

# **Disability Law Center, Inc.**

## **AN INVESTIGATION OF ABUSE (2008) AT THE SOUTH SHORE COLLABORATIVE RANDOLPH, MASSACHUSETTS January 2010**

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*DLC is the designated federal protection and advocacy system  
for Massachusetts and is a member of the  
National Disability Rights Network*

## I. INTRODUCTION

The Disability Law Center (DLC) is a private, non-profit corporation established by Congress and designated by the Governor of Massachusetts under a mandate by Congress to provide “protection and advocacy” services to individuals with developmental disabilities, pursuant to 42 U.S.C. §§1501 *et seq.* As part of this responsibility, DLC is authorized to investigate incidents of alleged abuse, neglect, and civil rights violations of persons with developmental disabilities within the Commonwealth of Massachusetts.

DLC began this investigation in November 2008, after we were contacted by a local parent advocate, as well as by advocates from around the country who had spoken with some of the parents whose children were the victims of the alleged abuse during the time period of February and March 2008. The allegations focused on abusive actions by the teacher in a self-contained classroom run by the South Shore Collaborative (SSC). The allegations were brought forward by the three aides who worked in the classroom.

DLC’s investigation focused on attempting to determine the veracity of the allegations, as well as analyzing the adequacy of the investigations conducted by the Department of Social Services (DSS)<sup>1</sup>, and to a lesser extent, the Massachusetts Department of Education (DOE)<sup>2</sup> and the Randolph Police Department (Police).<sup>3</sup>

The purposes of this report are to set forth: (1) the results of the DLC investigation; and (2) recommendations for systemic reform in order to minimize the risk of future instances of abuse.

DLC’s investigation included:

- Interviews with parents of four out of the six students who were allegedly abused.<sup>4</sup>
- Reviews of selected student records for the five students.
- Interviews with the three classroom aides who brought forward the allegations of abuse and review of their personnel files from SSC.
- Interviews of the attorney and advocate who had attempted to advocate on behalf of the families.<sup>5</sup>

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<sup>1</sup> The Department of Social Services recently changed its name to the Department of Children and Families.

<sup>2</sup> The Department of Education recently changed its name to the Department of Elementary and Secondary Education.

<sup>3</sup> This report’s analysis focuses primarily on DSS as the Police report does not attempt to come to any conclusions about the allegations and DLC was not involved in the related criminal proceedings. The DOE investigator did not interview any of the parties.

<sup>4</sup> The parents of one of the children declined to be interviewed by DLC and information about this child is not included in the DLC report. The parent of another child only gave limited consent for the use of his actual name. In order to protect the family’s privacy, that child is referred to in this report as John Doe.

- Review of the investigation reports by the Department of Social Services<sup>6</sup>, the Department of Education and the Randolph Police Department.
- Review of relevant statutes, regulations and policies.

## **II. LIST OF PERSONS INCLUDED IN THE REPORT<sup>7</sup>**

Ethan Goloski: student  
 Carmen Maggiore: student  
 Logan McHugh: student  
 John Doe: student  
 Sean Quill: student  
 Anne Marie Grant: teacher's aide  
 Mary Ericson: teacher's aide  
 Erin Royer: teacher's aide  
 Ann Gibbons: SSC teacher and alleged abuser  
 Sergeant Marag: Randolph police department  
 Brendan Sullivan: DSS investigator  
 Kristen Gerritsen: DSS investigator  
 Ruth Anne Weinberg: SSC school nurse  
 Yolanda Earle: SSC Occupational Therapist  
 Kit Hoffman: SSC Speech Therapist  
 Adrienne Manson: SSC substitute teacher  
 Maurine Gattine: SSC Assistant Program Director  
 Michael Savage: SSC Superintendent  
 Mary Scott: SSC Program Director  
 Molly Caravello: SSC Music Therapist  
 Laurie Pecce: SSC Physical Therapist  
 Pat DiCristofaro: SSC Adapted Physical Education teacher

## **III. EXECUTIVE SUMMARY**

DLC investigated the allegations of abuse of six students who were in a South Shore Collaborative self-contained classroom in Randolph, Massachusetts, in order to evaluate the truth of the allegations, the adequacy of the investigations and to make recommendations concerning reform of policies and procedures of the SSC and the investigating state agencies.

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<sup>5</sup> South Shore Collaborative staff, through its attorneys, declined to be interviewed as part of this investigation. The attorneys did submit a written rebuttal after reviewing a preliminary draft of the DLC report. The rebuttal is attached to the report.

<sup>6</sup> The DSS investigation report consists of a compendium of relevant interview notes, correspondence, notes about complaints filed and e-mails.

<sup>7</sup> Except with respect to John Doe, all of the families provided written consent to the use of the actual name of their child.

DLC's investigation revealed that despite strong evidence of serious abuse having occurred, the administration at the SSC chose to discredit the allegations by marginalizing and criticizing the aides who spoke up about their concerns. The problem was compounded by the failure of DSS to make determinations, consistent with professional standards and best practices, as to whether or not abuse had occurred. Faced with conflicting accounts from SSC staff, DSS made inadequate credibility assessments of the staff they interviewed. If they had made credibility assessments consistent with regulatory requirements, DLC believes they would have reached the logical conclusion that the aides did not suddenly choose to exercise personal vendettas against the teacher by bringing forth false allegations, while the administration was motivated to deny the allegations in order to protect the reputation of the teacher and SSC. In addition, DSS did not adequately take into account reported changes in behavior of the children or the physical injuries they suffered during the time period in question.

Based on the above findings, DLC recommends a number of specific actions be taken to ensure adequate responses to any possible future allegations of abuse at SSC. These are as follows:

1. SSC should provide training to all of its staff on positive behavior supports<sup>8</sup>, restraint prevention and reporting of abuse and neglect allegations.
2. SSC should ensure timely written notification to parents of any incidents of restraint which last over five minutes, as required by 603 CMR 46.06(1) and (3).
3. SSC should ensure future compliance with the provisions of 603 CMR 46.00 *et seq.* concerning reporting of restraints to the Department of Elementary and Secondary Education (DESE).
4. SSC should carefully review the job performance of Ann Gibbons to determine whether her continued employment as a special education teacher is appropriate and whether it presents risks to children in her class.
5. The Commissioners of the Department of Children and Families (DCF) should order a thorough review of its investigation by an independent agency or individual.
6. The District Attorney should review the process and outcome of the

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<sup>8</sup> Positive behavior supports generally encompass ways of using less intrusive interventions than restraint or seclusion, and teaching replacement behaviors as a means of addressing behavioral difficulties. See [www.pbis.org](http://www.pbis.org)

criminal complaint

7. The Office of the Child Advocate should review this report and make recommendations for any needed regulatory or policy reform.

#### **1V. INVESTIGATION**

##### **A. Background and Procedural History**

During the 2007-2008 school year, allegations of abuse were brought forward by three classroom aides against Ann Gibbons, the teacher in the SSC classroom where the aides worked at the Lyons School in Randolph. The procedural history is as follows.<sup>9</sup>

March 18, 2008: one of the aides, Anne Marie Grant, spoke with Mary Scott, the Program Director at SSC about the allegations.

March 19: Mary Scott's assistant met with the other two aides, Mary Ericson and Erin Royer, as well as with other instructional staff who regularly spent time in the classroom.

March 20: Ms. Scott met with Ms. Gibbons who denied all of the allegations.

March 24: Ms. Scott telephoned DSS to file a complaint alleging physical abuse (a "51A")<sup>10</sup> by Ms. Gibbons with respect to two of the students in her class. Ms. Scott told DSS that SSC had conducted an "exhaustive" investigation into the allegations and she expressed her opinion that Ms. Gibbons could not have abused any of the students.

March 25: The 51A was screened out by DSS.<sup>11</sup>

March 24: SSC placed Ms. Gibbons on administrative leave pending the criminal investigation.

March 25: Mary Scott spoke by telephone with some of the parents to inform them about the allegations.

March 27: Ms. Grant contacted the parents of the children about the allegations. Later that same evening, Mary Scott telephoned all of the

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<sup>9</sup> The timelines are based on both the DSS and Police investigations. There are no significant inconsistencies between the two investigation reports.

<sup>10</sup> 51A refers to section 51A of Mass. General Law chapter 119.

<sup>11</sup> A complaint is screened out if DSS does not believe that there is sufficient evidence of abuse or neglect to warrant a full investigation.

parents and asked them to come to a meeting the next day at SSC to discuss the allegations.

March 28: Ms. Grant and Ms. Erickson filed a 51A with respect to all six of the students. Ms. Royer was absent due to illness that day.

March 28: SSC placed the three aides on administrative leave pending the criminal investigation.

March 28: Ms. Scott and Mr. Savage (SSC Superintendent) met with the parents, explaining that a 51A had been filed with DSS about two of the children.

April 3: DSS referred the matter to the Police. On or about the same date, one of the parents also called the Police and requested that they initiate an investigation.

April 10: DSS found the 51A filed by the aides to be unsupported. "The Department has not found reasonable cause to support the allegation of physical abuse..."

April 28 (approximately): Ann Gibbons returned to teaching in a different SSC classroom.

May 9: Attorney Carol King, on behalf of the five families, filed a request for a Fair Hearings with DSS concerning the second 51A which was investigated and then found to be unsubstantiated. The request was denied by DSS on the basis of lack of jurisdiction for an appeal.

May 19: The Police issued their Investigation Report. The District Attorney's office decided not to bring criminal charges against Ann Gibbons.

August 6: Attorney Carol King filed a Written Statement of Concern with the Department of Education, alleging, among other things, that Ann Gibbons violated the DOE regulations on restraint.

September 2008: All of the children now attend different school programs, none of which are connected to SSC. Annemarie Grant and Erin Royer resigned from their positions at SSC and are employed elsewhere, while Mary Ericson continued working as a teacher's aide for SSC in a different location. Ann Gibbons also continued to work for SCC as a teacher in a different location.

September, 2008: Police filed for a Probable Cause hearing for felony complaint of Assault and Battery against Ms. Gibbons.

October 20: Probable Cause hearing took place in Quincy District Court, in front of Magistrate Robert Bloom.

November 7: Magistrate Bloom issued a verbal and written decision, finding lack of probable cause (LOPC).

December 12: LOPC appeal hearing took place in front of Judge Cadavan.

January 6, 2009: Continuation of appeal hearing in front of Judge Cadavan.

January 6: DOE issued investigation report finding deficiencies in training and reporting but is unable to substantiate the allegations against Ms. Gibbons.

March 2: Judge Cadavan denied the LOPC appeal but never issues a written decision.

October 13, 2009: DLC sent a draft report to SSC's attorney in order to give SSC an opportunity to respond before the report is finalized.

November 2, 2009: SSC, through its attorney, sent a Rebuttal Statement to DLC.

