STATE OF MAINE
SPECIAL EDUCATION DUE PROCESS HEARING

January 17, 2014

13.078H — Family v. RSU 21

REPRESENTING THE FAMILY: **Richard O'Meara, Esq.**

REPRESENTING THE DISTRICT: **Amy Tchao, Esq.**

HEARING OFFICER: **Sheila Mayberry, Esq.**

This hearing was held and decision issued pursuant to Title 20-A, MRSA §7202 et. seq., and 20 U.S.C. §1415 et. seq., and accompanying regulations. The hearing took place on October 21, 22, 28, 29, 31 and November 7, 2013, at the offices of Drummond Woodsum in Portland, Maine. Those present for the proceedings were Mother ("Mother"),the Mother's husband; Father ("Father"); Richard O'Meara, representing the Parents; Susan Martin, Director of Special Education for RSU 21 ("District"); Amy Tchao, Esq. and Erin Feltes, representing the District; and the undersigned hearing officer.

Testifying at the hearing were:

The Mother
The Father
Heather Alverez — Clinical Director, Sebago Educational Alliance
Melissa Bowker-Kinley — Medical Director, Child/Adolescent Services, Spring Harbor Hospital
Frances Kessler — Social Worker, RSU 21
Judith Mintz, Ph.D. — Clinical Psychologist and DBT Therapist
Susan Martin[1] — Special Education Director, RSU 21
Julie Olson — Special Education Director, RSU 21
Jennifer Searway — Program Director, Sebago Educational Alliance
Joseph Wojcik, Ph.D. — Psychologist, RSU 21

All testimony was taken under oath.

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[1] Susan Martin, formerly Susan Mulsow, was married during the summer of 2013. For simplicity, the decision will reference her only as Ms. Martin.

I. PROCEDURAL BACKGROUND:

On June 11, 2013, the Parents filed a hearing request on behalf of their daughter ("Student"). On July 22, 2013, a prehearing conference was held at the offices of the Department of Health and Human Services in Biddeford, Maine. Documents and witness lists were exchanged in a timely manner. However, additional documents were submitted during the hearing with the agreement of the Parties. The Parents submitted 299 pages of exhibits (herein referenced as P. #), and the District submitted 2,217 pages of exhibits (herein referenced as S. #).

On August 30, 2013, the District submitted a Motion to Partially Dismiss or Compel Testimony. The Parents submitted a response to the Motion on September 10, 2013. A request to delay the start of the hearing was granted in order to deliberate on the District's Motion. The Motion was denied on October 9, 2013.

The hearing took place over the course of six days. Both parties requested to keep the hearing record open until December 12, 2013, to allow the parties to prepare and submit post-hearing memoranda. Final written arguments were submitted by the District (60 pages) and the Parents (46 pages). The record closed upon receipt of these documents. The parties agreed that the hearing officer's decision would be due on January 6, 2014. Due to the death of a member of the hearing officer's immediate family, the hearing officer unilaterally extended the deadline to January 17, 2014.

II. ISSUES

1. Did the School's proposed IEP and placement offered to the Student between March and October 2013 fail to offer her a free appropriate public education ("FAPE")?

2. If so,

   a. Are the Parents entitled to reimbursement of the costs they have incurred in connection with the Student's ongoing unilateral placement at the Arlington School/Mill Street Lodge in Massachusetts since May 2013? If not, what other remedy is appropriate?

   b. Is the Student entitled to a continuation of her current unilateral placement at public expense until the IEP team determines that she is ready to transition to an appropriate educational program in a less restrictive setting? If not, what placement is appropriate?

III. FINDINGS OF FACT

1. The Student is xx years old (DOB: xx/xx/xxxx). She is eligible for special education and related services under the category of Emotional Disturbance. The Student attended xx grade in RSU 21, at the Kennebunkport Consolidated School, and then attended Waynflete School ("Waynflete") from grades xx through xx.

2. The Student's Parents divorced in 2005. Her mother remarried in June 2013. She has two younger siblings. The Parents have joint custody of the Student.

3. In May 2009, while at Waynflete, the Student began participating in outpatient psychotherapy to address depressed mood and the onset of significant, self-injurious behavior (cutting) with the intention of harming herself. (P. 2). She and her parents participated in groups training adolescents in Dialectical Behavioral Therapy ("DBT") skills through her outpatient treatment provider. (P. 2). DBT uses a cognitive-behavioral treatment approach that emphasizes the development of four skill sets: mindfulness, interpersonal effectiveness, emotion regulation, and distress tolerance. (S. A885). It was developed initially to treat suicidal ideation in adults with borderline personality disorders; however, it is now being used effectively in adolescents with similar self-harm behaviors as well as other co-occurring psychiatric illnesses, such as depression and anxiety. (S. A885). DBT is an empirically-supported technique, meaning that it has been clinically tested for its effectiveness in adolescents and adults. (S. A885).

4. In the spring of 2010, the Student's depressive symptoms returned and her cutting escalated significantly to daily episodes of self-injury, along with increased suicidal ideation. (P. 2). She was admitted to Southern Maine Medical Center and then transferred to Spring Harbor Hospital ("Spring Harbor"), a mental health facility located in Westbrook, Maine. (P. 1). She was admitted for inpatient management of Major Depressive Disorder Severe Recurrent and Impulsive Control Disorder, Not Otherwise Specified ("NOS"). (S. 524). A psychiatric evaluation was performed by Melissa Bowker-Kinley, M.D., Ph.D., Medical Director of Child and Adolescent Services at Spring Harbor. (S. 522-525).

5. The Student was discharged from Spring Harbor on May 19, 2010. In the Discharge Summary, Dr. Bowker-Kinley stated that despite intensive treatment, the Student's cutting and promiscuous behaviors escalated during her stay at the hospital. She stated that at her core, the Student had an intense self-loathing and sense of emptiness consistent with the likelihood of the development of a borderline personality disorder, if not adequately addressed prior to age 18. She believed that the Student's self-hatred motivated much of her behavior and that cutting, as well as putting herself in relationships with young men who may abuse her, served to confirm and validate her very low sense of self-worth. (P. 520).

6. Dr. Bowker-Kinley recommended that the Student be admitted to McLean Hospital's Intensive Adolescent DBT Unit, called 3 East ("3 East"), for intensive DBT treatment. (P. 2). She stated that the program at 3 East, located in Belmont, Massachusetts, was the only intensive inpatient DBT program for adolescents with a female-only milieu in New England. She stated that she believed that the Student's recovery would be most successful with treatment provided at this facility. (P. 1-2). 3 East is a highly specialized residential treatment program for adolescent girls who exhibit self-injurious or self-endangering behavior and emerging borderline personality traits that may present as depression, anxiety, impulsivity, eating disorders, and substance abuse. (S. A59, Dr. Mintz).

7. The Student was admitted to 3 East on May 19, 2010 for its 28-day intensive DBT residential treatment program. (P. 4). At that time, the Student was diagnosed with Major Depressive Disorder and Borderline Personality Disorder traits. (P. 4).

8. By June 4, 2010, it was reported that the Student had made "tremendous" strides in understanding the functions of self-injurious behavior and suicidal ideation, and demonstrated "significant" motivation and commitment to change her behaviors and use coping skills that were more effective in the longer term. (S. 512, P. 4).

9. On June 14, 2010, the Student was transferred from 3 East's "Intensive" program to its "Step-Down" Residential/Day Hospital. She was discharged from 3 East on June 24, 2010. (S. 509). The recommendation upon discharge was to attend individual DBT therapy with Greta Roderick at Maine Medical Center; to have access to on-call skills coaching as necessary following a DBT treatment model; attend a weekly DBT skills group at Maine Medical Center; and, in the event it was necessary, coordinate with the crisis intervention team at Spring Harbor for potential inpatient psychiatric hospitalization. (S. 511). Her educational plan was to return to school in the fall of 2010. (S. 511).

10. The Student entered xx grade in the fall of 2010 at Waynflete. During the second semester at Waynflete, the Student increased her self-injurious behaviors. (Mother's testimony). She cut herself at school and spoke about killing herself to peers. This occurred during the timeframe of a difficult relationship with a boy and the suicide of a friend she had made at 3 East. The administration at Waynflete assigned a one-on-one staff to her to "keep her safe." (Mother's testimony, S. 505-506).

11. In late March 2011, the Student "overdosed" on ibuprofen and Benadryl at home and was admitted to the Barbara Bush Children's Hospital by her mother. (S. 504, 546, Mother's testimony). While at the Children's Hospital, she attempted to commit suicide and was restricting her diet to about 350 calories a day. (S. 505). The Student was thereafter transferred to Spring Harbor for further treatment. (S. 504). The provisional diagnosis by Dr. Bowker-Kinley was Anxiety Disorder NOS; Eating Disorder NOS; Adjustment Disorder with depressed and anxious mood; and Major Depressive Disorder partial remission. (S. 507).

12. The Student was discharged on May 17, 2011 from Spring Harbor and transferred to Sweetser West Cottage Program ("Sweetser West"), a residential therapeutic facility. (S. 451, 500; D. 23). The Spring Harbor Discharge Summary indicated that a multi-pronged treatment plan was necessary. It was noted that Waynflete would no longer accept the Student and that academic tutoring would be provided by Sweetser. (S. 500). Further educational planning would be discussed during the summer to determine an appropriate

placement for the following school year. (S. 500). It was also noted that she would begin seeing Dr. Katherine Ray for outpatient psychiatric care upon her discharge from the Sweetser residential program. (S. 451).

13. Sweetser conducted a Comprehensive Assessment of the Student upon her admission to its residential facility. (S. 456). The presenting symptoms included cutting, suicidal ideation and attempts, food restriction, substance use, and emotion dysregulation. (S. 456). The "Current Severity" level for her symptoms of self-injurious behavior, suicide attempts and ideation, and depressed mood was "severe." (S. 460-461). The Assessment noted that she had daily thoughts of suicide, but that she could not identify triggers/thoughts around this. It cited Spring Harbor notes, stating that the Student was quite comfortable with ending her life and rated her hopelessness at '7' out of '10.' The Student reported that if she was to return home, she would act on her urges to kill herself either by suffocating with a bag or overdosing on pills. (S. 460).

14. The Assessment indicated the importance of family therapy, including the Student's siblings. It was clear that the Student and her parents are well versed in DBT and that they planned to have her continue with outpatient DBT. (S. 456).

15. The diagnosis of Borderline Personality Disorder Traits assessed by Spring Harbor was endorsed by the staff at Sweetser. (S. 461). The reason for the residential placement, as seen by Sweetser, was to address her increased anxiety and depressive symptoms which impacted her ability to maintain safety at home, school, and in the community. Sweetser staff stated that while the Student had learned DBT skills, "she was unable to access them when emotionally dysregulated. Parental support and individual therapy is recommended to address her negative and at times, attention seeking behaviors." (S. 458). It was noted in clinical review team recommendations that, "The primary focus of treatment should be to address the fractured trust issues that exist within this family unit, create increased interpersonal communication skills between all family members. Additionally, providing the basics for Collaborative Problem Solving, to decrease confrontational encounters. Providing self-soothing skills and anger management techniques to prevent

argumentation." (S. D77). By July 2011, the Student met the criteria for MaineCare (Maine's Medicare eligibility criteria) for treatment in a therapeutic residential setting. (S. D74).

16. Progress notes dated June 20, 2011, from Sweetser's Dr. Marc I. Kaplan, indicated that the Student felt that her mood/depression had stabilized, and that she wanted to set small goals to complete her ninth grade school work. (S. 452). The Student was eating well and sleeping better, and medications made a difference in her mood. (S. 452). The progress notes indicated that her Father felt that the family was able to communicate better with the Student and that she had not injured herself since being admitted to Sweetser. (S. 451).

17. During the summer of 2011, the Student transferred from the Sweetser West intensive unit to the Family Focus program. (Mother's testimony, S. B96). The Family Focus program is an interim program at Sweetser for patients and families to work towards a transition for the patient to return home. (S. B96). Also, Charles Whitehead, the Waynflete School psychologist, evaluated the Student and recommended to Waynflete that she not be admitted for the 2011-2012 school year. (Mother's testimony, S. B96). Thereafter, the Parents enrolled her in the District at Kennebunk High School ("KHS"). (Mother's testimony).

18. The Student also began to see Dr. Katherine Ray for outpatient psychiatric treatment. (Mother's testimony). The Mother noted that the Student had been seeing Dr. Greggus Yahr for outpatient services, but he had not been successful in helping the Student use her DBT skills prior to her admission to Spring Harbor in the spring of 2011. (Mother's testimony).

19. The Student started the 2011-2012 school year at KHS while she still resided at Sweetser. (S. 446). While there is disagreement about whether the Parents or the District suggested waiting to make a referral for Special Education and related services at KHS in September, none was made at that time. (S. 446). However, the District understood that the Student had been hospitalized and was still residing at Sweetser. (Father's testimony, Olson testimony).

She was placed in guided study halls for academic support and work completion issues. (S. 446). The Parents provided transportation from Sweetser West to KHS despite being told by the District that it would transport her. (Mother's testimony).

20. By September 2011, the Student was making "moderate" progress in her treatment. (S. B96). The Recommendation from the Sweetser staff was to have her discharged to her home in December 2011 with Home and Community-based Treatment ("HCT"), in-home supports, and psychiatric medication management in place prior to her discharge. It was recommended that the HCT service overlap with the residential program for 30 days. (S. B89).

21. Sweetser's Progress notes, dated October 12, 2011, indicated the Student was being discharged from the Family Focus program. It reported that due to the "fairly high conflict divorce," HCT continued to be needed to help the parents strengthen their co-parenting relationship and provide consistent structure and support for the Student. The notes stated that the Student still suffered from significant anxiety and depression; was often unable to regulate her moods effectively; and that "immediate work" was needed to focus the family on how to help the Student use her coping skills effectively. (S. B81-82).

22. The Student was discharged from Sweetser on October 19, 2011 and began living at the Mother's residence. (Mother's testimony). Short and long term goals were set by the Sweetser staff. Her short term goals were as follows:

> (The Student) will learn and practice coping skills and emotional regulation skills to manage her behaviors in the home, school, and community, as evidenced by her utilization of these skills at least twice per week. Parents will co-parent effectively and increase structure and consistency across their homes, as evidenced by at least weekly communication between adults. (The Student) and her family will increase their positive communication skills and maintain respect within the household, as evidenced by increased reported levels of trust and decreased incidents of disagreements.
> (S. B74).

Longer term goals were stated as follows:

> (The Student) will demonstrate safe behaviors in both parents' homes, in school, and in the community for a period of several months.
> (S. B74).

23. At some point in October 2011, the Student contacted the Mother while at KHS and told her that she was hiding under the stairwell at school with two other students whom she knew were using substances. (Mother's testimony). At another point, the District contacted the Mother to report that the Student had cut her arm and asked her to come in and assess the situation. (Mother's testimony). After these incidents, the Student's medication was changed upon the order of Dr. Ray. (Mother's testimony).

24. The Student's first quarter grades in the District ranged from 72 to 85. (P. 10, S. 442). Her second quarter grades ranged from 44 to 68. (P. 10).

