportunities for social interactions with her peer group that would be available at AMS.

In sum, the Student's IEP Team heard ample evidence that the Student was capable of being successful in a less restrictive placement, duly considered the effect on the Student of a change in that placement, and developed a program and transition plan that was reasonably calculated to address the Student's needs.

VIII. Corrective Action Plan

As no violations were found, none is required.