## B. Investigation Interviews by the Police and DSS<sup>12</sup>

In their respective investigations, the Police and DSS separately interviewed most of the same SSC staff and parents. In this report, DLC summarizes the cumulative information obtained in the two investigation interviews, while for the most part eliminating duplicative statements by the same interviewees provided to both the Police and DSS. Because DOE did not actually interview SSC staff or parents, its report will not be discussed in this section of this report.

### 1. General, non student-specific information

#### **Grant Interview by Sergeant Marag of the Police:**

Ms. Grant has worked as an aide since 2004, including the last 4 years with Gibbons. Prior to February of this year, she had no issues with how Gibbons treated the students. Starting in February of 2008, Gibbons became less tolerant of non-compliance behaviors of the students. Grant observed

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<sup>12</sup>Except for the parents of John Doe, the families consented to excerpts and information from the DSS investigation being included with the actual names of their children in the DLC report.

Gibbons several times bending a child's wrist forward in order to force compliant behavior. Gibbons also spoke to the students in a manner that Grant felt was verbally abusive. For instance, she made statements such as "like it or lump it" and "I'm bigger, badder and stronger." When preparing for a lesson the students didn't enjoy, she said "get ready for a fight." Gibbons also stopped aides from giving water to students after they had been placed in time-out. In these instances, Grant was concerned because the children had become hot and sweaty, and some of them had medical issues. Grant also stated that in her opinion, SSC was not taking the allegations seriously and that Dr. Savage was looking for a reason to fire her.<sup>13</sup>

**Grant interview by DSS worker, Brendan Sullivan:**

Grant provided copy of e-mails she sent to Scott. The first one expressed concerns about the safety of the children and not knowing what steps SSC is taking. Scott replied with an e-mail that SSC is taking the matter seriously and set up meeting with Grant on March 24. The second e-mail on March 21, stated that if Gibbons was still teaching in the classroom, Scott must not realize how serious the situation is. She also stated that the parents should be informed and that the aides were feeling intimidated and uncomfortable.

**Ericson interview by Sergeant Marag:**

She has worked for SCC for 20 years, the last three years as an aide in Gibbon's class. SCC is not taking the allegations seriously and she feels that the aides are being retaliated against. Gibbon's behavior started changing in early February, 2008. When restraining children, Gibbons would say "I'm bigger, badder and stronger" or "like it or lump it" when students engaged in non-compliant behaviors. Ericson interpreted this as meaning that if the students didn't obey her, Gibbons would get physical with them. Gibbons also said "come on lets fight" as a way to agitate two students.

**Ericson interview by DSS worker, Kristen Gerritsen:**

She told Scott that she was filing for retirement because she feared retaliation. Ericson told interviewer that she was coming forward now because SSC management was not doing anything and someone needs to protect the students.

**Royer interview by Sergeant Marag:**

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<sup>13</sup> Grant did not return to SSC after she was placed on leave and is now employed in the field of medical records.

Ms. Royer has worked for SSC since October, 2007 as a full-time aide in Gibbons' classroom. She observed a change in Gibbons since the beginning of February, 2008 when Gibbons became verbally and physically abusive towards the six students. Her requests for training on restraints were ignored by SSC administrators.

**Royer interview by Gerritsen:**

She told Gattine on March 19 that Gibbon was verbally and physically abusive and that, when restraining a child she says "she is bigger and stronger." Gibbons has also told students that they got hurt during restraint because "they were bad." Royer has seen Gibbons bend all of the children's hands forward and backwards. Royer was not comfortable talking with Gibbons about her concerns. During the week of March 10, she heard Grant, Ericson and Weinberg talking about how rough Gibbons was with the students and Royer was relieved that the others were concerned. She did not feel comfortable talking about her concerns before this time.

**Ruth Anne Weinberg (School Nurse) interview with Marag:**

She has worked as a nurse for SCC since November, 2006 and spends 85%<sup>14</sup> of her time in Gibbon's classroom. On March 19, she was confronted by Ericson in the hall. Ericson told her that the aides reported that Gibbons was abusing students and then stated "you're either with us or against us." Weinberg said she had never seen Gibbons act in an abusive manner and thinks she is one of the best teachers at SSC. She also noted that Grant has become more "distant" and believes that Grant and Ericson don't agree with some of the behavioral plans.

**Weinberg interview with Sullivan and Gerritsen:**

Weinberg is the nurse for Gibbon's classroom and another class with 12 children next door. She stated that she has never seen Gibbons act in an abusive manner towards her students and had never heard complaints about her. Weinberg has seen Gibbons restrain three students but she never lost her temper and only once raised her voice. She believes that the aides are acting in a malicious manner and that they have ulterior motives.

**Yolanda Earle (Occupational Therapist) interview with Marag:**

Earle has worked at SSC since 1999 and was in Gibbon's room two days a week. She has never seen Gibbons act in a physically or verbally abusive manner. Earle has helped Gibbons to restrain students and although Gibbons is strict, she never went overboard and students like her.

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<sup>14</sup> The 85% figure is disputed by the aides and parents (Report at p. 25 )

**Earle interview with Gerritsen:**

Earle has been in Gibbon's class since 2002. She is in and out of the class Mondays and Tuesdays 11:30 to 4. Earle has observed Gibbons do basket restraints lasting 1-2 minutes but has never seen a restraint she felt was excessive.

**Kit Hoffman (Speech Therapist) interview with Marag:**

Hoffman has worked at SSC for three years and with Gibbons that whole time. She is in the classroom 2.5 days a week and has never seen Gibbons physically or verbally abuse students. Hoffman is impressed with Gibbons as a teacher. There are 4-5 teachers constantly in the room and they would have voiced their concerns if abuse was occurring. Time-out is a common form of discipline and restraints are only used when necessary to prevent harm.

**Hoffman interview with Sullivan:**

Gibbons first uses visual cues to deescalate and it is effective. When she does restrain, it is pretty quick. Hoffman has seen Gibbons use 2-3 restraints of several minutes, most are basketholds and "some are up against a surface." Grant is one of Gibbons best aides but she seems different this year and there are concerns about her mental health.

**Adrienne Manson (Substitute Teacher) interview with Marag<sup>15</sup>:**

Manson has worked with Gibbons in the past and thought she was a highly qualified teacher. She never observed Gibbons physically or verbally abusing students. Grant acted in an insubordinate manner with Manson and was reprimanded.

**Maurine Gattine (Assistant Program Director) interview with Marag:**

Grant came to speak with her and Scott on March 18. Grant was not very specific about allegations except for the Sean Quill lip incident, insufficient snacks and one student became upset because of an unnecessary fire alarm. Grant also said Gibbons started to show a pattern of physical and emotional abuse in early February. On March 19, Gattlin received a telephone call from Royer who also said Gibbons had started to show a pattern of abuse with students. Royer only cited one incident where Gibbons was rough with Sean in gym but the gym teacher disagreed. Gattlin also received a call from Ericson who told her of incident where John Doe was restrained for 20 minutes on the floor with his head against the bookcase. Ericson also noted change in Gibbons' behavior since the start of February.

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<sup>15</sup> Ms. Manson was not interviewed by DSS.

Dr. Savage put Gibbons on administrative leave starting on March 27 and asked Scott and Gattine to do a full investigation. Scott and Gattine met with relevant staff and aides. Ericson wanted to be transferred, Royer was ok to stay in the class and Grant had an issue with the cost of health insurance and having to switch classes. Gattine was alarmed by Grant's elevated mood when she was told that Gibbons was being placed on administrative leave.

**Maurine Gattine interview by Gerritsen:**

There had never been prior complaints against Gibbons from parents or teachers. She admitted that she should have filed 51A when Grant spoke to her on March 18. Gattine opined that the aides seemed to have agenda and that the allegations were untrue. She noted tension between the three aides and said Grant and Ericson should have been comfortable coming to her with concerns. She partnered with Royer at workshop on March 7 and Royer did not mention any concerns.

**Michael Savage (Superintendent) interview by Marag:**

Savage was informed about the allegations by Scott on March 20 and asked her to start an investigation on March 24. He put Gibbons on administrative leave and had Scott contact DSS about the students. Savage met with aides later on March 24. On March 26, he was contacted by DSS to say the complaint was screened out. Savage set up a meeting with the aides to inform them of the DSS disposition. Grant became very upset, was shouting and crying. He discussed with Grant his concerns about a road rage incident and her insubordination with Manson. On March 28, he held a parents meeting where he gave the parents copy of a restraint policy approved on September 14, 2001. Parents reported that they had never before seen the policy.

**Savage interview with Sullivan and Gerritsen:**

Savage questioned Grant's motives since she had been working with Gibbons for over four years. He reported that the aides had gone into Gibbons e-mail and distributed e-mails.

**Mary Scott (Program Director) interview with Marag:**

She mostly reiterated what was said by the other administrators. The original report from Grant only mentioned Sean Quill and Ethan Goloski. Sean was pushed to the floor and Ethan was restrained by a forearm to his neck, as well as wrist bending. Then there were more vague allegations about Gibbons being mean and rough and not giving good snacks. Scott

asked both DiCristefaro and Manson to watch Gibbons and they both reported no concerns. Scott admitted she was not sure how to handle the matter and should have informed DSS and parents earlier. She also said that there is no restraint policy for parents to sign but they are aware that restraints take place.

**Scott interview with Sullivan and Gerritson:**

On March 18 at approximately 12:30 PM, Grant reported to her that Gibbons was rough with kids. Gattine was also present and they took the allegations seriously. They did not take notes because Grant did not give specific incidents or dates and was talking more generally while throwing around terms like “abuse when “it really did not seem to fit some of the examples she gave.” Scott told Grant that the Occupational Therapist would be in the room for the afternoon and Grant said abuse did not usually occur in the afternoon.

On March 19, Grant was not at work. Royer reported specific concerns to Gattine that did not seem to be abuse. Scott put Manson, the floating teacher, into the room to observe. Scott said she had never dealt with this type of issue or reporting to DSS before. She added that the kids are tough and it is “never pretty when you have to do a restraint” but that staff know to report anything that makes them uncomfortable.

Scott spoke with Gibbons on March 20 about the allegations and had Gibbons work only on MCAS preparation. She sent Gattine to take over other teaching duties.

According to Scott, Grant complained that the aides were doing all the work while Gibbons was seated behind the partition. Scott was also informed that Grant was speaking on-line to someone with autism who has told Grant about feelings of kids with autism who have been abused. Grant has had to restrain students and was upset about an increase in health insurance costs. Scott also felt that Grant had changed this year. She thought maybe it was because Grant had asked Gibbons for a job recommendation and Gibbons had joked about the request. Grant had also started talking as though she knows the students better than anyone else.

With respect to Ericson, Scott said that she can be difficult to work with and has been shifted to different classes. Ericson told Scott she did not report her concerns about Gibbons earlier because she was afraid she would be shipped to a different classroom. Scott also reported that both Grant and Ericson have been mean to Royer and on January 2008, Royer left crying because Ericson said something to her about restraint.