25. On December 8, 2011, the Student became intoxicated at school. When she was brought to the main office, she became verbally abusive, yet told the staff she needed help. She stated "I need help" and "I am not ready to do this on my own," and other comments about herself and her family. (S. 450.) She also threatened to jump out of the window and stated that she wanted to kill and cut herself, and needed more to drink because it made her feel better. (S. 450). When her father arrived at the school, she continued to use profanity and she became physically violent towards her father and others in the office. (S. 450). She was thereafter restrained and taken to the hospital by ambulance. (Father's testimony.) She was suspended from school from December 9 to 15, 2011. (S. 445). She was thereafter referred for special education by the Mother. (S. 445-446, 448).

26. Progress notes from Sweetser, dated December 9, 2011, reported on the school incident and the possible reasons it occurred. The notes stated that the Student was struggling with her desire to live with her mother and her anxiety about her father's reaction, resulting in the substance abuse incident at school. The notes reported that the family was working with the HCT team on all of these issues and that the case manager would monitor the effectiveness of the HCT (S. B60).

27. An IEP meeting was held on December 16, 2011, upon a referral for determination of eligibility for special education and related services. (S. 446). The Written Notice indicated that while the Student had a "fairly successful first quarter report card," she was failing

three or more classes at that time. (S. 446). She was considered "at-risk" in her health and academically. (S. 446). It stated that "All of (the Student's) teachers have expressed their concern that (she) is struggling academically this Semester. She had problems completing her work and her posted grades indicated that (she is failing all of her classes)." (S. 437, 446). The IEP Team determined that a variety of assessments and educational evaluations would be undertaken to assess her eligibility for special education. (S. 446).

28. In early 2012, the Student had been unsuccessful at changing her peer group. She was more depressed and her drug use had increased, including the use of synthetic marijuana, "D2," and "spice." She had also been trading sex for drugs on the KHS school grounds. (Mother's testimony).

29. Progress notes from Sweetser, dated January 16, 2012 indicated that the Student was living full time with her mother and that the Student's behaviors had decreased in severity since that transition. (S. B58). Nonetheless, the notes indicated, "However, the family still desperately needs HCT treatment to navigate this new living arrangement and help improve (the Student's) relationship with her father. Mom also needs help in becoming more assertive about getting (the Student's) needs met." (S. B52).

30. In February 2012, Dr. Joseph Wojcik, Psychologist for the District, conducted a psychological evaluation of the Student (S. 402). His evaluation included a review of school records; a clinical interview; interviews with the Student's Father and Dr. Charles Whitehead, Waynflete's psychology consultant; Wechsler Intelligence Scale for Children-Fourth Edition ("WISC-IV"); Million Adolescent Clinical Inventory ("MACI"); Behavior Assessment for Children-Second Edition ("BASC-II"); and classroom observation. (S. 402).

31. Dr. Wojcik's psychological assessment included a lengthy history of the Student's mental health background, including the prior hospitalizations at Spring Harbor and stays at McLean. (S. 403). He indicated that the District informed him that the Student had recently been hospitalized again "for reasons that were not disclosed" to him. (S. 403). He reported

that the Student appeared to be disengaged from instruction and also from peers during his classroom observations. (S.404). Her Composite academic scores indicated that she had “superior” verbal comprehension; ranged in the “high average” in perceptual reasoning and working memory; “borderline” in processing speed; and an overall “average” for a full scale IQ. (S. 404, 405).

32. Dr. Wojcik’s clinical diagnostic impressions included the diagnosis of Bipolar Disorder, most recent Episode Depressed, vs. Dysthymic Disorder; alcohol dependence; Oppositional Defiant Disorder; and Anxiety Disorder NOS; he ruled out Eating Disorder and Emerging Traits of a Personality Disorder. (S. 408). In summary, Dr. Wojcik stated that the Student “presented as experiencing on going symptoms of depression, anxiety, variability in mood, self-destructive behavior, suicidal thoughts, substance abuse, and poor academic performance.” Test results revealed that she was functioning in the "superior" range on the Verbal Comprehension Index and in the "high average" range on the Perceptual Reasoning Index. However, she scored over one and a half standard deviations below the mean on the Processing Speed Index, which suggested that she had a significant deficit in this area. Personality testing revealed ongoing concerns regarding her level of depression, anxiety, and self-destructive behavior. Behavior rating scales from the school and home settings likewise revealed concerns regarding anxiety, depression, and academic performance. (S. 410-411).

33. On March 16, 2012, Judith Pitchforth, a special education teacher and case manager for the District, conducted the Student’s Educational Evaluation. In summary, it indicated that the Student performed in the “solidly average range” for academic achievement. (S. 430). Her ability to apply academic skills was also within the average range. Her fluency with academic tasks was measured in the “low average” range. Her standard score for broad reading was “high average.” Her basic reading skills, brief reading, broad mathematics, brief mathematics, broad written language, and brief writing scores were in the average range. Her standard scores were low average in math calculation skills and written expression. She had a significant strength in broad reading. (S. 430).

34. Dr. Wojcik and Ms. Pitchforth made several recommendations regarding the Student's educational planning. Dr. Wojcik recommended ongoing supervision due to her self-destructive urges and other self-injurious behaviors; frequent home-school communication to ensure that she would not engage in these behaviors in the school setting, such as weekly phone conferences between the parents and school social worker; communication from the Parents if and when there were any changes in the Student's attitude or behavior in order for the District to take appropriate safety precautions; inclusion of emotional support in her programming to encourage her to change her negative "self-cognation"; and encouragement to the Parents to continue outpatient mental health treatment. (S. 411). Academically, it was recommended that the Student use math templates; one minute math drills or on-line computer practice; use of clarifying writing directions and expectations, as well as exemplars to help support her efforts to self-motivate and self-initiate writing assignment content areas; and direct instruction and strategies focused on self-regulation on timed tasks. (S. 411).

35. Progress notes from Sweetser, dated March 21, 2012, indicated that while the Student was making progress at home, there continued to be "challenges" between the two homes and using consistent co-parenting strategies The Mother took a leave of absence from work to address the Student's needs and submitted legal papers to the Father regarding the Student's residence. (S. B49, B43). It was also reported that the Student had been referred to special education evaluation due to her major emotional needs and very poor grades (S. B 43, B49-50); that she was meeting with a substance abuse therapist to address her alcohol abuse; and that she continued to have suicidal ideations and needed to be closely monitored. (S. B43).

36. Between March 28 and March 30, 2012, the Student engaged in significant self-injurious behaviors. She cut herself at school and then was found by her mother on an overpass bridge at night, planning to jump. (S. 423, Mother's testimony). The Mother took the Student to Southern Maine Medical Center due to her thoughts of suicide. Although she was released the same night, the next day she cut herself again with an "Exacto" knife, and her mother brought her to Maine Medical Center's Emergency Room. (S. 423, 432).

37. On March 31, 2012, the Student was transferred to Spring Harbor after a relapse of severe depression, self-harm, and suicidal ideation. (S. 423, 497, B41). At the time of admission, the Student reported that she had many stressors, including her lack of social life, feeling lonely, and doing poorly academically. (S. 423). She reported using alcohol once in January 2012; previous use of marijuana; smoking cigarettes two to three times per week; and occasional use of caffeine. (S. 424).

38. The Student was discharged to her Father from Spring Harbor on April 6, 2012. (S. 418, 420). HCT services continued to be provided by Chelsea Speers of Sweetser. (S. 420). Dr. Bowker-Kinley authored the Discharge Summary. In summary, she indicated that the Student's mood had improved and the relapse of self-injurious behavior had stabilized and, at the time of discharge, she was at a "moderate" risk of continued self-injurious behavior. It was notable that the degree of conflict between the Parents had increased regarding co-parenting roles, compared to the last hospitalization. (S. 419). She stated that "a great deal of work" needed to be done between the parents on their ability to co-parent. (S. 419- 420). With respect to the assessment of the Student's safety, Dr. Bowker-Kinley reported that, while the Student continued to have suicidal ideation, she was "fairly open" to reaching out and discussing these urges. However, the risk was that if she prolonged her need to reach out to others, she could likely act on these feelings. (S. 420).

39. An IEP meeting was held on April 24, 2012. (S. 387). The IEP Team reviewed the Special Education Integrated Report produced by Dr. Wojcik and Mrs. Pitchforth, dated April 12, 2012. (S. 402, 388). The Parents discussed their concerns about the Student's emotional/behavioral health and self-image. They were also concerned about her inability to regulate her emotions and hoped that she would be able to use the special education program to diffuse and solve issues before they became overwhelming. They were worried that her inability to complete and submit her work on time would impact standardized testing such as the SAT. (S. 388). The Father objected to the diagnosis of Bipolar Disorder by Dr. Wojcik. (S. 399). Dr. Wojcik indicated that the Bipolar Disorder was listed versus a Dysthymic Disorder, indicating that there was uncertainty as to what the most appropriate

diagnosis was. He stated that he was aware of the Student's hospitalization from his interviews with the family, and therefore additional information should be considered. (S. 401).

40. The IEP Team was also concerned about the Student's safety due to her long-standing suicidal ideation, self-harm, eating disorder, alcohol and substance abuse, and mood swings. (S. 388). The Team believed that she needed more intense supervision and that her program's priority would be self-regulation followed by academic support, along with on-going communication with both parents in order to provide support both at school and at home. (S. 388).

41. The IEP Team concluded that her program would include: changing her study hall blocks to Special Education blocks to aid her academically and behaviorally; social work services for 30 minutes per week to help coordinate services and information with the Student's outside providers; adding a "small group administrator" to reduce distractions as much as possible; an extra 50% more time for work completion; and extra breaks during long testing periods. (S. 388).

42. The Student's IEP, dated April 30, 2012, indicated that Special Education and related services were being provided under the category of "Emotional Disturbance." (S. 374). With respect to her "Needs," the IEP stated that, "The Student has a history of emotional dysregulation and unsafe behaviors which have led to several hospitalizations. She will benefit from small group support through special education to help her develop emotional regulation and social coping strategies in order to keep her safe when she becomes overwhelmed." (S. 375). Positive behavioral interventions and support, and other strategies, were indicated as needed. (S. 376).

43. The IEP goals included the following:

- Academic:
  - Pass 85% of her classes by April 2013;
  - Complete/submit assignments by the due date 60% of the time by April, 2013.
- Behavioral:

  - Given a difficult situation, seek out appropriate personnel for de-escalation and processing 75% of the time by April 2013;
  - Given a potentially harmful social situation, remove herself to a safe environment within the school, 75% of the time by April 2013.
- Social/Emotional
  - Given social work services, improve her self-image as demonstrated by positive descriptions of her social and academic performance at least 50% of the time during discussions with the social worker by April 2013.

44. No further incidents occurred until June 7, 2012, when the Student left her study hall room without asking permission, and without knowledge on the part of District staff, and went to the bathroom, where she cut her left arm and ankle with blades that she had with her at school. (Mother's testimony, S. 368). The Student did not communicate what she had done to anyone at school, despite going to her alcohol abuse counselor afterward. (S. 367). The Mother wrote in an email dated June 7, 2012 that she was concerned that no one reacted to the Student's behavior and that she did not receive a phone call that the Student was missing for 30 minutes. The Mother stated that it was only when the Student returned home that she became aware that something had happened. When the Student told her what had happened, and showed her the wounds, the Mother took her to a doctor and had her sutured. (S. 368).

45. The Student was discharged from Sweetser's HCT program on June 27, 2012. (S. 496). It was reported at that time that the Student was still engaging in self-harm and substance abuse, continued to have as well as exhibiting eating disorder symptoms. (S. 496.) Her relationship with her parents was very strained. The report indicated that the Parents struggled greatly to communicate or co-parent in "any way." (S. 496).

46. The Student was scheduled to attend Extended School Year classes during the summer of 2012. (Mother's testimony, S. 367). After the first day of class, the Student left the building, met up with other juveniles she did not know, and went for a car ride. (Mother's testimony, S. B1). The Student became intoxicated and used other substances. (S. B1). The Mother contacted the District to report the incident and informed the administration that the Student would not be returning to summer school. (Mother's testimony).

47. The Parents enrolled the Student at the Hyde School ("Hyde") in Bath, Maine, a private residential school, where she began school in the fall of 2012. (Mother's testimony, S. 495). Upon entering Hyde, the Student was placed in small class settings with a 7:1 student-teacher ratio and a high level of structure throughout the day. She was introduced to the daily regime of being accountable for getting her medications on a daily basis and the consequences for not doing so. (S. 361). The Hyde nursing notes, dated September 10, 2012, indicated that Nancy Jaeger, LCSW became her new therapist and employed the use of DBT therapy. (S. 361, A59). Geno Ring became her substance abuse counselor. (S. 361).

48. In late September 2010, the Student reported difficulties dealing with stress, schedules, male relationships, and self-worth. (S. 359). On October 7, 2012, she cut herself with 100 lacerations using a razor at school, after which she was excused for a period of three days. (S. 358). While the Student was readmitted to Hyde on October 11, 2012, she was given strict expectations to communicate with staff when she is overwhelmed. (S. 356-357).

49. The Student's fall mid-term grade report from Hyde indicated that she received "As" and "Bs" in all courses. (P. 27).

50. Sweetser case management ended on or about November 30, 2012, when it appeared that the Student had stabilized, was successful in school, and had stopped using alcohol and drugs. (S. 495). "Client's grades were improving and living away from home in a structured and closely monitored program was working well for the client." (S. 495).

51. On December 5, 2012, Ms. Jaeger diagnosed the Student with Dysthymic Disorder. (S. 363). She prescribed Fluoxetine 70mg. She reported that long term goals had been developed that included: 1) elevating the mood and showing evidence of usual energy, activities, and socialization levels; 2) showing a renewed typical interest in academic achievement, social involvement, and eating patterns, as well as occasional expressions of joy and zest for life; 3) reducing irritability and increasing normal social interactions with family and friends; and 4) acknowledging the depression verbally and resolving its causes, leading to normalization of the emotional state. Ms. Jaeger reported that the Student was

improving and was using her DBT skills to cope and to respond appropriately to normal stress and pressures of daily life. (S. 363-364).

52. On December 12, 2012, the Student cut herself multiple times on the arm with scissors, needing bandaging and sutures. (S. 351, 484). She reported feeling angry with herself and guilty for cheating on her boyfriend, and that she had to punish herself. (S. 351, 484). She stated that she had not meant to cut herself so deeply and was in a "dissociative" state when she did so. (S. 484). The Student was assessed by Sweetser Crisis services the same day. It was concluded that to keep her safe, the Mother would keep her at home and physically observe her for 48 hours and seek out her other providers for recommendations. (S. 484-85). Thereafter, she was taken to MidCoast Hospital in Brunswick, Maine for further medical evaluation of the injuries. (S. 346-350).

53. In late December 2012 or early January 2013, the administration at Hyde informed the Parents that it could no longer provide educational services to the Student because of its inability to keep her safe, despite ongoing therapy and a low student-teacher ratio. (Mother's testimony, S. 334, A3). In addition, Ms. Jaeger informed the Parents that the Student's mental health status was beyond her scope of treatment and she could no longer treat her. (Mother's testimony, S. A59).