During the meeting on March 26, Grant became upset, left and said something about needing to see her psychiatrist when told that DSS screened out the first complaint. Royer was rational but became hysterical when Grant returned and was “acting off the wall.” Ericson arrived at the meeting with a Union representative and said that she never would have come forward if no one else had.

**Joint interview of Scott and Savage<sup>16</sup>:**

Scott and Savage put Gibbons and aides on administrative leave. Ericson requested a transfer to an adult program.<sup>17</sup> Royer said she would return.

Scott and Savage raised a number of concerns about Grant. Among them were: not complying with directives from Manson, the substitute teacher; putting notes to parents in student bags; taking students on outside walks without Manson’s permission and a road rage incident which took place while Grant was driving an SSC van. The man involved in the incident told Savage that Grant was chasing him and cutting him off. He pulled over and she pulled up cursing and making racial slurs. On April 3, Scott called Grant to the SSC office, but Grant went instead to the Lyons School’s Principal’s office. The Principal reported that she was hysterical and irrational. When Grant got to the SSC office, she stated that the system had failed the kids, she had a psychiatrist appointment and flew off the handle.

**Molly Caravello (Music Therapist) interview with Gerritsen<sup>18</sup>:**

Caravello has worked at SSC for twelve years and is in Gibbons’ room 45 minutes per week. She loves Gibbons and thinks she is “fantastic” with kids. She has never seen Gibbons being rough with kids, bending their hands, restraining or hurting them.

**Laurie Pecce (Physical Therapist) interview with Sullivan<sup>19</sup>:**

Pecce has worked with Gibbons for four years. She is in Gibbons’ classroom on Tuesdays and Wednesdays for about two hours and sometimes works with the students in the gym. She stated that the aides are lying and that Gibbons is the best teacher at SSC. Pecce has never seen Gibbons use restraints, nor has she witnessed Gibbons doing anything abusive.

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<sup>16</sup> The DSS report does not identify the interviewers but it appears that both Sullivan and Gerritsen were involved. DSS’ decision to also do a joint interview with Scott and Savage is questionable in that it allows them to know about each other’s responses, thereby reducing the likelihood of contradictory statements among the SSC administrators and creates questions about the credibility of their accounts.

<sup>17</sup> Ericson disputes that she requested a transfer to an adult program.

<sup>18</sup> Ms. Caravello was not interviewed by Sergeant Marag.

<sup>19</sup> Ms. Pecce was not interviewed by Sergeant Marag.

**Pat DiCristofaro (Adapted Physical Education) interview by Sullivan<sup>20</sup>:**

She is at the school on Wednesdays and Fridays and spends short periods of time in Gibbons' classroom before or after gym class. Gibbons does not assist with the gym class. DiCristofaro has worked with Gibbons for the last six years and has never seen her be abusive towards the students.

DiCristofaro stated that Grant feels the aides are doing all of the work while Gibbons is behind the partition. Aides have been mean to Royer because she is new and can't do restraints. Grant was upset because if another site needed help, Grant or Ericson had to go because they knew the kids. In January 2008, Royer left crying because the other aides were mean to her. DiCristofaro worked with Ericson for 20 years and Ericson can question things.

**Gibbons interview by Sullivan and Gerritsen<sup>21</sup>:**

Gibbons said that the allegations were "shocking to her" and denied ever physically or verbally abusing the students. She has been trained in all types of restraints and has never used more than a single person basket hold. All restraints and injuries are documented in a log. Gibbons has not changed her approach to working with the students for the past six years and no previous complaints were ever filed against her.

Scott told Gibbons that Erickson bounced around a lot of different classrooms at SSC because she can be difficult to deal with. Grant is different this year and was looking for a new job. Gibbons is unsure if Grant was angry about Gibbon's jokingly telling her she would say bad things in a job recommendation. Grant has been acting irrational the past few weeks and even broke into Gibbons' school and personal e-mail.

**C. Student-specific allegations and investigations**

**ETHAN GOLOSKI<sup>22</sup>**

**Grant interview with Marag**

Grant has seen Gibbons push Ethan by the throat when he charges her and then push him with her forearm against his throat into a bookcase and hold him there

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<sup>20</sup> Ms. DiCristofaro was not interviewed by Sergeant Marag.

<sup>21</sup> On advice of counsel, Gibbons declined to be interviewed by Sergeant Marag.

<sup>22</sup> Except for the parents of John Doe, the families of the children consented to the use of their children's actual names.

in a basket-hold. When he then tried to head-butt her, she pushed him against the door and said “don’t head-butt me, head-butt the door.” She then pushed her shoulder against his head and into the door. Grant feels that Gibbons deliberately antagonizes Ethan.

#### **Ericson interview with Marag**

Gibbons held Ethan with forearm against his throat and pushed him into a bookcase which caused bruising, a scratch on his throat as well as a scratch on his face because she held him against the bookcase. Gibbons told Ethan it was his fault for being bad. In the second incident, Gibbons had a basket-hold on Ethan, pushed him against the door and told him not to hit her, and then pushed his head into the door with her shoulder.

#### **Royer interview with Marag**

Ethan tends to charge at teachers and when he does, Gibbons pushes him back by his throat. One day Royer noticed marks on Ethan’s cheek and collarbone. She asked Gibbons about it and Gibbons said “he was bad today.” Royer believes that Gibbons was trying to agitate Ethan with the comment.

#### **Parents’ interview with Marag**

They were informed by Mary Scott and attended the meeting on March 28. Ethan has become more aggressive over last few months but not sure if it is related to medication.

#### **Parent’s interview with Sullivan**

On March 27, Grant called to say that Gibbons abuses students less when “professionals” are around. Parents think that SSC has minimized and inappropriately dealt with the situation. Father thinks that Gibbons uses excessive force with the children. He wants to make sure that children are safe and that if the allegations are true, those responsible are dealt with appropriately. Parents are also concerned about SSC not having procedures to document and notify parents about restraints and injuries. There are system-wide issues with the program and they believe that SSC is failing to protect the children.

The DSS investigation report also includes the narrative of a 51A report filed by Ethan’s mother on March 31<sup>st</sup>, which summarizes the aides’ allegations concerning Ethan.

### **CARMEN MAGGIORE**

#### **Grant interview with Marag**

Grant recounted an incident where Carmen who has OCD, wanted to leave the rug area of the room but Gibbons dragged him the other way and when Carmen pinched her, she picked up his head. When she let go, he ran back away from the rug area and she did a basket-hold restraint for at least ten minutes. On March 17, she observed Gibbons twist Carmen's arm and wrist because he wanted a different St. Patrick's day hat.

#### **Ericson interview with Marag**

She described the first incident reported by Grant in a similar manner to how Grant described it above.

#### **Royer interview with Marag**

She described the first incident reported by Grant in a similar manner to how Grant and Ericson described it.

#### **Parents' interview with Marag**

Mother was informed on March 27 and went to the meeting on March 28. The parents met with Grant and Ericson on March 27. They have seen changes in Carmen's behavior over the last several months, including regression. Two months ago she saw three marks on his body which looked like rug burns. (Marag comments in his report that the marks on Carmen's collarbone and lower back were still visible to him).

#### **Mother interview with Gerritsen<sup>23</sup>**

She is disgusted with how SSC is trying to cover up the situation and waited ten days to inform parents. When she called Scott to voice concerns, Scott said SSC had looked into the situation but only included two of the children in the initial 51A report.

The mother reported that she and her ex-husband have noticed bruises and skin abrasions on Carmen's arms and spine<sup>24</sup> periodically over the last two months, including one that went from his collarbone up his neck. She is sure that the injuries did not occur when Carmen was with her or Carmen's father, whom she speaks with regularly. There was no mention in his daily log from school of how he had sustained these marks and there is only one notation concerning a brief restraint.

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<sup>23</sup> The mother's name is redacted but the interview content clearly refers to Carmen.

<sup>24</sup> The DSS worker notes that the mother showed her the scars on Carmen's back from the abrasions.

The mother also reported that Pam TenEyck from the school district had been Carmen's behaviorist for several years. When Ms. TenEyck wanted to observe in the classroom, Gibbons indicated that she did not want an outside behaviorist in her classroom.

## **LOGAN MCHUGH**

### **Grant interview with Marag**

Grant described an incident where she and Ericson were outside with some students and when they came in they asked where Logan was. Ericson found him spraying aerosol disinfectant can in the bathroom which is very dangerous for him because of his cystic fibrosis.

### **Ericson interview with Marag**

She witnessed Logan being kept in time-out for 20-30 minutes. He was crying and trying to stand up but Gibbons kept pushing him down. He has cystic fibrosis, epilepsy and autism.

### **Mother's interview with Marag**

She was informed by Scott on March 27 and told none of allegations involved Logan. She never heard of restraints being used and never gave written permission. On March 28 she received a voice mail message at 7:40 AM from SSC teacher Ilene Thompson who used to be Logan's teacher, saying the parents need to stick behind the teachers. There was another voice mail message at 2:58 PM asking what happened at the meeting. Thompson wanted to know because she was on the other phone line with Gibbons, which mother thought was not proper (Marag notes that he listened to the messages and confirmed the mother's account).

### **Mother's interview with Sullivan<sup>25</sup>**

She was concerned about the school's handling of the situation and the fact that she did not find out about the allegations until the meeting on March 28. She also stated that Logan frequently comes home with bruises but added that he is on medication which easily causes bruising. Logan came home one day in late February with what appeared to be four fingerprints on his arm and bruises on his lower back. When she recently picked up Logan from school, the nurse told her that he had been flapping his arms and hit his hands on a counter top,

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<sup>25</sup> The mother's name is redacted but based on the content of the interview, it clearly is about Logan.

causing a bruise on his hand. The mother stated that she questions if the nurse was telling the truth.

The mother mentioned what the aides had told her about the incident where Logan was in the bathroom spraying Lysol. She spoke about the danger of the aerosol due to his cystic fibrosis and seizure disorder. Additionally, she mentioned what the aides had told her concerning the incident where Logan was left in time-out while he was crying for a lengthy period of time and Gibbons refused to allow one of the aides to give him a cup of water. She explained the potential seriousness of the incident because if Logan becomes overheated, it could cause a seizure.

## **JOHN DOE**

### **Grant interview with Marag**

She witnessed Gibbons restrain John for over 20 minutes on the rug. He was held on the floor on his stomach with his arms unlocked and his face in the rug. John was pressed against a bookshelf. When he got up, his eyes were very red and puffy and he was breathing heavily and Gibbons refused to give him water. She also overheard Gibbons advising Earle during the incident “give him a chance to hit you and then hold him until he shuts up.” Earle put him in a basket-hold for 2 minutes.

### **Ericson interview with Marag**

Her account of the face-down restraint is in accord with Grant’s account above.