54. On January 2, 2013, the Student was admitted to McLean Hospital's 3 East unit (S. A10-11). Dr. Judith Mintz[2], the Associate Director of 3 East, was the admissions psychologist on staff at the time of the Student's admission. Thereafter, she became the Student's treating therapist during her stay at McLean Hospital.

55. Upon admission to 3 East, the Student was assessed as having "severe" mood symptoms and agitation / panic attacks / impulsivity; moderate history of suicide attempts and ideation, as well as "moderate" command of auditory hallucinations concerning self-harm or aggressions, and recent losses or relationship problems. (S. A14). She was considered to

[2] Dr. Mintz is licensed to practice clinical psychology in Massachusetts. She specializes in child and adolescent psychology, received her Ph.D. at the University of Chicago, interned at Harvard Medical School, and started working at McLean Hospital when it opened in 2007. (Mintz testimony).

have a low risk for suicide, but a high risk for self-harm. (S. A14). Her admission to 3 East was considered "medically necessary" at the time. (S. A15). Screening indicated a "high likelihood of borderline personality disorder." (S. A20).

56. In a letter to Anthem Behavioral Health, dated January 15, 2013, the Student's psychiatrist in Maine, Dr. Kathryn Ray, recommended that the Student be admitted to the 3 East Intensive Adolescent DBT Program. (S. 343-344). Dr. Ray reported that despite short-term progress, the Student's long-term gains had been elusive, even with high-level mental health services and close monitoring at Hyde. (S. 343). She stated, in relevant part:

> Based upon (the Student's) past history, current risk factors, and severe mood instability, it is my opinion than a higher level of care is needed. In particular, due to chronic symptoms of mood instability and self-injurious behavior, an inpatient intensive DBT program is indicated. Without short term residential unit with 24 hour monitoring, (the Student) presents a risk of serious harm. Within the last three months (the Student) has participated in a minimum of twice weekly outpatient therapy with two different therapists at the Hyde School without sufficient progress. Since lower levels of care have been unable to adequately stabilize her symptoms, intensive therapeutic residential care is indicated. Furthermore, DBT is an evidence-based treatment and it is expected that (the Student) will obtain significant benefit from this approach within the context of an intensive program. With regards to specific placement, a single sex placement is recommended. (The Student) has a history of maladaptive relationships with males and most recently exhibited promiscuous behavior and engaged in unsafe sexual activity. This experience triggered guilt and shame and resulted in severe cutting behavior during eight dissociative episodes. Due to the high risk of continued engagement in this behavior, single gender environment is strongly recommended.
> (S. 344).

57. In late January 2013, the Parents and Dr. Mintz began to explore potential boarding school options for the Student once she was ready for a transition. The initial hope had been for the Student to return to Hyde after her treatment at McLean. (Dr. Mintz testimony). Dr. Mintz described several places, none of which offered DBT, but all had structured environments, which she believed would be helpful for the Student. The residential schools included Carlbrook Montana Academy and Auldern. (S. A104, E22). By early February 2013, the Parents inquired about residential placement at Mill Street Lodge on the McLean campus and when she could return to "regular" school. (S. E30-31).

58. Drs. Mintz and Aguirre at McLean, with the help of Mr. Holsomback, McLean's educational transition consultant, drafted a letter between February 14 and 25, 2013

explaining the Student's medical history and their recommendation that the Student attend a therapeutic residential educational placement. The letter, backdated to February 14, 2013, stated the following, in relevant part:

> While (the Student) has made significant progress in reducing self-injurious behavior and increasing help seeking behaviors and the use of coping strategies, she presents with a complex constellation of difficulties and continues to require structure, staff support, and supervision on a 24 hour basis. While (the Student's) behavior has been consistent and predictable at 3 East, she continues to report urges to self-injure under emotional stress (usually triggered by interpersonal interactions), suicidal ideation and urges to engage in substance abuse. She has repeatedly stated that were she in a less restricted environment, she would likely be acting on the urges. Thus, while (the Student) has shown that she can make effective progress using DBT treatment, it is our assessment that (the Student) remains at high risk for relapsing into self- injurious behaviors and substance abuse at this time and necessitates a high structured therapeutic boarding school or residential treatment program where she would receive: a) A school environment where (the Student's) academic strengths can be accessed while offering individual – and group – based therapeutic accommodations to meet emotional disability; b) Continued therapeutic support, containment and structure to help with application of learned skills to support emotional regulation and refrain from behaviors that she has come to rely on to reduce stress and tension; c) A therapeutic residential setting where (the Student) would receive ongoing therapeutic support and supervision while accessing the life of a residential school through extracurricular activities.
> (S. E35).

59. Dr. Mintz testified that she enlisted the help of Mr. Holsomback because of his experience working with schools and the need to include information about the educational needs of the Student. (Mintz testimony).

60. On or about February 27, 2013, the Father contacted the District to re-enroll the Student at KHS and schedule an IEP meeting to discuss the Student's status. (S. 335). He also completed the Student's re-enrollment paperwork at KHS. (S. 335).

61. On February 27, 2013, the Student transitioned to the 3 East "Step Down" unit and started attending 3 East's Day Program/Partial Hospitalization Program for day structure, which was considered part of the 3 East "Continuum of Care." (S. A61). She relapsed on two occasions and struggled through this period, which included the death of her grandfather. She tested for a period of time without medications, and progressed in her recovery and behavior to the point where she was allowed weekend passes to see her parents in Maine. (S. A62-136).

62. In a "Statement of Concerns," dated March 4, 2013, the Parents stated the following:

- We wish to find an appropriate educational setting in which her academic and functional needs can be met.
- She has been hospitalized since early January and will be ready for discharge shortly.
- Despite multiple types of school environments with varying degrees of outpatient support, (the Student) continues to relapse (depression, self-injurious behavior, requiring repeat psychiatric hospitalizations.
- (The Student's) disability inhibits her from reaching her academic potential in the public school environment.
- Performance made at KHS was not reflective of her intelligence (as defined by recent testing); she was unable to complete xx grade.
- Depressed mood, self-harming behavior and substance abuse spiked while at KHS despite ongoing support (IEP) and outpatient therapy.
- (The Student) was unable to be successful at Hyde School despite:
  - Restrictive environment with well-defined expectations;
  - Weekly specialized outpatient DBT therapy;
  - Weekly substance abuse individual and group therapy
- (The Student's) progress at McLean over the last 2½ months may be lost if she transitions to a non-therapeutic environment.
- Substance abuse risk would be high and directly interfere with her education without proper counseling immediately available.
- We believe that an appropriate education would include:
  - A structured environment in which expectations are clearly defined;
  - Educational opportunities commensurate with her academic abilities;
  - On site professional therapeutic support (coaching and counseling) for both mental illness and substance abuse.

(S. 298).

63. On March 8, 2013, Ms. Martin requested that the Father submit documentation about the Student's current educational program and placement in order to review and prepare for the IEP meeting scheduled for March 13, 2013. (S. 327). The requested information included: all intake, treatment, evaluation, and discharge reports from McLean, Spring Harbor, Sweetser (all programs), Hyde, and Waynflete. (S. 327). The District indicated that it had only one document from McLean and one from Spring Harbor. (S. 327).

64. On March 12, 2013, the Father indicated that he would provide documents from Hyde and a letter from Dr. Mintz at the upcoming IEP meeting. He stated that the District already had

all Sweetser documents prior to March 2012 and Spring Harbor summaries from 2010 and 2011. (S. 324-325). In addition, he requested various documents from the District. (S. 325).

65. An IEP meeting was held on March 13, 2013 with District's staff; the Father; Buckley Hugo, the Family's advocate; the Student; and Dr. Mintz (via "FaceTime"). (S. 320). The IEP Team agreed to make the proposed IEP an "interim IEP" based upon the apparent lack information from McLean and other documents it requested from the Father. (S. 319).

66. The summary of the IEP meeting indicated that the Student was currently residing at McLean Hospital, was "transitioning" to the "step down program," and was receiving regular DBT services. Dr. Mintz reported that the Student continued to be at high risk for self-injury and dangerous behaviors, and that she required 24/7 therapeutic support. (S. 319, Mintz testimony). She believed that the Student would not be successful in a traditional school setting, that she required 24/7 medical and psychiatric care while accessing a day educational program, and that due to her suicidal ideation, the Student needed around-the-clock monitoring and access to DBT skills. (Mintz testimony). Dr. Mintz believed that a placement at the Arlington School, located on McLean's campus, along with the residential support from McLean, would be the "best possible" plan for the Student. She indicated that a transition to home and public school was "too big of a step" for her at this time. She stated that the Student's needs were medical because her emotional stability was impacting her educationally. She stated that she would like the Student to "step down" to Arlington first and then work towards a transition back to home/school. However, she stated that she could not be part of the Student's transition back to the District because she does not have a license to practice in Maine. (S. 319). The Father stated that he did not believe that the District was the appropriate placement for the Student and that the Arlington/McLean placement would be the most appropriate. (S. 319).

67. The proposed IEP discussed at the March 13, 2013 meeting relied upon assessments dated from March 2012. While the IEP did not indicate that it was "Interim," the Written Note specifically stated that it was an "Interim IEP." Changes made to the IEP dated April 30, 2013 included specially-designed instruction starting in a self-contained setting 100% of

time, but indicated gradual and systematic re-integration into the mainstream as tolerated. (S. 374, 312). Counseling from a clinical psychologist was included once a week for 60 minutes, and social work services twice a day for 30 minutes. (S. 312). A safety plan was also included to ensure that the Student would not have access to sharp objects. (S. 313). She would have access to the substance abuse counselor as needed and adult support throughout the entire school day. (S. 313). Transportation would be provided on a daily basis. (S. 313). It indicated that her functional needs included small group support through special education to help her develop emotional regulation and social coping strategies, and to keep her safe when she becomes overwhelmed. (S. 306). Positive behavioral interventions were required. (S. 307). The levels of her academic and functional performance were unchanged. The IEP indicated that initially, she would have no part of the day with non-disabled peers until the IEP team determined she was able to reduce the level of the restricted environment. (S. 314).

68. On March 14, 2013, the District made additional requests for documentation from McLean Hospital; Spring Harbor; Sweetser (including the West Cottage Program, HCT program; and case management services. (S. 303-304). Parental Consent for Evaluation was given on that same day. (S. 296). On March 18, 2013, the Father signed the District's release of information form for the release of documents from McLean Hospital, but noted in the release form itself, "I do not authorize release of therapy notes," and crossed out the release of the "Assessment." (S. 284, 286). He sent it back on March 20, 2013 (S. 282). Thereafter, the District requested release of information from Dr. Mintz and asked her to contact the District's psychologist, Dr. Wojcik. (S. 283).

69. The Parents submitted a second statement of concerns on March 25, 2013. (S. 278). It stated as follows:

- Need for Enhanced Functional Skills
  - Due to her disability, (the Student) lacks the basic coping and adaptive skills necessary to function outside of a structured therapy environment.
  - Without these functional skills, it will be impossible for her to participate successfully in educational programming at the secondary level.
  - Without these fundamental skills, it will be impossible for her to transition to post secondary programs for which she otherwise would be qualified.

- We are concerned that (the Student's) immediate and long-term educational future is at stake, with both depending upon prompt and effective skills training in her deficit areas.
- While skills training has been introduced at McLean, intensive training needs to continue; these skills must be reinforced over a long period time before they will become second nature for (the Student).

- After Hours Structure
  - Due to her lack of skills and emotional disability, (the Student) currently requires a structured therapeutic environment both during and beyond normal school hours.
  - Among other things, she needs access to 24/7 coaching.
  - We are concerned, in this regard, that external social triggers could result in resumption of self-harming behavior.
  - Without after-school support, she lacks the skills to effectively manage her time and school work area.
- Transition Service
  - (The Student) is a bright xx-year-old who should transition to college after high school.
  - Her disability, unless remediated with effective services now, threatens to prevent her from being successful in the less structured environment of a college or university.
  - As a result, she requires a detailed set of physician services focused on the remediation of her core disability-related deficits.

(S. 278).

70. Dr. Wojcik conducted a second psychological evaluation, dated March 25, 2013. (S. 267-271). His conclusions were based upon his personal visit to McLean, interviews with Dr. Mintz and the Student, a review of current and historical records from McLean, letters of recommendation and letters from Ms. Jaeger; Don McMillan, Head of the Hyde School; Dr. Kathryn Ray; and Geno Ring, LADC. Also, the Team reviewed records from Sweetser and Spring Harbor Hospital, including Dr. Bowker-Kinley's psychiatric evaluation, historical records from McLean, including 3 East, and public school records.

71. Dr. Wojcik concluded that, based upon his review of the Student, her record, and her current status, the Student continued to be at high risk for relapse of her self-injurious behavior and use of substances. (S. 270). Due to these factors, he recommended the following:

- a highly structured environment with constant monitoring;
- therapeutic support;
- searches of her belongings;
- movements within school closely monitored;
- provision of outpatient treatment to address out-of-school issues;
- close monitoring for prevention of substance abuse.

(S. 270).

72. Dr. Wojcik summarized that, "Overall, (the Student) presents as emotionally unstable and [is] vulnerable to engaging in future episodes of self-injurious behavior. It appears that she requires ongoing support, including the availability of around the clock mental health/medical services, and intervention so as to assist her in managing her mood and adapting to the demand of an educational environment." (S. 271).

73. On March 27, 2013, an IEP Team meeting was held to review additional documentation received from the Parents and Dr. Wojcik's evaluation of March 25, 2013. (S. 264). It reviewed current treatment plans in place; record reviews; service notes; school records; an interview with Dr. Mintz; a clinical review with the Student at McLean; and discussion from the IEP dated March 13, 2013. (S. 267). It concluded that the Student needed ongoing medical care at 3 East. It was Dr. Mintz's view that while the Student was not ready to be discharged into the community, she was ready to take on academic challenges. (S. 265). The Team proposed two hours of tutoring per day while she was in 3 East. The Father stated that he had concerns about the proposed tutoring, but would consider after talking to the Mother, who was unable to attend the IEP meeting, and get back to the District about their decision. (S. 265). The IEP Team notes stated that the Father "expressed he did not want (the Student) going through high school with a tutor as that was not a therapeutic learning environment." (S. 265).

74. On March 28, 2013, the Father informed the District that he accepted the IEP Team's offer of tutoring, stating that, "While I accept having a tutor in the short term as it will permit her to resume some academic endeavors, I do not accept is as a long term solution to provide her an appropriate education." (S. 263). However, on March 29, 2013, the Father indicated that he and the Mother ultimately rejected the offer of tutoring, stating that the Student needed an intensive therapeutic setting, such as a therapeutic boarding school. He stated the Student would be unilaterally at the Arlington School ("Arlington") in Belmont, Massachusetts in mid-April. They rejected what they described as the District's offer of "long-term hospital-based tutoring," followed by an immediate return to a placement at KHS, as inappropriate. However, they did accept the District's offer to fund tutorial

services for her during the interim while she remains hospitalized awaiting the start of the Arlington program next month. (S. 262).