### **Royer interview with Marag**

Her account of face-down restraint is in accord with Grant and Ericson’s account.

### **Father interview with Marag**

He was contacted by Grant on March 27 and attended the meeting on March 28. John had been in Gibbons’ classroom for two years and he was never informed of any restraints. Father has noticed a change in John’s behavior the last several months in that he has become more emotional.

### **Father interview with Gerritsen<sup>26</sup>**

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<sup>26</sup> The father’s name is redacted but based on the content of the interview, it is clearly about John.

He was angry about SSC's failure to provide DSS with complete information in the first 51A report, as well as SSC's account at the March 28 parent meeting where they said that they mentioned only two of the children and discussed "other minor issues." Additionally, he had been voicing concerns about John's regressions for months and sent two letters to his school district about John's regression and the need for a different placement.<sup>27</sup> John's psychiatrist from New England Medical Center reported they also had been concerned for months.

Father stated that John does have bruises but it is difficult to tell how the bruising occurred and whether they are painful. He reiterated that the recent changes in John's behavior are a sign that things are really wrong at school. John's daily notebook from school never includes accounts of restraint but the aides indicate he has been restrained on several occasions. The father believes the children were abused and disciplinary action should be taken against the School and administration.

## SEAN QUILL

### **Grant interview with Marag**

Grant described an incident where Sean was sitting at his desk, frustrated with a task and began banging his desk. Gibbons stood behind him with her stomach against his head. He started banging his head into her stomach. She put her fist on her stomach and when Sean slammed his head back the next time, he slammed his head against her fist. This occurred one to three more times during the incident.

On March 27, Grant and Ericson were outside with some of the students. When they came back inside, Sean was in time-out and his lip was bleeding profusely. Present were Gibbons, Royer and Weinberg. Gibbons and Weinberg were trying to stop the bleeding. Gibbons said "it kills me to be nice to him." Sean was upset and tried to get out of his chair. One of the times Gibbons pushed him back into the chair with full force. He missed the chair and fell on his back. Gibbons yelled at him to get up. Grant then overheard Weinberg tell Gibbons she will "just write it up that he tried to bite you and somehow his lip was cut by your nail." Mother called the next day to say Sean was limping. Weinberg attributed it to him kicking his chair but Grant thought it happened when he was pushed to the ground.

**Ericson interview with Marag:** her description of the bleeding lip incident was similar to Grant's report above.

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<sup>27</sup> The letters are included in the DSS investigation report.

**Royer interview with Marag:** She recounted an incident where Sean was upset that the computer was not working and he was put in time-out. He kept trying to get up and this was the start of the incident where Sean's lip was cut. Sean tried to bite Weinberg when she was trying to stop the bleeding and Royer did not see how his lip was cut. She also observed another incident where Sean and Gibbons were sitting across a table from each other and he was kicking her under the table. After warning him, she kicked him back multiple times.

Royer described the incident where Sean was slamming his head against Gibbons' fist in a manner similar to Grant's description. She also witnessed Gibbons twisting Sean's arm or wrist to get compliance and felt that the situation could have been de-escalated earlier.

**Weinberg interview with Marag:**

She also described the incident where Sean was upset about the computer and became out of control. She did not see how his lip was cut but believes it was from biting Gibbons' middle finger and then her nail cut him when she pulled away her finger. Sean has a tendency to bite. Weinberg checked Gibbons' finger after the incident and it appeared to have been bitten. Gibbons said it was from Sean biting her finger. Weinberg contacted Sean's mother to pick him up. Marag asked her why she had not informed the mother about Sean's attempt to bite and pinch. She responded that she was not sure and didn't fully remember what happened. She also did not see Gibbons push Sean to the ground despite the fact that her desk was only a few feet away.

**Mother interview with Marag**

She was notified by Mary Scott and went to the meeting on March 28. With respect to the incident where Sean's lip was cut, Weinberg told her that he bit Gibbons after becoming upset about the computer. Sean does have a tendency to bite. She noticed he was limping and it got worse when he tried to put weight on it. He stayed home from school the next day because he could not walk. She brought him to the pediatrician who said it was a bone bruise. SSC told her that he hurt his foot when he was kicking chairs.

A month previously, mother noticed a new behavior from Sean. He would grab her hand and signal that he wanted her to punch his head. He never wanted someone else to do it. She voiced concern to the home ABA providers. The behavior stopped after Gibbons left her position and the mother thinks it may have been in response to Gibbons fist intervention.

**Parents interview by Sullivan<sup>28</sup>**

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<sup>28</sup> This interview was inadvertently omitted from the original DSS report and was later sent to the parents.

Mother stated that she was initially told that Sean was pushed to the floor by the teacher and that Ethan was pinned to the floor by the teacher. They were told by Ericson and Grant about the bloody lip incident after the school meeting. Father questioned the aides as to why they did not report incidents earlier and their response was that they didn't want to lose their jobs. The aides told mother about an incident when Gibbons was covering the gym class. Sean does not like to walk backwards and normally staff will only have him do one lap backwards but Gibbons made him do three laps. Mother stated that he did have a bruise recently on his lower back and she doesn't remember him falling, but added that he does flop onto the ground when upset. Sean brings home a log home from school every day and the nurse will write down any incidents. In response to Sullivan's question, the parents said they have not received any incident reports from the school.

## V. ANALYSIS

### A. Investigation Standards:

A competent investigation must meet certain standards. It is not enough, as DSS did in this instance, to fail to reach any conclusions in the face of conflicting evidence. The proper standards are explained concisely in a recent investigation by the United States Department of Justice of a large Developmental Center in Illinois.

*Generally accepted professional standards for investigative practices require that investigations be timely, thorough and logical. The extent to which an investigation is thorough is measured in part by the degree to which the investigator probes for answers, researches facility documents and challenges discrepant accounts of events. This includes gathering all relevant evidence, and interviewing and re-interviewing witnesses. Logical investigative conclusions are reached when the investigator is able to apply critical thinking to the information she or she has gathered, and synthesize that information into a coherent report.*

Investigation of W.A. Howe Developmental Center, in Tinsley Park, Illinois (11/19/09) (United States Department of Justice, Civil Rights Division, Special Litigation Section, [www.usdoj.gov/CRT](http://www.usdoj.gov/CRT)).

### B. Credibility of the Witnesses:

In reviewing the DSS investigation, what stands out as a major flaw is the superficial consideration of credibility and bias.<sup>29</sup> While DSS did a reasonably thorough job of interviewing relevant individuals and memorializing these interviews in writing, the analysis and conclusions at the end are at best, inadequate.<sup>30</sup>

*At this time it is not clear what has happened in the classroom or not, and that the information obtained does not provide enough information to support the allegations. On the other hand it does not provide enough information to be able to clearly state that the concerns, or some version of concerns raised did not happen. Concerns have been raised about how the school handled the concerns in the report and it does not (sic) appear that the school has an appropriate/adequate system in place around documenting incidents/restraints and around the notification to parents of such.*

*Supervisor Comment:*

*I am in agreement with the decision as written. DSS has not been able to show reasonable cause to support allegations of neglect (sic)<sup>31</sup>. There is clearly dissention (sic) between the aides and teacher, which may impact the reliability of the reporting. There is no corroboration either through, physical evidence or other collateral witnesses (i.e. gym teacher, occupational therapist, music therapist) to support the alleged incidents occurred as described. In addition, the teacher has a 10 year history of teaching the autistic population with no reported concerns in her (sic) care of children or ethical conduct. Also of concern is the lack of appropriate (sic) documentation on incident (sic) and restraints which make it difficult if not impossible to show any increase in injuries to the children. Based on all of the information gathered, there is insufficient evidence to determine that abuse or neglect as defined by the Department occurred.*

The applicable regulations require the Department to conduct an investigation, including viewing the child, visiting the home or facility, and contacting relevant collaterals. 110 C.M.R. 4.27. The decision to support a report of abuse

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<sup>29</sup> The same flaw exists in the DOE investigation report which did not include interviews with anyone.

<sup>30</sup> There was, at minimum, an appearance of a conflict of interest in that DSS and SSC jointly operate a residential program called Pathways. Michael Savage is on the Board of Directors for Pathways, as is the DSS Area Director, Jay Madigan and Mr. Madigan was involved in the decision not to substantiate the second 51A.

<sup>31</sup> The supervisor's comment is troubling in that the allegations mostly concern abuse, not neglect.

or neglect rests on “reasonable cause to believe” an incident occurred. Reasonable cause is defined as “a collection of facts, knowledge or observations which tend to support or are consistent with the allegations, and when viewed in light of the surrounding circumstances and **credibility of persons providing information**, would lead one to conclude that a child has been abused or neglected.” 110 C.M.R. 4.32 (emphasis added). This relatively low standard of proof, less than a preponderance of the evidence, is because the Department’s mission is to protect children. Adele Lindsay v. Department of Social Services, 439 Mass.789, 800-804 (2003).

Significantly, all of the parents, when interviewed by DSS and the Police, expressed their firm opinion that abuse had occurred. They then repeated this belief when interviewed by DLC attorneys. The parents had existing relationships with the teachers and the aides, in many instance over a period of several years. They appear to have trusted the aides. This stands in stark contrast to their lack of trust in the SSC administration. This distrust resulted, at least in part, from SSC’s failure to routinely inform parents or document incidents of restraint and injury, the failure to notify them about the allegations against Ann Gibbons until after the aides approached the parents, the failure to report the allegations to DSS in a timely manner, the fact that the administration reported allegations with respect to only two of the children and the manner in which they downplayed the seriousness of the allegations. The parents’ assessments of credibility, however, do not appear to have been given any weight in DSS’ analysis, despite the fact that the parents are in a unique position to assess the character and credibility of the people they entrust to teach their children.

Sergeant Marag’s report does not directly address the credibility issue. In the DSS investigation, however, he is reported to have said that he has questions about how the program handled the situation and “that Erin [Royer] appears to be telling the truth as far as what has been going on.” (DSS Report at p. 51). Sergeant Marag’s professional assessment of a key witness’ credibility is not factored into DSS’ final analysis as to whether or not abuse did occur.

In evaluating the credibility of the witnesses, it is important to consider who had the most to lose if the allegations were substantiated. The idea advanced by the administration, as well as by Weinberg and Manson that somehow the aides have fabricated the charges as a means of getting back at the teacher is, simply stated, difficult to believe. It is well known that institutions have a tendency to retaliate against whistleblowers and based on DLC’s interviews and review of the aides’ personnel records, there are numerous reasons to conclude that is what in fact happened in this case.