75. Arlington is a private day school that provides individualized instruction with therapeutic resources to help the students manage and regulate their emotions, and learn to make progress in their academic life. (S. A61, 64, P. 92). It is a special education program that works primarily with students with emotional impairments, and is approved by the Massachusetts Department of Elementary and Secondary Education ("DESE"). (P. 92). It is affiliated with the same entity that owns McLean Hospital, Partners Healthcare, Inc., and is located on the same campus. (Mintz testimony).

76. Based upon the Parents' agreement to allow tutoring, the District made arrangements to start providing tutoring to the Student while she was at 3 East. (S. 254, 261). However, due to the death of her grandfather in early April, the Student was unable to start tutoring until sometime after April 22, 2013. (S. 257).

77. Medical notes from 3 East, dated from January 2, 2013 through April 29, 2013, showed that the Student tapered off her antidepressant medications, Prozac 70 mg. and Melatonin 9 mg. However, due to increased symptoms of unstable and low mood, she started a trial of Zoloft in early April 2013. (S. A41, A43, A45, A47, A49, A51, A53, A55, A57, A61).

78. An annual IEP meeting was held on April 23, 2013. (S. 250). There was much disagreement between the Father and the other Team members regarding the appropriate placement for the Student at that time. (S. 251). The Team believed that given the documentation it had at that time, the District could provide an appropriate education at KHS once the Student was discharged from the hospital. (S. 250). The basis of its proposed IEP was the Team review of her school file, limited contact with McLean, the Parents' input, and Dr. Wojcik's psychological evaluation, dated March 13, 2013. (S. 251). His second psychological evaluation, dated March 25, 2013, was not listed as one of the items reviewed in this meeting, although he was present. (S. 251). The Team urged the Father to apply for Intensive Therapy Residential Treatment ("ITRT") services before the Student

returned home. (S. 251). The Father stated that the Student needed on-going medical and psychiatric assistance from 3 East staff, and therefore a therapeutic residential placement at Mill Street Lodge ("MSL"), with her academic placement at Arlington, was the most appropriate placement. (S. 250, Father's Testimony).

79. The IEP Team's Written Notice indicated that it needed the following information from McLean regarding the Student's discharge plan: re-integration protocol between McLean and Arlington; current treatment notes after March 5, 2013; academic progress reports from Arlington; current counseling techniques and scripts used with the Student; more descriptive information regarding Arlington's size, curriculum, student population, etc.; data on how often the Student was independently using strategies to maintain her safety versus how often she is seeking professional assistance; data-frequency, duration, and successes of home visits and whether she needed access to McLean's 24/7 on-call service. (S. 251).

80. The Student's annual IEP was implemented on April 23, 2013. (S. 236). The IEP noted that the Student had been unable to access her tutoring since it was first offered at McLean. It stated that she was attending Arlington as a unilateral parental placement; and that she was using DBT to manage her mood and suicidal thoughts. It stated that her inability to successfully manage her emotions and intrusive thoughts of self-harm, and her high risk of relapse with substance abuse, impacted her consistent academic progress. (S. 241). Her academic goals remained the same. Her social/emotional goal stated the following:

> Given social work and psychological services and consultation with outside providers; (the Student) will utilize self-regulatory techniques to manager her self-injurious and suicidal thoughts and maintain adequate mood regulation throughout the school day (100% of the time) as measure by daily check-in and self-report by April, 2014.
> (S. 243).

81. The IEP placement continued to be in a 100% self-contained special education setting, to be reintegrated into the mainstream as tolerated with adult support. (S. 244). Supplementary services from the IEP dated March 13, 2013 included a safety plan to ensure no access to harmful objects; a bus aide; and additional adult support with "eyes on and within earshot at all times." (S. 245).

82. The IEP included the following transition services:

- Related service: social work; vocational rehabilitation referral
- Counseling: substance abuse counseling; dialectic behavior therapy
- Instruction: core subjects - college level; exploration of post-secondary programs in art therapy; required course at secondary level
- Community Experience: 30 hours community service; obtain driver's license; register to vote
- Post-school adult living objectives: independent living

83. On April 25, 2013, the Father reported that he was resending transcripts from Hyde and Waynflete, which the District continued to state it did not have. He also indicated that he would deliver the documents from Spring Harbor that he had at that point. (S. 233).

84. The Student was officially enrolled at Arlington on May 9, 2013. (P. 87).

85. The Student was officially transferred to MSL on May 13, 2013. (S A266). In the Discharge Summary from 3 East, undated but written in early May 2013, Drs. Mintz and Aguirre summarize the Student's progress.[3] (P. 71). They stated that the Student was ready to transition to a small, less restrictive setting and start attending school full time. Although she had made significant gains, she still remained "quite vulnerable." They strongly recommended that she "continue to receive individual out-patient DBT therapy in the context of a residential treatment environment which would help her maintain and fortify her commitment to use skills that will enable her to regulate her emotional states." (S. A64, P.71). They stated that the Student would be admitted to the MSL and would continue to work with Dr. Mintz for out-patient therapy; receive psychopharmacological support from Dr. Ximena Sanchez, psychiatrist for MSL residents; continue to attend Arlington on the McLean campus (allowing her to leave, attend school, and receive treatment in one environment with coordinated services); receive psycho-education; and attend a support group for adolescents with a history of substance abuse, due to her cravings to use substances to manage her mood states. (S. A64-65, P. 71-72). The 3 East Discharge Summary indicated the following diagnoses:

[3] This Discharge Summary was not received by the District until mid-July 2013. (S. 152).

- Axis I: Mood Disorder (NOS); Trichotillomania; and ADHD
- Axis II: Borderline Personality Disorder
- Axis III: Prolonged QT syndrome
- Axis IV: Moderate- Primary supports, lack of peer relationships, educational (has been unable to complete xx grade), changes in family constellation.
- Axis V: 55

(S. A64, P. 71).

86. On May 13, 2013, the Student was discharged from 3 East's Step Down unit and admitted to MSL (S. A59, P. 72).

87. MSL is a residential (group care) program for young women, ages 13 through 20, who have completed an intensive DBT program at 3 East and who attend Arlington. (S. A61, 64, P. 68-72, 241, S. A408, Mintz testimony). It is owned by the same entity that owns McLean Hospital and Arlington. It is designed for residents who have achieved mastery in the four fundamental DBT skills sets of Mindfulness, Distress Tolerance, Emotion Regulation, and Interpersonal Effectiveness, and are ready to work on generalizing these skills in a less structured environment. (P. 241). Residents are expected to be able to use learned skills to reduce and/or eliminate behaviors that are self-destructive or acutely maladaptive. The minimum length of stay is 90 days. The goal is to help residents transition to an age-appropriate level of independence and enhance their functioning in school, in the community, and at home. (P. 241). The staff uses a DBT hierarchy to assess which behaviors to target for treatment. A three-stage assessment is used when a student's behavior becomes an issue. Staff and clinicians work with the student to understand and resolve the behavior and have the student plan on how to handle it in the future. If the behavior is serious enough, it could affect the level of a student's privileges. (P. 246).

88. The MSL treatment team is comprised of psychiatrists, psychologists, nurses, residential counselors, educators, and consultants, all of whom are trained in DBT and work in a coordinated fashion to best help residents attain their desired goals. The treatment team works collaboratively with residents, families, outpatient therapists, teachers, and the staff of Arlington. (P. 241). A nurse from McLean Hospital provides all medications. (S. A228, A250). While MSL is a residential facility, patients go "on pass" with friends and families that are approved by the resident's case manager. (P. 243). MSL enforces a "Level"

privileges system. Students enter on Level "I" and are expected to be able to maintain on-ground privileges. They move up the level system by achieving all expectations for their current level, putting in effort towards expectations for the next level and then applying for a level increase. Parents and students must sign off on all level changes. (P. 246). Residents may be off the premises in accordance with their "level," but not during times they are expected to participate in group activities. (P. 243). Overnight passes are used to help patients and their families practice new behaviors and generalize learning to the home environment. Coaching by phone is available to both patients and families for the duration of the pass. Time spent "on pass" is part of treatment and therefore included in the 90-day commitment. When residents return from pass, staff will check for contraband. (P. 243).

89. A McLean Risk Assessment, dated May 13, 2013, indicated that the Student was a "moderate" risk for Severe Mood (depression) and Agitation-Impulsivity. (S. A205, A330). At that time, she had no plan or vivid mental image or a method of harming herself or others. (S. A205). Her medications and supplements at that time included Zoloft 50mg, melatonin 3mg, Vitamin D3, and fish oil. (S. A212).

90. The MSL team developed a Treatment Plan, dated May 15, 2013. (S. A215). It included the following four goals: 1) reduce intensity of emotions through practicing DBT skills daily; 2) maintain sobriety by attending 1-2 AA meetings per week; 3) increase use of "IPE" skills; 4) build structure outside of the mental health system by continuing to seek opportunities for a wrestling team. (S. A215). The Student was assigned to three therapy groups (self-regulatory management; modification of cognitive/behavior; and social skills/educational/vocational). (S. A215).

91. On May 23, 2013, the Father reported to the District on its outstanding document request. He stated that notes from Dr. Mintz' therapy sessions would not be released because they were confidential to the Student and he believed it would be detrimental to her if they were released. (S. 221).

92. In a letter to the District, dated May 24, 2013, Suzanne Loughlin, Arlington's Director, explained to the District that Arlington supports a reintegration plan when the student and the family initiate the transition. When that occurs, Arlington staff work with other providers and the family to devise a plan with goals and timelines, which would include multiple visits to the receiving school and collaboration with the designated support team. (S. 220). Maureen Principe, Arlington's Educational Administrator, agreed at that time that Arlington staff would submit monthly progress summaries to the District through the Father. (S. 219).

93. On June 3, 2013, Ms. Principe reported on the Student's progress at Arlington. She stated that the Student had some difficulty adjusting to academic life, isolating herself from peers to some extent, but noted that she was beginning make connections with peers as the weeks progressed. She was also checking in with her clinician multiple times a week "minimally totaling 45 minutes for individual support." Her courses included Art, English, Collage, Math, Chemistry, Media, and Modern Asian History. (S. 218).

94. An IEP meeting was held on June 3, 2013. (S. 214). Ms. Loughlin and Ms. Principe were included in the meeting by telephone. They clarified at the meeting that the Student officially started classes at Arlington on May 9, 2013. They noted that she started on April 29, 2013 for half days as a visitor, and continued as a visitor for full days on May 6, 7, and 8. (S. 215). They reported that the Student increased her engagement and commitment to school as the days progressed. She was making peer connections, using fidget tools and puzzles for stress reduction in the classroom, and accessed clinician support when she needed it. She had one weekly group session with clinical support totaling 45 minutes; weekly "check-ins" totaling 45 minutes; and 90 minutes of therapeutic support per week. (S. 215). At MSL, she had been accessing clinical support "a couple of times each day" based on their review of "pass-on" notes between MSL and Arlington staff. The Arlington staff reported that due to the high level of experienced teachers at Arlington, no data is gathered about a student's functional progress. However, they said they would try to accommodate the District request to provide data about the Student's progress. The IEP Team requested that District staff be allowed to observe the Student at Arlington to assess

for themselves her educational needs and assist with a smooth, transition back to KHS. (S. 214-216). The Father wanted to discuss this proposal with the Mother and Dr. Mintz before agreeing to an observation. (S. 215-216). The IEP Team agreed to meet in August after the Arlington summer session to review progress and credit status, as well as continue efforts to transition her back to KHS. (S. 214).

95. On June 4, 2013, the Father signed a release of information and records from the Arlington School. (S. 198). On June 14, 2013, the District requested the Student's records and other information from Dr. Aguirre at McLean / 3 East; the District also requested specific documents from Ms. Loughlin at Arlington. (S. 194-197, 189-190, A269). While Ms. Loughlin responded that she would submit documents by June 24, 2013, she stated that documents from MSL needed to be requested from them directly. (S. 188).

96. In a letter to the Father from the District, dated June 14, 2013, the District reiterated its request for documents from McLean, MSL, and Arlington. It stated that it had not received any documents from these entities since March 5, 2013. (S. 193). The Father responded that the Discharge Summary had been completed and was on its way to McLean's Medical records department and should be received by the District, "within the next week." (S. 186).

97. In a letter dated June 13, 2013 to Anthem Behavioral Health, Ms. Jaeger stated the following:

> I saw (the Student) for eleven, one hour individual, sessions between September 18, 2012 and December 17, 2012 (weekly with a few exceptions). The Student has a diagnosis of 301.83, Borderline Personality Disorder. Throughout the period of treatment with me, the Student described repeated unstable, intense interpersonal/sexual relationships with males which would result in self-injurious behavior (cutting) and intense feelings of guilt. These occurred at both prior to and during the period of treatment. The last incident occurred on December 13, 2012 when, following a sexual encounter and conflict with a male (not a boyfriend or any description), she engaged in cutting that required E.R. admission and sutures. Furthermore, the Student had described to me an exaggerated, irrational fear of abandonment, other episodes of impulsive promiscuity, cutting, inappropriate/harmful eating habits and substance abuse.
>
> My treatment plan for the Student was to see her individually once per week and to emphasize and work on DBT skills. I also had her see a Substance Abuse Counselor on an individual, weekly basis.

> It was clear after four months of comprehensive out-patient treatment that the Student was unable to manage the stress and pressure of her environment and remain safe. (This was particularly evident from the December 13, 2012 incident that showed, if anything, a deterioration of her coping abilities).
>
> It is my strong recommendation that the Student be placed in an in-patient facility where she could be safe while in treatment. No such facility exists in Maine. I therefore recommended the McLean Hospital in Massachusetts, whose 3 East Intensive Adolescent DBT program was the closest option of that kind and, importantly, provides a single-sex program.
> (S. 185)

98. By June 15, 2013, the Student's progress on her MSL treatment plan indicated that her symptoms were in remission; that she had "mild" to "moderate" urges for self-injury and poly-substance abuse; continued to use the support of team and coaching; and practiced DBT skills daily. (S. A225). At that time, she had been granted "Level II" privileges, allowing non-family visitors, and had a visitors pass. (S. A225). Her Zoloft had been increased to 100mg. (S. A226).

99. On June 18, 2013, Dr. Cary Meyer, Psy.D., the Clinical Psychologist at Arlington, reported that the Student had accessed clinical support on two occasions outside the regular weekly check-ins with him. He was in contact with Dr. Mintz weekly and the MSL residential director biweekly to inform everyone of the Student's level of functioning. (P. 79).