Mary Ericson has worked at SSC for twenty years as a teacher's aide. DLC's review of her complete personnel file<sup>32</sup> from SSC includes uniformly positive job evaluations during the whole twenty year period of her employment. The only criticism noted is subsequent to the allegations against Ann Gibbons, that she can be difficult to work with and has frequently transferred to different classrooms.<sup>33</sup> When DLC interviewed Ms. Ericson, she clarified that the changes in class assignments were involuntary and due to staff turn-over. She further explained that she never had a problem with staff and had an "ok" relationship with Ann Gibbons prior to the incidents of February 2008. At the age of 65, she has eschewed retirement and continues to work as a teacher's aide for SSC. At the end of my interview with her, in reference to the veracity of the allegations against Ms. Gibbons, she stated "What have I got to gain?" She also remarked "Why didn't they just do the right thing? This should have been handled differently." During the meeting with Ms. Ericson, DLC found her to be credible and sincere.<sup>34</sup>

Annemarie Grant had been working as a teacher's aide in Ann Gibbons' classroom for four years at the time the allegations surfaced. She stated in her interview with me that she had always gotten along with Ms. Gibbons and did not have any sort of vendetta against her. Although she had been uncomfortable with Ms. Gibbons' practice of bending wrists in order to get behavioral compliance with her students, she decided not to make an issue of it. As was the case with Mary Ericson, DLC's review of Ms. Grant's SSC personnel file indicates that she received uniformly positive evaluations and there were no criticisms of her work until after the allegations against Ann Gibbons were brought forward.

The nature of the negative comments in Ms. Grant's personnel file<sup>35</sup> consisted of vague allusions to her having mental health problems, acting in an insubordinate manner to the teacher replacing Ms. Gibbons, giving a child a cup of water while he was in yoga class, being overly emotional about DSS screening out the first complaint, and allegations about a road rage incident. While it is arguably beyond the scope of DLC's investigation to conduct an in-depth review of the allegations, the nature and timing of the allegations certainly supports an inference that they were made in an attempt to discredit the allegations against Ann Gibbons. In addition, Ms. Grant's written responses to

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<sup>32</sup> Ms. Ericson voluntarily provided DLC with a copy of her personnel file and consented to the inclusion of information from the file in this Report.

<sup>33</sup> There was also an allegation that Ms. Ericson and Ms. Grant illegally accessed and printed out Ms. Gibbons' private e-mails. However, there was a shared e-mail ID for Ms. Gibbons and the three aides so there was no reasonable expectation of confidentiality or privacy.

<sup>34</sup> Matthew Engel has worked as an attorney at DLC for 24 years where almost every day he must make assessments about a person's credibility. Based on this experience, he was reasonably confident in his assessment of the credibility of Ms. Ericson and other individuals whom he interviewed.

<sup>35</sup> Ms. Grant voluntarily provided DLC with a copy of her personnel file and consented to the inclusion of information from the file in this Report.

the allegations are logical and credible. Similarly, her discussion of the allegations and her responses during the course of DLC's interview with her were factually credible and her demeanor made it difficult for the DLC interviewer to believe that she, in concert with the other two aides, had fabricated stories about Ms. Gibbons' actions towards the children.

Erin Royer had only been working as a teacher's aide since the beginning of the 2007-2008 school year. In her interview with DLC, Ms. Royer explained that she was quite close to Ann Gibbons and complained that Ericson and Grant acted at times in a hostile manner towards her. Near the end of her DLC interview, Ms. Royer remarked "why would I ally myself with Ericson and Grant who were mean to me in order to make false accusations against Gibbons who had been my friend?"

#### B. Bias of SSC Staff:

The investigative records are replete with statements by SSC staff which strongly suggest biases in expressing their belief that the allegations against Ms. Gibbons were false or asserting questionable facts which, if true, would support their belief that the allegations were false.<sup>36</sup> Some of the examples are as follows:

Weinberg told Sergeant Marag that she spent 85 % of the time in Gibbons' classroom (Report at p. 7).<sup>37</sup> This claim is highly questionable in light of the fact that she was also the nurse for the classroom next door and sometimes got called into that classroom. In addition, she was the nurse for another school building at a different location in Randolph and had to go there whenever called.

Hoffman told Sergeant Marag that 4-5 teachers were always in the classroom (Report at p. 9). Once again, this claim does not appear to comport with the facts as reported by SSC staff. DiCristofaro, the adaptive Physical Education teacher, was almost never in the classroom because she worked out of the gym (Report at p. 13). Hoffman, the Speech Therapist was in the classroom for limited periods of time 2-3 days per week (Report at p. 9) while Earle, the Occupational Therapist, was in and out of the classroom 2 days per week, starting at 11:30 AM (Report at p. 8). Caravello, the Music Therapist, was in the classroom 45 minutes per week (Report at p. 12). Peece, the Physical Therapist, was in the classroom twice a week for 2 hours (Report at p. 13).

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<sup>36</sup> Almost all of these statements were made within a few days of the time that staff first learned about the allegations.

<sup>37</sup> References to specific pages of this DLC Investigation Report are noted in parentheses in this manner.

Gattine told the DSS investigator that the aides seemed to have an agenda and that the allegations were not true (Report at p. 10). It is unclear as to how she could have come to so quick a conclusion about the truth of the allegations.

Peece opined during the course of her DSS interview that the aides were lying and that Gibbons is the best teacher at SSC (Report at p. 13). Again, this appears to be a rush to judgment based on personal allegiances.

DiCristofaro recounted to DSS that Ericson and Grant were mean to Royer, apparently believing that this supported the view that the allegations against Gibbons were false (Report at p. 13). However, as Royer herself explained, she was certainly not motivated to join forces with the other aides to make false allegations against Gibbons.

In addition to notes on the interview with Gibbons, DSS' investigation report included a lengthy e-mail, dated March 28, that Gibbons apparently sent to other SSC staff.<sup>38</sup> In recounting the events of the previous few days, she makes the following comments which raise questions about the objectivity of certain staff.

*Wednesday night I got a call from Mary telling me that Annemarie did talk to her. Mary did not believe and (sic) of it and was wondering what they were up to.*

*Adrienne who is a floating teacher was in the room as an 'ally' as Mary put it.*

*At the end of the day on Thursday, Mary called me and told me not to worry all weekend and that she had talked to some of the professional staff (Gym, OT, Speech, RuthAnne) and that every single one of them said I was not 'rough' and they were definitely up to something.*

*RuthAnne was very angry, because like I said she completely disagreed, but it put her in an awkward position because she is a mandated reporter. All professional staff disagreed and supported me. When I was in my meeting, Dr. Savage was trying to figure out what would turn them against me. I told him that the only thing I could think of was that AnnMarie had gone on a job interview and put me down as a reference...and (I) jokingly said 'I told her all bad things.' ...Dr. Savage totally agreed that this was the motivation.*

*Well, he<sup>39</sup> then proceeded to tell me that he needed to make a claim to DSS because he was afraid that AnneMarie would go to them first.*

On May 3, 2007, Ms. Gibbons sent an e-mail to Mary Scott which appears to

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<sup>38</sup> The addressee line of the e-mail says "redacted." Gibbons starts her e-mail by saying "Hi Guys."

<sup>39</sup> This refers to Dr. Savage.

reflect a negative attitude on Ms. Gibbons' part towards a student and her mother.

*I attached two letters that I got from Ms. A<sup>40</sup> this morning. The lady is totally nuts. I know Danielle has her issues, but Mrs. A should thank her for putting up with B. As you know, she has no way of disciplining Mary and she spends her entire day getting hit by her. Mrs. A just wants to praise and reward B but there is nothing to praise and reward...she is horrible! One of the attachments is about Danielle keeping her in time-out after she had wet herself. That is a behavior, and she was in time out for a couple of minutes...big deal.*

When Logan McHugh's mother was interviewed by DSS, she recounted the incident where an SSC teacher left her a voice mail message on March 28, stating that the parents need to stick behind the teachers. Later that day the teacher left another voice mail message asking about what happened at the parent meeting and she had Ms. Gibbons on the other phone line.

### C. Changes in the Behavior of the Children

All of the children in Ms. Gibbons' classroom were autistic and had extremely limited verbal skills. They were not able to tell us in words what did or didn't happen in Ms. Gibbons' classroom. It is well established that for children with limited expressive language skills, their behavior serves an important communicative function. See e.g., V.M. Durand and E.G. Carr, *An Analysis of Maintenance Following Functional Communication Training* (Journal of Applied Behavioral Analysis, 1992, Winter, 25(4):777-794). Thus, in any investigation of abuse allegations involving non-verbal children, it is critically important to take into account significant changes in behavior. Incredibly, however, DSS seemingly did not take into account the striking parental responses about changes in their children's behaviors for the period of time during which the abuse allegations were made. The parental responses were as follows:

Ethan Goloski: Ethan has become more aggressive over the last few months and doesn't know if it is related to medication (Report at p. 14).

Carmen Maggiore: seen change in Carmen's behavior over the last several months, including regression (Report at p. 15).

John Doe: noticed change in behavior over the last several months in that he has become more emotional. He (the father) had been voicing concerns about Ian's regression for months and sent 2 letters to his school district about John's regression and the need for a different placement. John's psychiatrist from New England Medical Center reported that they had also been concerned for months.

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<sup>40</sup> The actual names of the mother and student have been sanitized by DLC in order to protect their privacy. The mother is referred to as Ms. A and the student as B.

He reiterated that the recent changes in John's behavior are a sign that things are really wrong at school (Report at pp. 17-18).

Sean Quill: a month previously, mother noticed a new behavior. He would grab her hand and signal he wanted her to punch his head but never wanted anyone else to do it. She voiced her concern to their home ABA provider. The behavior stopped after Gibbons left her position (Report at pp. 19-20). The behaviors exhibited by Sean Quill are clearly the most troubling as he appears to have been mimicking what had been happening to him at school. If the aides had fabricated the allegations, it would either be an amazing coincidence that his behavior mimicked the allegations or alternatively, Sean's mother must have conspired with the aides to present a consistent story. Simply stated, neither of these possibilities is credible. It is also apparent that the children were suffering as a result of their experiences at school.

#### D. Injuries to the Children

Parents of five of the children reported that their child received injuries covering the period of time of the allegations:

Carmen Maggiore: Two months ago the mother saw three marks on his body which looked like rug burns (marks were still visible to Sergeant Marag on collarbone and lower back). The mother reported that she and her ex-husband have noticed bruises and skin abrasions on Carmen's arms and spine periodically over the last two months, including one that went from his collarbone up his neck. She is sure that the injuries did not occur when Carmen was with her or Carmen's father, whom she speaks with regularly (Report at p. 16).

Logan McHugh: she also stated that Logan frequently comes home with bruises but added that he is on medication which causes bruising easily. Logan came home one day in late February with what appeared to be four fingerprints on his arm and bruises on his lower back. When she recently picked up Logan from school, the nurse told her that he had been flapping his arms and hit his hands on a counter top, causing a bruise on his hand. The mother stated that she questions if the nurse was telling the truth (Report at p. 17).

John Doe: father stated that John does have bruises but it is difficult to tell how the bruising occurred and whether they are painful (Report at p. 18).

Sean Quill: mother noticed a limp which got worse when he tried to put weight on it. He stayed home from school the next day because he could not walk. She brought him to the pediatrician who said it was a bone bruise. SSC told her that he hurt his foot kicking chairs. Sean also had his lip cut during an incident involving Ann Gibbons (Report at p. 19).

While admittedly there is some ambiguity as to how some of the injuries occurred, it strains credibility to conclude that none of them happened as a result of mistreatment at school. The fact that DSS failed to address the injuries in the final analysis is incomprehensible and certainly reflects a lack of adherence to professional standards.

## **VI. RESPONSE TO SSC'S REBUTTAL STATEMENT**

On November 2, 2009, SSC's attorneys, after reviewing a draft of DLC's Investigation Report, submitted a Rebuttal Statement (Statement). The Statement is appended to this Report. For the reasons explained below, the Statement did not change DLC's findings, conclusions and recommendations.

### **A. DLC's Failure to Interview SSC Staff:**

The Statement criticizes DLC's investigation for failing to interview any SSC staff (Statement at p. 2). It neglects, however, to mention that counsel for SSC refused DLC's request to interview the teachers and other staff. The refusal was ostensibly justified by counsel's view that the DLC investigator had already made up his mind about the validity of the allegations. In reality, the DLC investigator stated that he found the aides' stories to be generally credible but that he might be persuaded otherwise if he was allowed to interview SSC staff. It is disingenuous for SSC and its counsel to not avail themselves of the opportunity offered to persuade the investigator of their position and then criticize the report for not giving SSC's side of the story.

### **B. Reliance on the DSS and DOE Investigation Reports:**

SSC's Statement relies to a large extent on the investigations conducted by DSS and DOE. The DSS investigation, however, fails to come to any conclusion with respect to the ultimate question of whether the alleged abusive actions did in fact occur. Thus, SSC's references to the DSS investigation in support of the proposition that the allegations were false, is illogical and mis-leading. Moreover, a substantial and important part of DLC's report is the analysis of why the DSS investigation was patently inadequate. The DOE investigation was simply a paper review and like the DSS investigation, it demurred on the ultimate question about the veracity of the allegations.

### **C. The Criminal Proceedings:**

DLC made a deliberate decision not to do a critical review of the court proceedings since DLC was not directly involved. John Quill, however, the father of one of the students and an attorney, attended both criminal court proceedings and drafted two affidavits which are appended to this report. In his

second affidavit, Mr. Quill explains in some detail the credible reasons why he believes that the court proceedings resulted in erroneous findings of fact and conclusions of law, especially with respect to the failure of the aides to document their allegations in the behavioral logs. Quill 2 at ¶11.

D. Attempts to Discredit the Behavior and Actions of the Aides:

SSC's Rebuttal Statement predictably tries to discredit the professionalism and character of the three aides, despite the fact that there were no negative comments in their personnel records prior to date when they first reported their concerns about Ms. Gibbons to administrators at SSC. Taking this factor into account, the attempts to discredit the aides are less than convincing.

The Rebuttal Statement places great weight on the fact that the aides did not report the abuse allegations in the students' behavioral logs. The purpose of these logs, however, was to document patterns of problem behaviors for education Teams to discuss. Ms. Gibbons would have, in all likelihood, been the first person to review the entries by the aides. Quill 2 at ¶ 6. During the criminal proceeding in front of Judge Caravan, Mary Scott admitted during cross-examination that the behavioral logs are not an appropriate place to report abuse. *Id.* Moreover, when interviewed by DLC, all three aides stated they had concerns about retaliation at the time they came forward with the allegations and subsequently felt that they did in fact experience retaliation.

The notations in the behavioral logs do raise questions about the veracity of Ms. Gibbon's statements to the DSS investigators. Ms. Gibbons told DSS that she had not restrained a single student since "November or December [2007]." Quill 2 at ¶6. The behavioral logs, however, document 25 instances where Ms. Gibbons restrained students. *Id.* In August, 2008, Linda Auger, the parent of one of the students, requested a copy of her son's behavioral logs, and encouraged other parents to do so. *Id.* In September, 2008, copies of the behavioral logs were given to Sergeant Marag. Shortly thereafter, the Randolph Police Department filed for a Probable Cause hearing. *Id.*

E. The Alleged Inconsistencies of the Aides' Statements and Testimony:

The SSEC goes to great lengths to point out inconsistencies in the aides testimony, some real and some that appear to be very questionable. There are a number of points in the Statement which are misleading and appear to be an attempt to create inconsistencies that do not exist.

From day one, the aides have indicated that they do not recall specific dates of abuse, other than the abuse that occurred during the St. Patrick's Day party in March. Quill 2 at ¶6. The Statement points out inconsistencies such as "each reported different lengths of physical restraints," (Statement at p. 5) and "the length, duration and frequency of physical restraints were different." (Statement at p. 7) The SSC's Rebuttal implies that the three aides' testimony

of multiple instances of abuse, over a period of several months against six different students, should have been close to identical. In actuality, the statements by the aides to DSS, the Randolph Police, and during the criminal hearing and appeal, have been sufficiently similar and consistent that SSC's arguments to the contrary are not persuasive. Taken as a whole, DLC does not believe the inconsistencies create a reasonable inference that the allegations were fabricated.

The Statement attempts to portray Ms. Royer as an intimidated individual who was successfully pressured by Ms. Grant and Ms. Ericson to fabricate allegations against Gibbons and lie in two criminal proceedings. This suggestion does not hold up under a careful examination. Both the probable cause hearing and the appeal occurred well after Ms. Royer had left the SSC and was working for another school district. She had no connection to Ms. Grant or Ms. Ericson at the time of the hearings. When Ms. Royer was interviewed by DLC months after the criminal proceedings, she stated emphatically that she did not fabricate the allegations and was not intimidated by either Ms. Grant or Ms. Ericson.

## VII. CONCLUSION

The failure of DSS to adequately address the issue of credibility stands out as a major omission in its investigation. The weighing of credibility is complex and multi-faceted in this instance. It should begin, however, with an assessment of which parties have the most to gain or lose if the allegations are substantiated.

Unless they had a strong personal vendetta against Ann Gibbons, there is no credible reason why the aides would come forward with false allegations. The record, however, simply does not support the hypothesis of a personal vendetta. Anne Marie Grant had worked in Gibbons' classroom for 4 years and there are no reports or accounts of conflict between them prior to February, 2008. There are also no accounts or reports of conflict between Mary Ericson and Gibbons who had worked together for three years. Finally, Erin Royer reported that she had a close relationship with Gibbons, while Grant and Ericson were mean to her. Royer remarked "why would I ally myself with Ericson and Grant who were mean to me in order to make false accusations against Gibbons who had been my friend?" There is, of course, no credible response to her rhetorical question.

The three aides knowingly risked their reputations and retaliation by SSC staff when they came forward with the allegations. The investigation reports document that they were in fact criticized, dismissed as not being credible, and retaliated against by SSC staff.

The reputations of the SSC staff and the whole Collaborative program were at stake with respect to the outcome of the investigations. If the allegations had been substantiated, SSC management would have faced hard questions about their oversight of their teachers and how they responded to the reports of the aides. It is also conceivable, and perhaps even likely, that school districts would have been reluctant to place students at SSC, resulting in a drop in enrollment and revenue for SSC. In the course of her DLC interview, Mary Ericson reported overhearing several staff talking about their fear of losing their jobs if the allegations were substantiated.

The job security and professional reputation concerns of the SSC staff were both understandable and provide a logical explanation as to why many of them quickly chose to support Ms. Gibbons and to dismiss the allegations made against her. When potentially damning allegations are made against an individual, colleagues of that individual who have much at stake may do everything in their power to convince themselves and third parties that the allegations are false. It explains why staff suddenly began finding fault with the aides' professional and personal integrity after the allegations surfaced. It also provides the answer to Ms. Ericson's question, "why didn't they just do the right thing?"

The parents of all six children reported that they observed behavioral regression and emotional upset during the period of time in question. No reasonable mind can conclude that the parents imagined or fabricated these observations, or that the timing is coincidental. This is particularly true in reference to Sean Quill's attempts to get his mother to punch his head, thereby acting out the abusive actions of Ms. Gibbons, as reported by all three aides. While most of the children's bruises and other physical injuries could be explained for other reasons, the number and timing of the injuries strongly suggests that at least some of them were sustained as a result of SSC staff actions, with Ms. Gibbons being the most likely perpetrator.

When all of the evidence is carefully examined and weighed, there is more than enough to substantiate the allegations of physical and emotional abuse of the six children by Ms. Gibbons, particularly in light of the "less than a preponderance of the evidence" standard enunciated by the Massachusetts Supreme Judicial Court. Adele Lindsay v. Department of Social Services, *supra*. Sadly, the investigations conducted by DSS and DOE failed to come to this same conclusion because they ignored or did not carefully analyze much of the evidence. While all six children are now thankfully placed in safer school environments, other children with disabilities are at risk for continuing abuse when the agencies charged with protecting their welfare conduct inadequate investigations.

## **VIII. RECOMMENDATIONS**

1. SSC should provide training to all of its staff on positive behavior supports, restraint prevention and documentation and reporting of abuse and neglect allegations.
2. SSC management staff should ensure timely written notification to parents of any incidents of restraint lasting more than five minutes, as required by 603 CMR 46.06(1) and (3).
3. SSC should ensure future compliance with the provisions of 603 CMR 46.00 *et seq.* concerning reporting of restraint to the Department of Elementary and Secondary Education.
4. SSC should carefully review the job performance of Ann Gibbons to determine whether her continued employment as a special education teacher is appropriate and whether it presents risks to children in her class.
5. The Commissioner of the Department of Children and Families should order a thorough review of its investigation by an independent agency or individual.
6. The District Attorney should review the process and outcome of the criminal complaint.
7. The Office of the Child Advocate should convene a workgroup which includes top level managers from all of the state agencies for children to develop standards to improve abuse investigations involving children with severe disabilities.

While DLC understands that SSC does not agree with the findings and recommendations in this Report, we believe that the balance of the credible evidence strongly supports our conclusion that abuse of the students did take place. We acknowledge that SSC staff, for the most part, are dedicated professionals who work diligently with a challenging group of students. It is not our intention to denigrate either the staff or their programs. We hope that this Report will act as a catalyst for SSC, state agencies and other interested parties to critically reflect on how to respond to allegations of abuse of our most vulnerable children in an objective and careful manner.