100. On June 20, 2013, Dr. Wojcik interviewed Dr. Mintz, as the Student's private therapist, regarding the Student's current status. (S. 182). She reported to him that the transition to Arlington and MSL was "difficult" and that she was "socially vulnerable." Dr. Wojcik reported that, from Dr. Mintz' observations, the Student used substances to alter her mood. She was concerned that the Student may suffer increased cravings as she progressed and had more freedoms. Dr. Mintz told Dr. Wojcik that the Student was aware that alcohol was present at her mother's wedding, but had been able to refrain from using it. However, she believed that the Student would be drawn to substance users in a public school setting, due to interpersonal issues. Dr. Mintz reported that she suspected that the Student was texting boys while she used the bathroom for prolonged periods of time. She noted that the Student had supervised, yet unlimited, access to the Internet in the interest of helping her learn how

to use it. Dr. Mintz reported that the Student's current stressors included fears that she would not earn enough credit to graduate; struggles with loneliness as she avoids being around peers when they talk about substances; and worries that others will think that she is doing better than she really is. The Student is very sensitive, feels guilty at times for feeling angry with others, and quickly feels rejected by peers. She noted that the Student tends to pick at herself during stressful periods. Finally, Dr. Mintz stated to Dr. Wojcik that the Student's behavioral difficulties were under control at that time, which allowed her to address her social and emotional functioning, but that she was concerned about her ability to manage her emotional functioning in a "big public high school." (S. 182-183).

101. On June 28, 2013, the District sent a request for a release of documents to Dr. Mintz and 3 East staff (S. 176, 178-180). The District was informed by the staff at 3 East that their records must be requested from Arlington directly. (S. 170-176). On July 1, 2013, the Father reported to the District that the Medical Records department at Arlington would be sending out all the requested documents on July 2, 2013 (S. 163).

102. In emails between staff at Arlington and MSL, it became evident that any document requests from 3 East and MSL had to go to McLean's medical records department and that a McLean release form had to be used. (S. 175-177).

103. The Student attended summer school at Arlington from July 1 to July 26, 2013. (S. 199, P. 90, 94). Her classes were at the college preparatory level. (P. 94).

104. In early July 2013, the Student had a difficult emotional period, mostly concerning her boyfriend, who had a recent emotional setback, and her visits with him. (P. 200-201, 209, 211). By July 16, 2013, she had been expressing increased feelings of depression and mood fluctuations. (P. 214, 215). Notable events included her boyfriend's status, peer changes at MSL, the remarriage of her mother, and the ending of her father's recent relationship. (D. 214-215). By July 18, 2013, she was talking about ending her life. (P. 217). She was helped by staff at MSL and her mother, and was able to go "on pass" for the weekend. (P. 219). Dr. Mintz and MLS staff member Erica Nelson also reported their concern to the Parents

about the Student's relationship with a boy who had a history of depression and suicidal ideation. (P. 174-183, 200). During July 2013, the Student met with a McLean psychiatrist at least three times. (S. A346, A348, A350).

105. An IEP Team meeting was held on July 8, 2013. (S. 156). The Father attended but the Mother did not. The District proposed the following:

- pay for Arlington until July 26, 2013 (but not MSL)
- continue to work collaboratively with the family to find out what is available for services in Maine, including DHHS and any other available services that are needed to assist with the Student's transition to KHS

(S. 157).

106. The District indicated that it would not pay for a residential placement at MSL because it believed that the placement was medically necessary and therefore it was not responsible for the cost. (S. 157). Its decision was based upon a visitation to Arlington and MSL, staff interviews, and records received from them. The Team rejected the option of having the Student start at KHS in the fall of 2013 because the Father did not believe that she would be ready. (S. 157).

107. The IEP Team's proposal was based upon its view that, while Arlington did not appear to be nearly as therapeutic as suggested, the Arlington staff was "DBT friendly" but not "really" trained in DBT, and did not use it on a regular basis. It appeared to the IEP Team that communication between the MSL and Arlington staff seemed to be minimal. Ms. Martin cited Dr. Mintz' opinion that she believed partial and/or acute residential hospital care was "medically necessary" and was prescribed to improve or maintain functioning and to prevent hospitalization. (S. 157). The Father was told that the District was willing to partner with the family to see if insurance would pay for the residential placement, since the records indicated it was a medical necessity. (S. 157).

108. During the summer of 2013, Arlington did not hold classes on the following dates: June 7; June 17-28; July 4 and 5; and July 29 through August 30. (S. 199). Its summer session ran from July 1- 26, with half days on July 12, 19, and 26. (S. 199). Arlington is not in session during August. (P. 90).

109. The District received documents from Arlington, McLean, and Dr. Mintz on or about July 17, 2013. It made an ongoing request for updated information due to the upcoming due process hearing. (S. 150-155).

110. In a letter dated July 19, 2013 to Ms. Martin, it was reported by Ms. Loughlin and Ms. Principe that the Student had been able to engage in grade-level work with accommodations; that she was on track to earn .25 credits in each of her three core classes and .15 credit in physical education; and that she had neither displayed any behavior warranting an incident report nor visited the school nurse. (P. 94).

111. On July 19, 2013, Dr. Meyer reported that the Student remained at "significant risk of emotional distress and self-harm behaviors." (P. 108). She reported to Arlington staff and clinicians that the Student was triggered by peer behavior and environmental cues (e.g., being too near a bar during a bowling party). She used a range of strategies for self-regulation, including sitting alone at lunch and taking frequent bathroom breaks, and the use of fidget toys (weights and puzzles). (P. 108, S. A319).

112. On July 29, 2013, the District requested that it be represented in any meeting regarding the Student's progress, any planning regarding her educational program at Arlington, or any discharge or transition planning from Arlington. (S. 149). On August 1, 2013, the Father indicated that he would inform the District of meetings, "in which we feel the District's inclusion would be appropriate." (S. 169). Between August 15 and September 4, 2013, the District attempted to schedule a visit with the Student in order to assess her progress at MSL. (S. 135-149).

113. In letters to Arlington, McLean, MSL staff, and Dr. Mintz, dated August 27, 2013, Ms. Martin reported that no documents had been received from any of them since its July 29, 2013 requests. She reiterated the request for information and specified what documents to include. (S. 125-132.)

114. On August 28, 2013, the District received a cover letter from Ms. Loughlin that included a Clinical Report for the 2013 summer session at Arlington, signed by Dr. Meyer, and a summer report card. (S. 117-119, 122, 120). Dr. Meyer reported that the Student struggled during the summer with peer interaction; experienced emotional dysregulation at schools; reduced her sensory overload by keeping away from peers; used the bathroom frequently; used weights and puzzles in class as strategies for calming herself down; sought clinical support one to four times per week; and met her clinician on a formal basis once a week, as well as "external therapist" on several occasions for skills coaching or emotional support. (S. 122). She passed her courses in Environmental Science, Math, Criminal Justice, and Physical Education. (S. 120). In a cover letter attached to the above documents, Ms. Loughlin indicated that no additional self-regulation data protocol sheets were available; and that any "pass-on" notes between Arlington and MSL were considered part of the Student's medical records, not educational records, and needed to be obtained through the McLean hospital protocols. (S. 119).

115. In a progress letter, dated August 30, 2013, Katherine Quinn, LICSW, Clinical Team Manager at MLS, stated that while the Student had made progress, she continued to have difficulty following through on skills coaching around effective communication and maintaining peer relationships at MSL. (P. 130). She recommended that the Student attend a program that offered her 24-hour support to be able to attend school regularly and succeed academically. She noted that the Student had been able to complete the xx grade at Arlington. She stated, "At this time, due to the level of support (the Student) is accessing on a regular basis, I do not feel that clinically she is ready to attend school independently and without the support of 24 hour staffing." (P. 130).

116. Starting sometime in late August 2013, the Student began volunteering at Rosie's Place, a women's homeless shelter in Boston. (S. E6-7, F42, F49, F53-54, F63, G30, Bowker-Kinley, Mintz, Mother's testimony). She attended driver's education from August 19 to 23, 2013. (S. E34-35, F38). In early September, she began taking the Amtrak Train by herself to Maine for home visits. (S. E8, F48, 61, 66, 70, 73, 74, G19, 23, 26, Mintz, Father's testimony). She also was permitted to take a taxi by herself to and from the Woburn,

Massachusetts train station. (S. F61-61, 65). She also began to work part-time a boutique store in Kennebunk, Maine on the weekends and enjoyed it. (S. E10, P 158, Bowker-Kinley, Mintz, Mother, Father's testimony). In addition, sometime in September or October 2013, she joined a co-ed wrestling team at Belmont High School in Belmont, Massachusetts, and independently attended practices twice a week. (S. E18-20, F69, F72, P168, Mintz, Mother's testimony). She also went on unsupervised outings with friends. (S. G23).

117. The Student did not have or want DBT therapy in August 2013 during the time that Dr. Mintz was on vacation. (S. A354, P. 156-158).

118. In a letter to Ms. Loughlin, dated September 6, 2013, Ms. Martin insisted that Arlington provide the Student's program information, including "pass-on" notes, that she believed was necessary for the District to review in order to make appropriate educational programming decisions for the Student. She also requested the following: a general description of the educational program and a statement of its purpose; an organizational chart; tuition information; documentation of the current approval or licensing status; documents granting authority to operate the school, including those that fully identified ownership; and all requested policies and procedures. (S. 105-106).

119. In a letter to the Parents, dated September 10, 2013, Ms. Martin requested their help in obtaining documents that the District had requested from McLean, MSL, and Arlington, but had not yet received. (S. 95-97). A summary of those documents follows:

- Clinical contacts between the Student and Dr. Mintz;
- Communications between Arlington and MSL referenced by Ms. Loughlin in her letter dated July 17, 2013;
- "Pass-on documentation" or other regular communication between MSL and Arlington referenced in the letter from Ms. Quinn dated July 22, 2013;
- Documentation of the Student's contacts with clinicians at Arlington as cited in Dr. Meyer's letter dated July 19, 2013;
- All current progress reports from Katie Quinn subsequent to August 15, 2013;
- All MSL staff notes;
- The parent DBT Manual cited in the Father's letter dated May 23, 2013;
- Most recent MSL Treatment Plan;
- Any educational programming materials generated or used by Arlington or MSL;

- A description of tuition rates and other cost breakdowns for Arlington and MSL.

(S. 95-98).

120. On September 17, 2013, Dr. Bowker-Kinley visited Arlington and MSL, and interviewed the Student upon the request of the Parents. (Bowker-Kinley testimony). She was informed of the MSL Level Privileges system where goals were focused on attaining the next level of privileges. (Bowker-Kinley testimony, P. 240-253). It was reported to her that MLS had 24-hour staff who were trained in DBT coaching and access to chain analysis, whereby behaviors could be traced back to thoughts and feelings to help students understand how to manage their emotions more effectively. It was reported that the Student remained a "high risk" if she was unsupervised with her peers, therefore she remained at a Level II. (Bowker-Kinley testimony).

121. The Student met with Dr. Bowker-Kinley on September 28, 2013. (Bowker-Kinley testimony). The Student was reported to be on Level II on the MSL privilege system at the time of Dr. Bowker-Kinley's visit. (Bowker-Kinley testimony). It was reported to Dr. Bowker-Kinley that she had difficulty transitioning into MSL. She was socially uncomfortable and had difficulty maintaining her school schedule. However, she had not cut herself since March 2013. (Bowker-Kinley testimony). The Student reported that her level of suicidal ideations had diminished from a constant to an intermittent level. She continued to have urges to use substances, but she felt that the consequences were so severe that she had not allowed herself to engage in those impulses. She was intermittently restricting her food intake and still concerned about her weight. She was accessing staff at MSL about seven to 10 times per week to help her navigate personal dramas within MSL. She also knew that she had phone access to Dr. Mintz. (Bowker-Kinley testimony). The Student reported to Dr. Bowker-Kinley that she was proud of herself for completing xx grade, and felt that she had a good opportunity to earn high school credits. (Bowker-Kinley testimony).

122. Dr. Bowker-Kinley believed that an appropriate IEP must include access to trained DBT clinician and support staff, and a plan to help the Student navigate her risk of substance

use. She noted that Sweetser had replaced its DBT program with a Cognitive Behavior Therapy ("CBT") program. Dr. Bowker-Kinley was concerned that the Student would relapse into her self-injurious behaviors without the use of her DBT skills and reinforcements. (Bowker-Kinley testimony).

123. By September 2013, Dr. Mintz believed that the Student was managing her target behaviors "very well," noting that she goes home each weekend. The concern she had was whether increasing her freedom would increase her urges to engage in cutting, but was "pretty confident" that she had not engaged in any cutting since March 2013. She could not guarantee, however, that her urges for self-injury would not increase if she attended a coeducational boarding school where she might be exposed to substances. It was her belief that the Student would become more vulnerable if she were to attend such a school (P. 231). She also believed that it was inevitable that the Student would remain vulnerable to abusing substances at any point in the future when she had access to them, because she continues to crave them as a way to mange her feelings. (P. 231). She opined that while she could continue to progress in the more restrictive therapeutic setting with supports in place, she will ultimately need to manage her emotional states responsibly and effectively with lees environmental containment and restriction. (P. 232). She suggested researching boarding schools such as Greenbriar Academy (West Virginia) and The Grove School (Connecticut). (P. 231-232). However, she did not have any knowledge of SEA. (P. 232).

124. In a letter to the Parents, dated September 13, 2013, the District offered an amended IEP. (S. 87). It included the consideration of placement at the Sebago Educational Alliance ("SEA"), a day treatment educational program in Maine with an intensive mental health component. (S. 21, 87). An IEP meeting was scheduled for October 3, 2013, then rescheduled for October 16, 2013, to discuss this option. (S. 85, 38).

125. SEA, located in Buxton, Maine, is a public school comprised of five school districts. (S. 9, Alverez testimony). It also accepts students from outside the district upon referral. (Alverez testimony). The academic curriculum is based on the Westbrook, Maine School District's curriculum and is aligned with the Maine Learning Results. It was designed for the needs

of approximately forty to forty-five students in grades kindergarten through 12th grade. It provides evidence-based academic instruction in a cohesive and integrated educational program that incorporates educational and mental health goals, and is designed to improve daily living, interpersonal, and community integration strategies. (S. 9). The goals of SEA are to provide positive behavior supports to students as they work through an aligned educational and therapeutic curriculum, learning skills that will lead to their transition back to a less restrictive environment. (S. 9). Students attending SEA have been identified as having emotional, social, and/or behavior problems; autism; or developmental delays. The school believes that, for these reasons, the student's ability to learn is being impeded and they are unable to be successfully educated in their community school with their same-aged peers. (S. 10). SEA's policies include restrictions of personal items that do not foster their academic and treatment goals, and medication management using the nursing services of Maine's SAD 6 School Department and staff members. Discharge from SEA is determined by the IEP team and is generally based on progress made on the student's treatment and educational goals. (S. 16).

126. SEA provides a variety of assessments, social work services, psychological services, and therapeutic interventions. (S. 21-22, Alverez, Searway testimony). The SEA program provides individualized service planning, including an Individualized Behavior Plan that includes goals monitored daily by the Day Treatment Staff members and documented daily. (S. 19-20). SEA staff members are trained to support Positive Behavior Interventions and Supports ("PBIS"), which include individualized behavior plans, verbal de-escalation and crisis intervention, and therapeutic "holding." (S. 22-24). Psychological services are provided to the program by the full-time psychologists and services team. (S. 22).