### **AFFIDAVIT OF JOHN QUILL**

1. My name is John F. Quill. I reside in Norwell, Massachusetts.
2. I am the father of three children, including my son, Sean Quill, age 11. Sean attended the South Shore Educational Collaborative (SSEC) from 2002 until 2008.
3. This Affidavit is written in connection with the allegations of physical abuse by Ann Gibbons against six Collaborative students, including my son Sean. The events occurred in the Collaborative classroom at the Lyons school in Randolph, MA.
4. I write this affidavit to give an account of my observations of the events related to the abuse, my son's change in behaviors as a result of the abuse, the investigation of the abuse by the Mass. Department of Children and Families (DCF, formerly DSS) and the Randolph Police Department, the probable cause hearing and appeal, and related conversations and observations over the past 16 months. In particular, I have drawn conclusions about the credibility of the people involved in the allegations, investigation and probable cause process. As explained in detail below, I am convinced that Ann Gibbons abused my son and the other students in her classroom.
5. My wife and I first learned of the allegations of abuse on March 25, 2008. We were informed through a phone call from Mary Scott, Director of the SSEC Mini School. Mary Scott told us that Ann Gibbons was accused of two instances of physical abuse, one where she pushed Sean to the floor in the classroom, and one against another student in the school (which we later learned was an allegation against Ethan Goloske). We were told that the SSEC was self-reporting the allegations to DSS.
6. My initial reaction was that this was likely a misunderstanding. We always thought that Ann Gibbons was a good teacher. She has a no-nonsense style which was good for our son. I assumed that either the aides had seen something that they assumed to be more rough than necessary, or that Gibbons had reacted to an aggression from Sean more rough than necessary. Sean can be aggressive towards himself and others, and at times needs to be restrained.
7. The following day, I had to pick up Sean at the SSEC classroom at the Lyons school in Randolph. When I arrived, I was told by the nurse, Ruth Ann Weinberg, that DSS had "Screened out" the allegations. Weinberg explained that this meant that DSS determined the allegations were not credible. At the time, I was naïve about the DSS process, and assumed this was investigated and dismissed as not credible. I later learned that DSS had screened out the case without contacting any of the aides who reported the abuse. They only spoke with the Collaborative who had self-reported the abuse.
8. The day after speaking with Weinberg, we received a second call from the SSEC. They set up a parent meeting for the following day, March 28. At the March 28 meeting, we first began to learn about the severity of the allegations against Gibbons.
9. The March 28 meeting was attended by parents of the six children, and by Michael Savage, Director of the SSEC; Mary Scott, Director of the SSEC Mini School, and

Maureen Gattine, Assistant Director of the SSEC Mini School. This meeting was very contentious. We learned that there were multiple allegations against Gibbons, more than the two instances that were first reported to us on March 25. We also were told by Michael Savage that the SSEC did not have a restraint policy. Finally, we learned that the aides had printed out emails written by Gibbons to the SSEC, which were disparaging to the students and some of the outside professionals that worked with the SSEC students. Mary Scott admitted that she did nothing at first when the allegations were reported to her, and the SSEC waited several days before acting on the aides' information. The end result of this meeting was that the SSEC requested a full investigation from DSS. When this meeting ended, I was still unsure if I believed the allegations against Gibbons.

10. On the afternoon of March 28, after I returned to work, I received a call from two of the aides, Annemarie Grant and Mary Ericson. I characterize this phone call as bizarre. I had only spoken with the aides briefly on the few occasions that I dropped Sean off or picked up Sean at school, and did not know them well.
11. When Grant and Ericson called me at my office, they thought they were calling my home number. When my secretary picked up the phone, either Grant or Ericson thought she was my wife, and started telling my secretary about the abuse that Gibbons had committed against Sean. My secretary was a bit taken aback by the call, and told me there was someone on the phone from school that was confusing her with Julie. I picked up the phone, and again spoke with either Grant or Ericson, who started telling me that Sean was abused by Ann, and started to give me the details on how Sean was abused. I asked why they waited so long to report the abuse, and she said they were afraid of losing their jobs. I can't remember if I was speaking with Grant or Ericson, but whoever I was speaking with handed the phone to the other one, who again told me that Sean was abused by Gibbons and that they were afraid for him.
12. At this point, based on our background with Gibbons and the bizarre nature of the call from Grant and Ericson, I had a hard time believing the allegations.
13. Some time later, Julie and I were interviewed at home by Brendan Sullivan of DSS. After this interview it became clear that there was truth to the allegations. There were two reasons why I believed the allegations after the DSS interview. First, Sullivan relayed an incident which was told to him by Grant. As retold by Sullivan, Sean was banging his head against a desk, and Gibbons was holding her fist behind Sean's head so that the result was that Gibbons' fist struck Sean's head when he rocked back. We found this allegation to be hard to believe, because Sean did not bang his head against objects. Sullivan said he would repeat the allegation to Grant to get her reaction. He called a few days later and said as soon as he repeated the allegation to Grant, Grant told him that Sean was rocking his head but not banging it against the desk. Sullivan did not question Grant, he simply relayed the story as he wrote it, and according to Sullivan, Grant corrected him immediately. The head rocking is consistent with Sean's behavior.
14. Second, Sullivan relayed another allegation against Gibbons. When Sean gets upset, he sometimes will bang his fist against the side of his head. The allegation was that Gibbons went up to Sean, and in "hand-over-hand" style, took his hand on her forearm, banged her

fist into Sean's head, and said, "let me help you do that." This was the "Eureka" moment for me that convinced me that the allegations were true. Several weeks earlier, Sean was taking our arm with his hand, and having us bang our hand against his head. We refused to do this, and were very confused as to why he would be doing this. We relayed this to Sean's two ABA therapists who work in our home, but did not relay this information to school. The aides would have no idea that Sean was exhibiting this behavior at home. I find no other explanation for Sean's behavior other than he was imitating what was happening at school.

15. At some point after the DSS investigation, the Randolph Police Department began a criminal investigation. Sgt. Anthony Marag came to our home and interviewed Julie. I was not home for this interview. At this interview, we learned that Gibbons denied each and every allegation against her, stating that nothing like this happened. More importantly, we learned that Gibbons stated that she had not restrained a single child in the classroom since November or December, 2007.
16. I found both of these statements hard to believe. First, as I mentioned above, my initial reaction was that this may have been a big misunderstanding. Either the aides saw something out of the corner of their eye that seemed worse than it was, or that Gibbons reacted in the heat of the moment a bit more rough than she should have. For her to deny the allegations outright meant that she was accusing all three aides of lying about the allegations. I could find no reason at that time why all three aides would make this up. In addition, Sean can have aggressions, and sometimes aggresses toward himself or others. I would expect Sean to have to be restrained from time to time. To go four or more months without having to restrain Sean, or any other child in the classroom, was simply not believable.
17. Regarding restraints, Linda Auger (the parent of another SSEC student) notified all of the parents to let us know that the school kept behavioral logs on each student. Auger asked us to contact the SSEC to request a copy of our child's behavioral log, which most of the parents did. The behavioral logs indicated that Sean had been restrained twice during this time period, including one 12-minute restraint. There were a total of approximately 25 restraints from November 2007 to March 2008 reported in the behavioral logs among the six students. Either Gibbons lied to Marag, or the behavioral logs were completely fabricated. The teacher is ultimately responsible for the behavioral logs, and they were in the custody of the SSEC, so I find it extremely difficult to believe that the logs were fabricated.
18. At the Probable Cause (PC) hearing on October 20, the severity of the allegations first began to take effect. We heard the aides describe the allegations against five of the six students. The description of the allegations from the aides was similar. On the other hand, the "professionals" in the classroom all testified that they never saw any abuse; that Ann was a great teacher; and that all of the students had improved greatly over the course of the school year. Ruth Ann Weinberg, the nurse, also testified. I will get to her testimony in a moment. After hearing multiple versions of the incident with Sean's cut lip and injured leg, I am convinced that Weinberg has lied about this incident.

19. First, I want to discuss the testimony of the “professionals” in the classroom regarding the lack of abuse. Everyone took the stand and said that it was not possible that Ann could have done this. At the same time, a number of the Collaborative employees had positive experiences working with Mary Ericsson and Annemarie Grant. Yolanda Earle told DSS that Grant was the best aide that she worked with. I don't think they sat on the witness stand and told outright lies, I just think their long-term relationship with Ann clouded their ability to take an unbiased view of this.
20. Regarding the testimony and statements of Ruth Ann Weinberg, the SSEC nurse, I find her statements to be completely non-credible. We have heard so many different versions of what happened with Sean's cut lip, that I don't even know which of the lies is least believable. By way of background, we received a call from school in early March, because Sean's lip was bleeding and they could not get the bleeding to stop. They asked us to come to school to pick him up because of the bleeding. The story that we were told was that Sean was upset and tried to bite Gibbons. When Gibbons pulled her finger away, she cut Sean's lip with the side of her fingernail. When Julie picked Sean up, she was told by Weinberg that the cut should have taken 2 or 3 stitches, but could not be stitched because it was in his lip.
21. By the time Julie brought Sean home, he had a noticeable limp on his left side. Julie called Gibbons that afternoon, and again the next morning, to ask about his leg. Gibbons stated twice that she had no idea what happened to his leg. By the end of that evening, he could not put any pressure on his left leg, and I had to carry him up to bed. Julie took Sean to the pediatrician the next morning, and they found no severe damage to his leg.
22. At the PC hearing, Stg. Marag testified that he interviewed Weinberg twice about the incident with Sean's lip. In the second interview, Weinberg changed her statement about whether or not Sean had bit Gibbons. When Marag asked her about the difference in her statements, she asked if she could read her earlier statement that she had given to Marag. I find it very hard to understand why Weinberg would need to review her earlier statement to Marag when she was asked about it a second time. This was not a routine incident, and Weinberg had to write an incident report, so it seems very strange that she would tell two different versions of the event and ask to see her earlier statement.
23. At the PC hearing and at the appeal before Judge Cadavan in January 2008, Weinberg again changed her statements. At the PC hearing, Weinberg said that Sean bit Gibbons so hard that “Gibbons finger turned blue.” In her incident report, she had written that Sean “started to bite” Gibbons finger, but no mention that he actually bit her, or that her finger was blue. At the appeal, Weinberg said that Sean had a “minor laceration”, and the bleeding could not be stopped only because it was on Sean's lip. This contradicted her statement to Julie on the day of the injury that the cut should have taken 2 or 3 stitches to close.
24. Finally, I find the entire story about Sean's cut lip to be impossible to believe. Again, the story is that Sean bit, or tried to bite, Gibbons finger. When she pulled her finger away, she cut Sean's lip with the side of her fingernail. Weinberg has said on multiple occasions that she monitored the fingernails of all of the classroom teachers and aides,


and would trim fingernails if they were too long so that the students would not get hurt. Moreover, I have tried on many, many occasions, to cut my own lip in this manner. I have found it simply impossible to pull my finger out of my mouth and cut my lip. After five or six times in the exact same spot, I can draw blood, but certainly cannot draw enough blood to cause prolific bleeding as Sean had suffered. I invite anyone reading this affidavit to try to cut their own lip in this manner and see the results.