127. The Parents submitted a Statement of Concerns, dated October 16, 2013, regarding the District's offer to place the Student at SEA. Their concerns included: 1) whether the academic curriculum was rigorous enough for the Student; 2) that staff were not qualified to support the Student with DBT; 3) that the SEA peer group appeared to have more "outwardly aggressive and disruptive" behaviors that would trigger her self-injurious behaviors; 4) whether the co-educational nature of SEA would make it difficult for the

Student to set boundaries between herself and male peers; 5) that PBIS is focused on outward maladaptive behaviors that are not applicable to the Student's disability; 6) the lack of after-school and 24/7 support, without which the Student could relapse into self-harming behaviors. (S. 572).

128. An IEP meeting was held on October 16, 2013. (S. 562). The Team discussed the possibility of placing the Student at SEA. Dr. Heather Alverez, SEA Clinical Director, and Jen Searway, SEA Program Director, were present at the meeting. Dr. Wojcik presented his views regarding the status of the Student, based upon his visit to Arlington and MLS in September 12, 2013. He stated that the Student was more independent; volunteered at a homeless shelter in Boston; worked part-time in a boutique store in Kennebunk, Maine on weekends; and sought out Arlington's psychologist no more than one or two times during the summer. (S. 568). He stated that she did well academically, but was often tardy to class. He stated that he did not know where she went between classes. (S. 568). He stated that she was not in a "suicide category" at this time and that she was being successful in reducing her urge to self-injure. (S. 570).

129. The IEP Team discussed the SEA program at the meeting with Ms. Searway and Dr. Alverez. The SEA staff explained SEA's safety contingencies and the process for searching a student's belongings. (S. 569). If a student managed to get a sharp object into the school, the staff would treat the behavior as a clinical concern, not something that needed consequences. It would be addressed with the social worker, family, and outside clinicians. With respect to supervision, Dr. Alverez stated that the students are never unsupervised and that if the Student needed "outside space," an adult could accompany her and she would have access to a social worker. She stated that SEA has "eyes-on" supervision for the first 30 days to get to know the student. Thereafter, supervision would be reduced with increased independence.

130. Ms. Searway explained that SEA's day treatment program had small-group learning and the opportunity to show one's work in different ways, depending upon a student's ability. Dr. Alverez explained that since the Student struggled with processing speed, she could

benefit from the support at SEA. SEA classrooms were composed of six students, one teacher, and one educational technician ("Ed Tech"), with an additional Ed Tech in the high school as a "floater." (S. 568). The high school was composed of 17 students, nine female (if the Student attended). The girls are provided an additional therapeutic discussion group in addition to individual therapy. (S. 569).

131. Dr. Alverez explained that while DBT, per se, is not used at SEA, the social workers were also licensed as alcohol and drug counselors, with a focus on motivational therapy and CBT. (S. 569). Dr. Wojcik noted that he was informed that Arlington staff did not use DBT extensively, but is "DBT friendly," according to Dr. Meyer. (S. 569). It was noted that the proposed IEP included DBT therapy as an outpatient service, similar to the current arrangement with Dr. Mintz. (S. 569). The Student would have on-call access to SEA staff by phone when she was away from SEA, and it would be included in her crisis plan. (S. 569). Dr. Wojcik stated that SEA was similar to MSL, with the main difference being that MSL was a hospital setting that included nursing staff. (S. 569).

132. Ms. Martin stated that the District was willing to work with the Parents to obtain ITRT for the Student's after-school programming, as it did when the Student was at Sweetser in the spring of 2012. The IEP would reflect that DBT services would be considered outside of the school day. Dr. Alverez stated that SEA works very closely with outside providers and actively promotes a high level of communication. Several DBT providers were being contacted to determine whether they would be able to provide DBT after school hours. Also, Dr. Alverez stated that it was recognized that a transition plan was needed in order for the Student to transition smoothly from Arlington/MSL to SEA.

133. The IEP, dated October 16, 2013, that was proposed to the Parents included the statements of parental concerns dated March 13 and March 25, 2013, and a summary of all academic and psychological evaluations available since March 2012. It did not include Dr. Wojcik's summary of his visit to Arlington and MSL in October 2013. The IEP summarized the Student's academic performance at Arlington ("A" grades in all courses; tardy 21% of the time during school and 83% during summer school; viewed as hard working and

participatory.) (S. 550). The Student's Developmental Performance was summarized as follows: "In order to regulate herself, she isolated herself during lunch and used fidget tools in class." Her Functional Performance was summarized as follows:

> (The Student) has a history of low frequency, high intensity emotional dysregulation and unsafe behaviors including poly-substance abuse and non-suicidal self-injurious behavior (cutting), which has led to several psychiatric hospitalizations. She would benefit from a small group learning environment and supportive, empathetic staff, regular social work and psychological services and collaboration between the school and outside providers to help develop emotional regulation and social coping strategies in order to keep yourself safe.
> (S. 550).

134. The proposed IEP included the use of positive behavior interventions and supports. Her present levels of academic and functional performance were reiterated in Section 4 of the IEP, which concluded with the statement, "(The Student's) inability to successfully manage her emotions, intrusive thoughts of self-harm, and high risk of relapse with substance abuse impacts consistent academic progress and requires close supervision within an empathetic, supportive small group setting." (S. 552).

135. The proposed IEP included six annual goals, all with the support of instruction and/or related services:

- Completion of grade level expectations with 85% accuracy by April 2014;
- Present and on time for class 90% of all school days by April 2014;
- Utilize self-regulatory techniques to reduce her urges for substance abuse and self-injurious behavior 50% of baseline by April 2014;
- Maintain zero incidents of self-injury throughout the school day as measured by daily check-in and self-report by April 2014;
- Self-initiate the use of "socially appropriate" anxiety reduction techniques/fidget tools and reduce the use of fidget tools to 10% of classes;
- Initiate engagement with peers during lunch and social activities for six out of ten opportunities.

136. The proposed IEP included specially-designed instruction in a special education / day treatment setting for 360 minutes per day; consultation regarding curriculum and credits for 60 minutes per month; ESY services (undefined); Occupational Therapy for 30 minutes biweekly; social work services, both individual and group, as needed to get through the school day, but to be further determined; social work consultation services with staff for 60 minutes per week; DBT provided either as day or outpatient treatment three times per week

for a total of 90 minutes; daily transportation; clinical supervision at least once a week; team consultation for 60 minutes a week; and substance abuse counseling. (S. 555-556).

137. Supplemental aids and services included: 50% extended time for tests and quizzes; a safety plan to eliminate access to any harmful objects (such as searching the Student's backpack and purse upon arrival at the school); having "eyes on / earshot" supervision at all times during the entire school day; and a daily transportation aide. (S. 557).

138. The Secondary Transition portion of the proposed IEP indicated that the Student was informed on April 25, 2013 of her transfer rights to adult status when she reached the age of majority. Her transition plan included her stated plans to attend college and study Art Therapy; work as an Art Therapist or in a related field; and live independently. (S. 559). In order to assist her with these goals, the proposed IEP included the following services: social work, vocational rehabilitation referral, counseling, substance abuse counseling, and DBT. She and her parents would work towards completing 30 hours of community service, obtaining her drivers license, registering to vote, and obtaining a part-time summer job. (S. 560).

139. In a letter to the Parents, dated October 16, 2013, Ms. Martin invited them to meet with Michelle Descoteaux from the Office of Children's Behavior Health Services to discuss coordinating of community- and home-based services available to assist the Student with her transition from Arlington and MSL. (S. 542). In addition, subject to the Parents meeting with SEA staff, the District was informed that the Student had been accepted to SEA. (S. 616).

140. Dr. Mintz testified that the Student had one relapse of self-injurious behavior in March 2013. Since then, there have been no incidents. She is 80% to 90% confident that the Student will no longer injure herself. (Mintz testimony). However, she is still at high risk for substance abuse. She still has strong cravings for alcohol and marijuana. The Student admitted to her that if she went home she would probably use them. Dr. Mintz reported that the Student's shame still persists, noting that she judges herself harshly in relation to her

participating on the wrestling team (Mintz testimony). While the Student wants to avoid the sport, she wants to work on it at the same time. Her suicidal ideation was higher in the summer, but by October, it had been reduced.

141. Dr. Mintz stated that the next step for the Student is to make a gradual transition back to her home, or perhaps a less restrictive boarding school. This should include "wrap around" services during the day and evening hours. The transition needs to be slow in order to build the next therapeutic alliances. Dr. Mintz stated that the Student would need someone available by phone after school for coaching. She believes that the Student needs access to DBT given her history with it, and how she has been able respond to it. She stated that DBT was designed for people like the Student.

IV. POSITIONS OF THE PARTIES

Parent's Position

The Parents argue that the District's IEPs and placements did not offer a FAPE to the Student. It stated that they directly contradicted the recommendation of the Student's providers at 3 East who recommended that she be placed at Arlington and MSL.

While there were three IEPs in the Spring of 2013, the Parents focus their argument specifically on the IEP dated April 23, 2013. They assert that it did not include extended day services, individual or group DBT therapy, or DBT skills coaching. At that time, the Student required a highly-structured school placement with a therapeutic milieu, supported by individual and group DBT series provided by a trained DBT therapist, and 24/7 DBT coaching support by a professional experienced in working with students with Borderline Personality Disorder. The Parents argue that the proposed IEP contained only two academic goals with an achievement rate at only 70%. They assert that the IEP lacked a plan for how she would achieve a goal of 100% self-regulation of her emotions, which would have been impossible in the absence of DBT. The Parents assert that the therapeutic services offered would have been counter-productive to the Student's progress. They argue that, once the Student had been discharged from 3 East, she

needed a structured environment based on a model of trust, with seamless therapeutic support built into the program, not a 100% self-contained setting with adult supervision at all times. They state that the most restrictive setting would serve only to trigger the Student and thrust her into downward emotional spiral. The Parents argue that the District's goal of merely keeping her safe at school did not address the Student's need for social, emotional, and developmental services to support her academic and functional progress.

The Parents debunk the District's argument that the Student's requirement to be at McLean was "medical necessity," and that therefore, the District was not required to reimburse the Parents for medical care while she was there. The Parents state that the Student's treatment at McLean was inextricably intertwined with her academic and functional progress, and that therefore, she required the therapeutic residential setting while attending Arlington. They argue that the Student needed consistency in her programming and environment to make educational progress following her discharge from acute care.

The Parents next argue that its unilateral placement at Arlington and MSL, supplemented by therapeutic services provided by Dr. Mintz, was proper under the Individuals with Disabilities Education Improvement Act ("IDEA") (P.L. 108-446). They argue that the evidence established that the Student required a residential placement with "wrap around" services beyond the traditional school day for her to make meaningful educational progress. They assert that Arlington, a Massachusetts-approved special education school, has provided the Student with a therapeutically-based school environment in which she has been able to attend small classes with qualified faculty and an appropriate level of emotional support. She has been able to complete her xx grade requirements. The MSL portion of her placement has also allowed her to improve her functional skills in order for her to attend and engage in school, and for transition to adulthood. The Parents cite *In re School District,* BSEA No. 12-0132 (Massachusetts SEA, January 10, 2013), wherein the hearing officer awarded reimbursement of an MSL placement, finding that it was "well-suited" to provide an appropriate residential placement and related services while the student attended Arlington. The Parents assert that, similarly to the student in the Massachusetts case, the MSL residential placement satisfies the liberal test established by the

courts because the Student has gained new academic and functional skills, while her level of functioning has improved since May 2013.

The Parents also claim that the Arlington and MSL placements should continue until such time as the District is able to develop and implement an appropriate Maine placement for the Student and a proper transition into that placement. The Parents concede that the offer of a placement at SEA comes much closer to addressing the Student's needs. They believe that the proposed placement at SEA is still not appropriate because it lacks a DBT-based program with trained staff, and is unable to provide 24/7 DBT skills coaching. They state that, while the proposed IEP included DBT services from a non-SEA provider, the District has been unable to identify such a provider as of the date of the hearing. Even if SEA were a viable option, the Parents insist that the transition must be slow and include all the elements outlined by Dr. Alverez and Dr. Mintz.

District's Position

The District argues that the IEP it offered on March 13, 2013 was based on the limited information provided to it by the parents and Dr. Mintz. The IEP team understood at that time that the Student had been admitted to McLean for psychiatric treatment. It stated that at the IEP meeting on March 13, 2013, documents could not provide a timeline as to when the Student could step down or be discharged from McLean. It asserts that the IEP team properly concluded that the Student could not access education at that point, due to her hospitalization, and developed an interim IEP on that basis. The proposed IEP included a placement in a self-contained classroom based on Dr. Mintz's stated need that the student be monitored continuously for dangerous behaviors. The IEP team believed that once the Student began transitioning back into the district, she needed to be slowly reintegrated into the regular classroom as she was able to do so. The District argues that the safety plan, social work services, and counseling sessions included in the proposed interim IEP were also appropriate, given the information the team had, which indicated that the Student struggled with suicidal thoughts and self injurious behaviors. The IEP team also included access to a DBT-trained therapist. The District states that the IEP was intended to be an interim IEP and that the team could amend it as the date of the Student's discharge from McLean approached.

The District claims that, based on Dr. Wojcik's evaluation in March 2013, the IEP team continued to believe that the Student was not ready to leave the hospital setting by the date of the IEP meeting on March 27, 2013. The District cites the Student's continuing need for constant supervision and therapy. Based on Dr. Mintz's belief that the Student had progressed to the point in her treatment where she could now access some academics, the District argues that the IEP team proposed two hours of tutoring per day while she remained hospitalized. The District argues that the amended IEP addressed the Student's educational plan, based on its belief that the course of treatment determined by the Student's medical team was still ongoing.

The District asserts that the annual IEP dated April 23, 2013 was based on its belief that she continued to require medical care at McLean. While the team understood that the Parents had enrolled her in Arlington, the Team did not have any information regarding the Student's educational plan. The IEP it offered provided an initial start in a self-contained classroom, with gradual and systematic reintegration into the mainstream as tolerated by the Student; it also included an extended school year program to assist in credit completion, social work services twice per day for 30 minutes, and counseling services once per week for 60 minutes. It included a safety plan, extended time for tests, adult support at all times, and weekly counseling with a substance abuse counselor. The District argues that this placement continues to be appropriate. The team continues to believe that the Student remained in an intensive medical treatment facility at McLean. Without updated information, it was simply guessing as to what might be appropriate for her at the time.

The District argues that in preparation for the due process hearing, it had obtained sufficient information about the Student's present level of performance and treatment progress to make an informed proposed placement. The information indicated that she was ready to return home, but could access her education in an out-of-district, day treatment program at SEA. The proposed IEP, dated October 16, 2013, included college-level classes, social work services, substance abuse counseling, weekly therapy with a clinical psychologist, and occupational therapy consultation (with fidget tools) for the Student's sensory needs. In addition to her regular scheduled sessions, the Student would be able to access social services and clinical psychologist-

level therapy on an as-needed basis. The District also agreed to contract with a DBT therapist on an outpatient basis three times per week for 60 minutes per session. The Student would have extra time for tests and quizzes, a safety plan, constant supervision, and a special education transportation aide. The district argues that the SCA staff had experience with students who had engaged in cutting, substance abuse, and suicidal ideations, and it had the staff in place to address these behaviors, including searching all students upon arriving at school. The District notes that Dr. Mintz testified that the Student was ready to attend a treatment program. Dr. Alvarez also stated that, based on her information about the Student, the IEP goals seemed appropriate and the clinical services offered in the IEP were also appropriate. The District also cites Ms. Searway's testimony indicating that, based on her knowledge of the Student, the IEP goals seemed appropriate for her cognitive profile. The District also argues that it had been in contact with several DBT therapists in the state of Maine and was confident that it could contract with an appropriate DBT therapist for the Student's outpatient needs.

The District argues that the Parents' conduct prevented it from obtaining timely and relevant information from McLean. It argues that the family had its sights set on Arlington and MSL as early as February 2013. It states that the Father set out to create a record that would allow him to litigate his claim, furthering his goal of obtaining an order requiring the District to fund the residential placement. The District argues that the Parents' carefully-crafted, single-minded strategy, including the ruse of cooperation with the District, should influence this hearing officer to deny or significantly reduce any award. The District argues that the family stopped participating in the IEP process by placing the Student at Arlington and MSL before an IEP could be developed. It asserts that the team only proposed hospital-based tutoring at the time the family notified the District that it was a unilaterally placing the Student at Arlington. It asserts that while the Parents continued to appear engaged in the process of developing an IEP, they did not provide the District with the records it had requested since March 2013. Documents, including treatment plans and discharge summaries, were not provided until after the Parents filed for the due process hearing in this matter. The District argues that under these circumstances, reimbursement should be denied.

V. DECISION

Burden of Proof

Although the IDEA is silent on the allocation of the burden of proof, the Supreme Court has held that in an administrative hearing challenging an IEP, the burden of persuasion, determining which party loses "if the evidence is closely balanced," lies with the party seeking relief. *Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005). As such, the Parents bear the burden of persuasion in this matter.

Standard for a Free Appropriate Public Education

Every student who is eligible for special education services is entitled under state and federal law to receive a "free and appropriate public education ... designed to meet their unique needs and prepare them for employment and independent living." 20 USC 1400(d)(1)(A). The hearing officer must examine whether the Student's educational program contained in her IEP was "reasonably calculated to enable the student to receive educational benefit." *Board of Educ. v. Rowley*, 458 U.S. 176, 207 (1982). The First Circuit elaborated that the student's educational program must guarantee "a reasonable probability of educational benefits with sufficient supportive services at public expense." *See G.D. v. Westmoreland School Dist.*, 930 F.2d 942, 948 (1st Cir. 1991). In *Town of Burlington v. Department of Education,* the First Circuit explained that an appropriate education must be directed toward the achievement of effective results – demonstrable improvement in the educational and personal skills identified as special needs – as a consequence of implementing the proposed IEP. 736 F.2d 773, 788 (1st Cir. 1984), *aff'd*, 471 U.S. 359 (1985). The educational benefit must be meaningful and real, not trivial or *de minimis* in nature. As the First Circuit stated in *Lenn v. Portland School Comm.*, the law does not:

> …promise perfect solutions to the vexing problems posed by the existence of learning disabilities in children and adolescents. The Act sets more modest goals: it emphasizes an appropriate, rather than an ideal, education; it requires an adequate, rather than an optimal, IEP. Appropriateness and adequacy are terms of moderation. It follows that, although an IEP must afford some educational benefit to the handicapped child, the benefit conferred need not reach the highest attainable level or even the level needed to maximize the child's potential.
>
> 998 F.2d 1083, 1086 (1st Cir. 1993).

In *Roland M. v. Concord School Comm.*, the First Circuit described the goal as providing the student with "demonstrable" benefits. *Roland M.* 910 F.2d 983, 991 (1st Cir. 1990). As the First Circuit explained:

> The issue is not whether the IEP was prescient enough to achieve perfect academic results, but whether it was "reasonably calculated" to provide an "appropriate education" as defined in federal and state law . . . For one thing, actions of school systems cannot, as appellants would have it, be judged exclusively in hindsight. An IEP is a snapshot, not a retrospective. In striving for "appropriateness," an IEP must take into account what was, and was not objectively reasonable when the snapshot was taken, that is, at the time the IEP was promulgated. See 34 C.F.R. Pt. 300, App. C, Question 38.
> *Id.*

"Education" has a broad meaning under the IDEA, and is not limited to academic progress, as the IDEA requires the IEP team to consider the "academic, development, and functional needs of the child." 20 U.S.C. §1414(d)(3)(9)(A). Accordingly, the IEP must be designed as a package to target "all of a child's special needs . . . whether they be academic, physical, emotional, or social." *Lenn v. Portland Sch. Comm.,* 998 F.2d 1083, 1089 (1st Cir. 1993). The law is also clear that special education programming must be delivered in the least restrictive environment. 20 U.S.C. § 1412(a)(5); Maine Unified Special Education Regulations (MUSER) §X(2)(B). What is least restrictive depends upon an individual's needs. The goal is to educate the Student, whenever possible, with non-disabled students, and as close as possible to the child's home. MUSER §X(2)(B). An out-of-district placement is only appropriate when the District is unable to provide the Student with a free and appropriate public education ("FAPE"). "Parental preference alone cannot be the basis for compelling school districts to provide a certain educational plan for a handicapped child." *Brougham v. Town of Yarmouth,* 823 F. Supp. 9 (D. ME 1993).

Interim IEP Dated March 13, 2013

I find that that the interim IEP dated March 13, 2013 was appropriate given the information that the District had at the time. The District had not been in communication with the Parents or the Student since her unilateral removal in June of 2012, until the Father called the District on February 14, 2013 asking for an IEP meeting. By the IEP meeting on March 13, 2013, the District understood from Dr. Mintz that the Student was hospitalized at McLean for

psychiatric treatment due to a relapse that included suicidal ideation and self-injurious behaviors. It was unclear when she could be discharged. I find that it was a reasonable course of action for the team to change her 2011-2012 IEP to an interim IEP, and plan on reconvening on March 27, 2013 to review the Student's status.

The interim IEP was geared toward a time when the Student could be discharged to KHS. It included a self-contained special educational setting which would be reduced as the Student was able to tolerate it. It included an increased level of social work services and weekly counseling sessions with a clinical psychologist; a safety plan; and counseling sessions with a substance abuse counselor. Looking through the lens of the IEP Team and the information they had at the time, I find that the interim IEP was appropriate. While Dr. Mintz recommended a residential therapeutic placement at that time, the District was not obligated to rely on one recommendation without further documentation and evidence of the Student's needs. Therefore, I find that the IEP dated March 13, 2013 provided a FAPE to the Student.

Interim IEP Dated March 27, 2013

I find that the Interim IEP dated March 27, 2013 continued to be appropriate. Dr. Wojcik's evaluation gave the IEP Team a better understanding of the Student's medical status at that time. The IEP Team understood that the Student continued to be in 3 East and that she was not ready to be discharged due to her continuing struggle to control her emotional dysregulation. She still maintained a high risk for self-injurious behaviors at that time. Dr. Wojcik concluded that the Student required "ongoing support, including the availability of around the clock mental health/medical services, and intervention so as to assist her in managing her mood and adapting to the demands of an educational environment." (S. 276). The Parents did not dispute that she continued to require hospitalization. However, at the IEP meeting on March 13, 2013, Dr. Mintz indicated that the Student might be able to start accessing some educational programming. Based upon this information, the District offered to provide tutoring to the Student while she was at 3 East. While the Father initially accepted the offer, he thereafter declined it, believing that it was considered a long-term solution to her educational needs. There is nothing in the record indicating that tutoring would be a long-term solution.

I find that by March 27, 2013, the Student's future needs were speculative at best, given the information provided by Dr. Mintz and Dr. Wojcik. Neither of them could inform the IEP Team of her future educational needs or when she would be discharged from 3 East. She was still in a hospital setting receiving psychiatric treatment with no clear prognosis for her recovery.

Therefore, I find that the District offered a FAPE by adding tutoring to the interim IEP during her hospitalization. (see MSUER X.2.A.4).

IEP Dated April 23, 2013

I find that the annual IEP dated April 23, 2013 did not provide the Student with a FAPE. The goals and related services it provided did not address the Student's functional development, a necessary element of the Student's total educational performance. 20 U.S.C. section 1414(d)(1)A); 71 Fed Reg. 46579 (Aug. 14, 2006); *Mr. I. v. Maine Sch. Admin. Dist. No. 55*, 480 F.3d 1, 12 (1st Cir. 2007); see also *Roland M.,* 910 F.2d at 992. Maine defines a student's "functional performance" broadly to include "how the child demonstrates his/her skills and behaviors in cognition, communication, motor, adaptive, social/emotional and sensory areas." MUSER section II.16 (2013). The record is clear that the Student's disability adversely affected her functional performance in the areas of communication skills, adaptive skills, and social/emotional skills, including her inability to cope appropriately with stress.

The IEP dated April 23, 2013 provided only two goals. While the Student's academic goal was to complete xx grade with "70% accuracy," her social/emotional goal focused only on the need to maintain her coping strategies to keep her safe 100% of the time. (S. 238-239, 241). In order to achieve this goal the IEP provided social work services for 30 minutes throughout the day; counseling once per week for 60 minutes; and consultation services with outpatient providers bi-weekly for 60 minutes. The special education teacher would monitor a safety plan that prohibited access to sharp objects. She would also have access to a substance abuse counselor for 30 minutes a week as needed. Finally, she would have adult support with "eyes on and within earshot at all times." Her special education setting was a self-contained setting 100% of the time, with small group support, until the IEP Team determined that she could increase her mainstream participation. (S. 246).

While a goal of having the Student maintain her social coping skills in order keep her safe may be necessary to allow the Student to attend KHS, it does not address core functional issues described by her providers and Dr. Wojcik that must be addressed for her to make progress in her functional development. The record is replete with evidence that the Student could not access her education due to a variety of issues, including urges to injure herself when triggered by exposure to unhealthy social interactions (peer substance abusers, unhealthy male relationships, family discord, etc.). She often felt lonely, shameful, and guilty if she thought she hurt or disappointed others. Her behaviors were known to occur during school at Waynflete, Hyde, and KHS. While these issues were reflected in the numerous reports that the IEP Team had by April 23, 2013, there were no functional goals, specialized instruction, or services offered in the IEP to address her social or emotional triggers, such a social pragmatics instruction. (See *Mr. I v. Sch. Dist. No. 55*, supra). Her only social/functional goal was limited to managing her self-injurious behaviors and suicidal thoughts. What is also concerning about this particular IEP is that it lacked behavioral and social goals (e.g., ones related to her social interactions with peers and improving her self image) that had been included in the IEP dated April 24, 2012, a year earlier. Due to the lack of these goals, special education instruction, and related services to address her social and emotional development, the IEP dated April 23, 2013 does not provide the Student with a FAPE.

The IEP also did not include individual or group DBT therapy or skills coaching upon discharge from 3 East. All of the providers recommended such services. Without any DBT available, it was unlikely that the Student would have been able to maintain her ability to manage her emotional dysregulation upon immediate re-entry into KHS. This was apparent given the prior experience at Hyde, where she was triggered by social influences at school, but did not have ready access to DBT coaching on the spot. Her relapse occurred despite her therapist's assessment, at the time, that the Student was progressing well within the structured environment at Hyde. Even at 3 East, with access to DBT support, the Student had a relapse and cut herself sometime in March 2013. Based upon the information that the District had on April 23, 2013, it is inconceivable that no DBT services were included in the IEP.

Moreover, while the IEP Team stated that it could provide "a high level of support" for the Student, the IEP only reflects the provision of non-DBT social services for 30 minutes throughout the day and a single 60-minute non-DBT counseling session once per week. It should also be noted that the KHS social worker had a caseload of approximately 50 students at that time. It is difficult to imagine how the Student could access any immediate help during the school day without staff members who were properly trained and accessible.

In addition, the IEP failed to include access to home and community-based services for the family as recommended by Dr. Wojcik ("It appears that she requires ongoing support, including around the clock mental health/medical services and intervention so as to assist her in managing her mood and adapting to the demand of an educational environment.") It is the responsibility of the District to offer and pay for those services if needed for the Student to access her education. Clearly, if the Student had been discharged from 3 East and immediately transferred to KHS, she would have needed these extended day services. *Gonzales v. Puerto Rico Dep't of Educ.* 254 F.3d 350, 353 (1st Cir. 2001). I find that the lack of services for the Student and the family after the Student's immediate discharge from 3 East added to the District's failure to provide a FAPE.

The IEP also lacked any therapeutic or social work support during the ESY period that was offered in the IEP. The District knew how this could impact the Student based upon its experience on the first day of the ESY period in 2012, when she left the building with juveniles and ended up using substances. Therefore, the impact of not having after-school therapeutic and social work services during the ESY period was not unforeseen.

The IEP lacked any transition services between the time she would have been discharged from 3 East to her re-entry into KHS. By all accounts, an immediate transition would have been cause for concern for all parties. The Student had developed a relationship with her therapist Dr. Mintz, who would have been unable to continue seeing the Student due to her lack of licensure in Maine. All contact with her support team would have been automatically terminated, leaving the Student without adequate DBT coaching upon her return to KHS. The District recognized this

issue in October 2013 when it offered a different educational option for the Student, but it did not do so in April 2013.

Finally, the IEP called for the Student to complete academic grade level expectations with 70% accuracy. This goal does not appear to be based on evidence in the record. It was reported that the Student is bright and at least average in her rating scales. Her IEP from April 2012 had her passing her classes by 85% and completing assignments by the due date 60% of the time. The IEP offered on October 16, 2013 had her completing grade level expectations with 85% accuracy by April 2014. Therefore, I find that there was no basis for decreasing the academic goals for the Student in the IEP dated April 23, 2013.

It is understandable that the District was frustrated by the lack of documentation provided by McLean in March and April 2013. However, what it did have was information about the Student' serious emotional dysregulation and tendencies to self-harm in school, as reflected in reports from Hyde, Dr. Ray, Nancy Jaeger, and other documents noted in Dr. Wojcik's report dated March 25, 2013. It had specific recommendations from Drs. Mintz and Aguirre on why a residential placement was necessary once the Student was discharged from 3 East. There is no evidence that any of these reports were inaccurate or exaggerated. The fact that Drs. Mintz and Aguirre backdated their letter to February 14, 2013, and edited it to include more information about the Student's educational needs, does not make it inaccurate. The District did not present any evidence to indicate that the facts or recommendations were not valid.

In summary, I find that the IEP dated April 23, 2013 failed to provide the Student with a FAPE.

IEP Dated October 16, 2013

The IEP Team convened on October 16, 2013 to discuss the status of the Student's placement. Based upon the information that had been submitted, the Team offered a day treatment program at SEA. Since SEA was an approved day treatment educational program, the IEP could be structured around the therapeutic services that it offered. The IEP proposed instruction in college-level classes, social work services (group and individual), substance abuse

counseling, weekly therapy with a clinical psychologist, and occupational therapy consultation (including fidget tools) for the Student's sensory needs. The District offered to contract with a DBT therapist on an outpatient basis three times per week for 60 minutes per session. The Student would also have extended time for tests and quizzes, a safety plan, and supervision at all times. She would also have a special education transportation aid.

SEA provides a high school curriculum for students who have significant emotional or behavioral needs, including those with borderline personality traits. Some students have transitioned to SEA from psychiatric hospitals or other long-term residential settings, and of the current high school population at SEA, five students have borderline traits. According to Dr. Alvarez, SEA's clinical director, the staff has experience with students who have engaged in cutting, substance abuse, and suicidal ideations, and it has the staff in place to address these behaviors. One of the ways that SEA addresses cutting and substance abuse is by searching all students upon arriving at the school. This is to ensure that no dangerous items or substances enter the school, and the method of the search does not single out any individual student. While there are no clinicians at SEA who have formal DBT training, there are at least four therapists in the area who would be able to provide 24-hour coaching for the Student. Based upon the opinions of Dr. Alvarez and Ms. Searway, the SEA school administrator, the IEP goals seemed appropriate, as were the clinical services offered.

The clinical staff at SEA uses CBT for its therapy modality, the foundation for the development of DBT, according to Dr. Alverez. It is notable that when Dr. Mintz, in February 2013, discussed several schools that used CBT as a therapy modality, she did not rule them out. In addition, Dr. Mintz testified that she recognized that the Student was ready to begin a transition to a day treatment program and slowly reintegrate back to KHS.

While the Parents are concerned that no one had been identified to provide DBT support, it is the District's responsibility for determining who will provide the service. *Slama v. Indep. Sch. Dist. No. 2580*, 259 F. Supp. 2d 880, 884 (D. Minn. 2003). Therefore, the IEP does not become invalid merely because a provider has not been named. The crucial factor is that a qualified provider was slated to offer DBT services.

The weakness of this IEP, as recognized by the District at the hearing, is the lack of a transition plan that will enable the Student to make a seamless transition from MSL and Arlington into the SEA program. While I find that this does not invalidate the IEP in total, in order to provide the Student a complete FAPE, the District must add a transition plan to it and work with the parents, Arlington and MSL administration, and the Student's providers as best it can to make such a transition happen as smoothly as possible.

Unilateral Placements from May 13, 2013 to October 16, 2013

The IDEA provides parents of students with disabilities with a "self-help" remedy when the school district fails to offer them a FAPE in a timely manner. 34 C.F.R. §300.148(c), *Burlington*, 471 U.S. 359 (1985). The Supreme Court established the IDEA's standard for determining the propriety of parents' unilateral private placement as follows, "[When] a public school system has defaulted on its obligations under the Act, a private school placement is 'proper under the Act' if education provided by the private school is 'reasonably calculated to enable the child to receive educational benefits." *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7, 11, citing *Rowley*, 458 U.S. 176. However, parents make a private placement at their own financial risk. *Florence,* 510 U.S. at 15 (1993), quoting *Burlington*, 471 U.S. at 373-74 (1985). As a remedy, a private placement need provide only some element of special education services missing from the public alternative in order to qualify as reasonably calculated to enable the child to receive educational benefit. *Mr. and Mrs. I. v. MSAD No. 55*, 480 F.3d 1, 25, citing *Berger v. Medina City Sch. Dist.,* 348 F.3 513, 523 (6th Cir. 2003). The private placement does not have to meet every special education need. *Id.,* citing *Frank G. v. Bd. Of Educ. Of Hyde Park,* 459 F.3d 356, 365 (2nd Cir. 2006), *cert. denied,* 552 U.S. 985 (2007). Reimbursement for an appropriate private placement may be awarded as a form of compensatory relief when parents have acted unilaterally and with proper statutory notice. *Ms. M. v. Portland Sch. Comm*. 360 F.3d 267 (1st Cir. 2004).

A. Arlington

I find that the unilateral placement at Arlington was proper. It is a special education program that provides therapeutically-based educational services to students who have been

discharged from McLean's 3 East DBT program. The Parents chose to place the Student at Arlington because it provided the Student with specialized instruction in a therapeutic setting. It is a Massachusetts-approved day school which is aligned to the Massachusetts Curriculum Framework and Common Core Standards, and has strong clinical supports. It is located on the grounds of McLean, where access to ancillary psychiatric services to students is possible. The staff of Arlington also benefit from high level clinical consultation throughout the year in order to facilitate their work with students dealing with significant psychiatric disorders. To address the social and emotional needs of students, the hallmark of the school, each student is assigned a counselor/clinical case manager when they enter the program. The case manager oversees all aspects of their progress. The school also benefits from ongoing clinical consultation with highly qualified psychiatrists and psychologists from McLean. Students participate in group counseling weekly and access individual counseling on a scheduled and as-needed basis. Counselors maintain contact with students and ancillary health care providers to ensure the consistency of services. The entire faculty of Arlington, operating as a team, provides a therapeutic milieu for students. (S. 415-417).

The Student's educational needs, including the provision of core classwork in small group settings, were met at Arlington. She was able to access her high school courses there, while being provided with DBT and related services during the school day. This included psychological services from Dr. Meyer, and any coaching needed from her DBT-trained teachers. The staff at Arlington was provided with information about the status of the Student during off-school hours from MSL in the form of "pass-on" notes. The record indicates that the Student thrived at Arlington during the spring of 2013 and during the ESY program. She earned grades of "A" and "B" in all of her courses, and completed the xx grade.

The ESY term, which ended July 26, 2013, was also an appropriate piece of the unilateral placement. The Student was able to continue her coursework with the aid of continuous DBT coaching and counseling. She made progress throughout this period, as reflected in Dr. Mintz's notes and other documentation.

Based upon the above, I find that the unilateral placement at Arlington through October 16, 2013, provided the Student with special education services, and therefore was proper under the Act.

B. Mill Street Lodge

The more difficult question is whether the District is responsible for reimbursement of costs associated with MSL. Under the IDEA, when a child's "medical, social or emotional problems that require hospitalization create or are intertwined with the educational problem, the state remains responsible for the cost of the residential placement." *Lamoine Sch. Comm.*, 353 F. Supp. at 32, quoting *Vander Malle*, 667 F. Sup. at 1039. Therefore, the question is whether or not the Student required a residential component to receive educational benefit at Arlington. While a student "who would make educational progress in a day program" is not entitled to a residential program, *Abrahamson v. Hershman*, 701 F. 2d 223, 227 (1st Cir. 1983), a school district is responsible for all non-medical costs, including room, board, and related services, associated with a residential program that "is necessary to provide special education and related services to a child with a disability…" 34 C.F.R. section 300.104; see also *Jefferson County Sch. Dist. v. Elizabeth E.*, 702 F. 3d 1127, 1235 (10th Cir. 2012), *cert denied* 113 S. Ct. 2857 (2013) (residential placement of student with a mental health disorder found to be reimbursable under a straightforward application of the statutory text because the placement provided both specially designed instruction and related services required for her to benefit from that instruction, both of which the district had failed to provide); *Coventry Pub. Sch. v. Rachel J.,* 893 F. Supp. 2d 322, 336 (D. R. I. 2012) ("school districts are obligated to place a child in a residential school when, due to the complexity of the child's disabilities, the child needs consistent instructional and therapeutic interventions throughout his waking hours in order to make meaningful educational progress."); *Mohawk Trail Reg'l. Sch. Dist. v. Shaun D. ex rel. Linda D.*, 35 F. Supp. 2d 34, 41 (D. Mass 1999) (child's emotional behavior was "inextricably intertwined" with his educational performance and "the kind of training he needed had to be given round-the-clock," thereby "necessitating placement in the residential facility.") In *In Re: Student with a Disability*, (Massachusetts SEA No. 12-0132), 112 LRP 3245, the hearing office determined that MSL, designed to complement the educational programming at Arlington, provided appropriate services to a student with a similar profile as the Student. MSL was found to be "well suited" to

the needs of student. DBT was also the only therapeutic intervention that had been effective in addressing her extensive emotional and behavioral challenges. Her providers all recommended the continuation of intensive DBT skills, which needed to be taught and used around the clock. Over a short period of time, the student made effective and meaningful progress. Based upon this evidence, the hearing officer found that there was no other residential facility appropriate for her while she attended Arlington.

Since Arlington is a proper placement under the IDEA, the District is responsible for the room and board component of the placement. In this case, MSL offers not only room and board, but also the essential related services recommended by her providers. Drs. Mintz, Aguirre, and Ray, as well as Nancy Jaeger, were strong in their views that the Student needed an educational setting with a residential component. Dr. Wojcik stated that it was apparent that the Student needed "wrap around" services, even if the Student went to SEA.

The related services provided by MSL enabled the Student to make effective and meaningful progress in the functional aspects of her education. They addressed the issues that had marred her overall educational achievement in other settings. She was able to reduce the intensity of her emotions through the practice of her DBT skills; maintain sobriety; develop peer relationships; and build her independent living skills. There is no dispute that the Student excelled in her functional development due to the services provided at MSL. By the end of July 2013, she had reached the point where she could apply for a driver education class, go on family vacations, begin to take public transportation by herself, find a volunteer opportunity, and start looking for a part-time job. She also was able to start looking for a co-ed wrestling team that would accept her. By the end of July 2013, she had moved from being dependent upon her providers to get her through her days, to becoming an independent young woman ready to face the world on her own. The residential component that MSL provided not only met the "room and board" aspect of her unilateral placement at Arlington, but also provided these key related services to help her develop her functional skills, and complemented the academic components at Arlington. This is not a case where her educational program was merely incidental to the services she was being provided at MSL. *Mary T. v. School District of Philadelphia,* 575 F.3d 235 (3d Cir. 2009). In fact, they were a necessary component to her educational programming at

Arlington. I find therefore, that the residential component at MSL was proper under the Act and the cost reimbursable to the Parents up through July 26, 2013.

However, I find that the District is not responsible for MSL costs from July 26, 2013 forward and for 22 days during June and July 2013, when the Student was "on pass" (during vacations and weekend stays with the family.) Arlington was not in session for the month of August. By early September 2013, the Student had progressed in her functional skills to the point of being independently responsible for her daily activities. She was allowed to leave MSL with friends and visit family. As stated above, she took driver education classes and traveled by taxi and train by herself. She volunteered at a women's shelter in Boston. She also found a part-time job at a boutique in Kennebunk, Maine. She did not want DBT therapy sessions while Dr. Mintz was away on vacation and did not appear to have difficulty during this period. The Student had become virtually independent. Therefore, she no longer needed the residential component of MSL.

Reduction or Denial of Reimbursement

A. Reasonableness of the Unilateral Placement

When a disabled child is enrolled in a private school by her parents, the cost of reimbursement may be reduced or denied based on a finding that the parents' actions were unreasonable. 20 U.S.C. section 1412(a)(10)(C)(iii)(III). Even if a private placement is otherwise reimbursable under the IDEA, in some circumstances the conduct of a child's parents in obtaining the placement may preclude or reduce reimbursement. *Florence County,* 510 U.S. at 16.

The District argues that the Parents were obligated to explore residential treatment options closer to home, such as the ITRT program funded by the Maine Department of Health and Human Services or other less expensive residential placements. In this case I find that, while the Parents probably knew in February 2013 that they wanted to place the Student at Arlington and MSL, since the April 23, 2013 IEP was inappropriate and the Arlington and MSL

placements were proper under the IDEA, the Parents were not obligated to search for other options.

I find that there is insufficient evidence to conclude that the cost of Arlington and MSL were unreasonable. While the District cites the costs of another private residential DBT program in Massachusetts, there is little evidence in the record to compare or analyze the differences in the programs, other than the costs. Furthermore, it was not merely the recommendation from Dr. Mintz that McLean was an appropriate placement. The Parents had the recommendation from Dr. Bowker-Kinley, the Medical Director for Child and Adolescent Services at Spring Harbor Hospital, that McLean was the most appropriate placement for the Student. Therefore, I find that the Parents did not act unreasonably by choosing Arlington and MSL as the unilateral placement.

B. Parent's Conduct

I find that the Parents' conduct did not impede the IEP process, as the District argues. (citing 20 U.S.C. § 1412(a)(10)(c)(iii)(III); *C.G. v. Five Town Comm. Sch. Dist*., 513 F.3d 279, 289-90 (1st Cir.)) It asserts that they either directly or indirectly failed to have documents from Arlington and MSL provided to the District by the IEP meetings in March 2013, and that the Father indicated in emails to Dr. Mintz as early as February 2013 that he wanted the Student to attend Arlington once the Student was discharged. The District's argument lacks merit because, despite any alleged conduct on the part of the Parents to impede the IEP process, the IEP Team had sufficient information by the annual IEP meeting on April 23, 2013 to develop an appropriate IEP, as stated above.

The District also argues that providers at McLean colluded with one another to craft a letter of recommendation that slanted the professional opinions of Drs. Mintz and Aguirre to suggest that the Student's need for a therapeutic residential placement was at least as much related to her educational programming as it was to her medical status. While I believe the February 2013 letter, backdated to February 14, 2013, was edited to reflect this opinion, there is insufficient evidence to suggest that it was inaccurate or misleading. The recommendations from other providers, including Dr. Ray, Nancy Jaeger, and Dr. Wojcik, all support the finding that the Student required a residential placement at that time in order for her to access her education. In

addition, the related services provided at MSL were necessary at that time in order for her to continue to manage her emotional fluctuations, which allowed her to go to school and focus on her academic requirements.

Therefore, I find that there was no unreasonable conduct by the Parents that impeded the IEP process, and therefore no basis to reduce the reimbursement responsibility of the District.

ORDER

1. The proposed IEPs, dated March 13, 2013 and March 27, 2013, provided a FAPE to the Student.

2. The proposed IEP dated April 23, 2013 did not provide a FAPE to the Student.

3. The proposed IEP dated October 16, 2013 provided a FAPE to the Student.

4. The District must add a transition plan in the October 16, 2013 and schedule a meeting with the IEP Team within 15 days from the date of this Order to plan the Student's transition from Arlington and MSL to SEA, along with any related services that must be provided pursuant to the IEP.

5. The Parents are entitled to reimbursement of the costs they have incurred in connection with the Student's unilateral placement at Arlington and Mill Street Lodge as follows:

    1. $26,326 in tuition reimbursement for Arlington, at $329.00 per day[4] (from May 9 through June 24[5], from July 1 through July 26, 2013[6], and from September 5, 2013 through October 16, 2013).

    2. $27,645.00 in costs for MSL, at $485.00 per day[7] (from May 13, 2013 through July 26, 2013, excluding 22 days[8] ($10,670) deduction).

6. The Student is not entitled to a continuation of her current unilateral placement at either Arlington or MSL at public expense.

It is so ORDERED.

Sheila Mayberry, Esq.
Hearing Officer
January 17, 2013

[4] P. 239
[5] P. 87
[6] P. 90, P.128, P.239
[7] P. 114-115, P. 119, P. 239
[8] Student was "on pass" for an average of 22 days during the summer months. (Mintz testimony, "pass on" notes).