25. Regarding Sean's leg, no one was ever able to explain why he was limping so badly that he could not put any weight on his left leg. I find it odd that his leg was injured on the same day that his lip was cut. Gibbons' attorney, in the appeal, concluded that Sean hurt his leg by kicking his chair. This is very hard to believe. Sean, when upset, will sometimes kick the legs of his chair. He has never hurt his leg to the point where he was limping and could not put any weight on his leg.
26. Regarding the credibility of the aides, over time I have found their statements and their testimony to be credible. Grant and Ericson are not the most polished witnesses, and it would be easy to dismiss them because they sometimes got agitated, and are not the most articulate speakers. However, I have found that Grant, Ericson and Royer have been consistent in their telling and retelling of events. Moreover, they have been attacked repeatedly by the SSEC and by Gibbons' attorney. If they were inclined to completely make up these allegations, I think they would have given up a long time ago. They continue to be supportive of our children, and want to see Gibbons and the SSEC be rightfully punished.
27. In order to believe Gibbons, one must draw the conclusion that the three aides collaborated to make up fantastic lies about Gibbons and her abuse of the students. This makes no sense for several reasons. First, according to multiple accounts by the SSEC, Grant and Ericson were mean to Royer, and they did not get along with Royer. Why Royer would decide to go along with false allegations makes no sense. Second, I see no motivation for the aides to lie. Gibbons' attorney tried to make Ericson out to be a problem employee, and accused Grant of having a vendetta against Gibbons because of an issue with a job reference and because she complained about health insurance co-payments two years before the allegations. Gibbons' attorney tried to paint the aides as problem employees who fabricated these allegations. At the end of the day, I don't see how the SSEC can employ people for 25 and four years, respectively, if they were the problem employees that Gibbons' attorney made them out to be. Moreover, I see no reason at all for Royer to suddenly side with Grant and Ericson to completely fabricate these allegations against Gibbons. Yolanda Earle stated that Grant was the best aide at the SSEC. Finally, Mary Grant was one year away from retirement after 25 years, so I can't imagine why she would make bring this upon herself if it were untrue.
28. In summary, there are many, many events, statements, and evidence that do not add up.
29. First, to believe Gibbons, one has to conclude that the three aides completely fabricated this story. No one has given a plausible explanation as to why they would do this. In particular, it makes no sense that Erin Royer, who was treated poorly by the other two

aides according to many people at the SSEC, would suddenly conspire with the other aides against Gibbons.

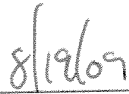
30. Second, Gibbons stated that she had not restrained a single student from November/December 2007 until March 2008. This is contradicted by the SSEC behavioral logs, which show about 25 instances of restraint during that time frame.
31. Third, Gibbons' attorney painted completely contradictory pictures of the classroom. He repeatedly (repeatedly, repeatedly) described our kids as one degree short of wild animals. He kept stating, "isn't it true that Sean [and other students] bites, kicks, scratches, head butts and pinches?" First of all, Sean does not head-butt, but does exhibit these other behaviors at times. More importantly, if Gibbons taught in a classroom full of students that exhibited these behaviors regularly, how is it possible that she could go four or five months without restraining a single child?
32. Conversely, Gibbons' attorney also asked the SSEC witnesses about the atmosphere in the classroom. Universally, the witnesses said that Ann's classroom was calm and orderly, and that she was always calm and reserved. This contradicts the picture of our animal-like children that Gibbons' attorney also portrayed. I have no idea how someone can make these completely contradictory views, and not be called on it.
33. Finally, the aides have been put through Hell throughout this ordeal. They have been treated horribly by the SSEC, and been accused of being problem employees, disgruntled employees, a racist, liars, and conspirators. I suspect that if they were making all of this up, they would have given up a long time ago, because no one deserves the abuse that they have gone through.
34. All of these events have led me to conclude, without a shadow of a doubt, that Ann Gibbons physically abused my son, and the other students in the classroom.
35. When the allegations against Gibbons first came out, I thought it wasn't possible because we had sat with Gibbons in IEP meetings, and at that time, the Norwell school system was the enemy and we were on the same side as the Collaborative. I always thought that Ann was a good teacher with a no-nonsense style, which is definitely the way to work with Sean. When the story first surfaced, we were only fed a small part of the story by the Collaborative, and thought that, at worst, it was a big misunderstanding. We actually thought about calling Gibbons to give her our support. Two things caused us to hesitate. First, we wanted to proceed cautiously without rushing to judgment and taking sides. Second, we thought, "why isn't she calling us?" If I were accused of abuse, the first thing I would do is call the parents to deny the allegations. To this day, we have never heard a word from her other than a brief exchange after the PC decision.
36. Finally, I also would like to note that I filed a Public Records request to the SSEC, requesting a number of documents that qualify as public records that are related to this case. I attach my request, the response from the SSEC's attorney, and my response to the attorney, which was written at her invitation. The SSEC has completely stonewalled me with this request. If truly none of these events occurred, I don't understand why they are

so reluctant to share public records about this case. I have filed an appeal to the Public Records Division of the Secretary of State's office.



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John F. Quill



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Date

## **AFFIDAVIT OF JOHN QUILL**

1. My name is John F. Quill. I reside in Norwell, Massachusetts.
2. I am the father of three children, including my son, Sean Quill, age 11. Sean attended the South Shore Educational Collaborative (SSEC) from 2002 until 2008.
3. This Affidavit is written in response to the South Shore Educational Collaborative's Rebuttal Statement to the DLC's draft investigative report, regarding allegations of abuse by Ann Gibbons against students in the SSEC Mini School in February and March 2008.
4. I write this affidavit to give an account of my observations and knowledge about the case, which will refute a number of mischaracterizations, misstatements of fact, and questionable conclusions in the SSEC Rebuttal Statement. The SSEC's Rebuttal Statement continues to perpetuate a number of falsehoods and inaccuracies that have been asserted throughout the investigation by the Department of Social Services (DSS, now Department of Children and Families) and the Randolph Police Department, and the criminal proceedings that followed. Moreover, this Rebuttal Statement contains new conclusions and allegations that are, at best, intellectually dishonest and do not withstand scrutiny.
5. As explained in my prior affidavit, I am convinced that Ann Gibbons abused my son and the other students in her classroom. The SSEC's Rebuttal strengthens my belief that this abuse happened.
6. The Rebuttal Statement, in numerous places, clings to the idea that the abuse did not occur because it was not reported in the students behavioral logs. This argument lacks merit, and was refuted by the testimony of the Director of the SSEC Mini School, Mary Scott. During the appeal before Judge Cadavan, Ms. Scott admitted during cross examination that the behavioral logs are not an appropriate place to report abuse. It is surprising that the Collaborative clings to the idea that the abuse did not occur because it was not reported in the behavioral logs, in light of the following facts:
  - Mary Scott, Director of the SSEC Mini School, admitted that this was not an appropriate place to report abuse during the appeal.
  - The behavioral logs are reviewed by the classroom teacher to report patterns of behavioral issues during Team meetings. In effect, the aides would have been reporting the teacher's abuse directly to the teacher herself. We have attended approximately 10 Team meetings and IEP meetings while Sean was a student at the SSEC. During these meetings, the classroom teacher would summarize instances of self-injurious behavior and restraints from the behavioral logs.
  - The behavioral logs show over 25 instances of restraint against students in Gibbons classroom. Gibbons stated to the DSS investigator that she had not restrained a single student since "November or December [2007]." This statement was contradicted by the behavioral logs. The SSEC wants to use the

fact that the abuse was not reported in the behavioral logs to serve as conclusive proof that the abuse did not happen. Yet, the fact that the behavioral logs document over 25 instances of restraint, which contradicts Gibbons' statement to the Randolph PD, is completely ignored by the SSEC. The Collaborative cannot point to the behavioral logs as conclusive proof on the abuse issue if they are going to ignore it on the issue of restraint and Gibbons' false statement to police.

- Finally, the withholding of the behavioral logs are a large part of the reason why there was a delay by the Randolph PD in filing a criminal complaint in this case. The allegations came to light in late March, 2008. In April, 2008, the Randolph PD began their investigation. In June, 2008, the Randolph PD issued their report. In late June 2008 DSS finally sent a copy of their investigative report to me, approximately two months after the report was concluded, and after approximately five requests to receive a copy of the report. In the DSS report, Gibbons was quoted as saying she had not restrained a child since "November or December [2007]." At that time, the parents noted a large number of inconsistencies in the statements from the SSEC employees to the Randolph PD and to DSS.
  - In late July 2008, Linda Auger, the parent of one of the students, requested a copy of her son's behavioral logs, and encouraged other parents to do so. In August 2008, the behavioral logs were presented to Sgt. Marag at the Randolph PD, which documented that Gibbons lied when she had said there were no restraints for a 3-4 month time period. In September 2008, the Randolph PD filed a criminal complaint. The parents were told by Sgt. Marag that he now had enough evidence to file a complaint, based on the inconsistencies between Gibbons' statement and the behavioral logs.
  - It is ironic that the SSEC withheld crucial evidence in this investigation, in that they did not release the behavioral logs. When forced by parents to produce the behavioral logs, the SSEC then tried to spin the logs as proof that the abuse did not happen because the abuse was not documented in the logs; and further ignored their own delay in producing the logs when blaming the Randolph PD for the delay in filing charges.
7. The Rebuttal focuses disproportionately on the alleged inconsistencies of the Aides' testimony. The SSEC goes to great lengths to point out inconsistencies in the aides testimony, some real and some that appear to be made up of whole cloth. There are a number of important points that must be addressed, including some items in the Rebuttal Statement that are patently false and appear to be an attempt to create inconsistencies that do not exist.
- The aides have, from day one, indicated that they do not recall specific dates of abuse, other than the abuse that occurred during the St. Patrick's Day party in March. The Randolph PD requested that dates be listed in the police report, and asked the aides to give their best estimate on when events occurred. The aides

have always maintained that they do not recall specific dates, and to use this as a basis for alleging inconsistency is dishonest.

- The Rebuttal Statement points out inconsistencies such as “each reported different lengths of physical restraints,” and “the length, duration and frequency of physical restraints were different.” Apparently, the SSEC’s position is that the three aides testimony of multiple instances of abuse, over a long period of time, against multiple students when the aides were either not all present, or at different vantage points, had to match exactly, word-for-word. In summary, the statements by the aides to DSS, the Randolph PD, and during the hearing and appeal have largely told the same story regarding the individual instances of abuse that occurred in the classroom. While it is acknowledged that there are some inconsistencies among the testimony and statements of the aides, they have told and retold the same stories in the same manner throughout this year-long process.
- The Rebuttal Statement contains a patent falsehood about Royer’s testimony during the Probable Cause hearing. The summary under the caption, “Testimony of Ms. Royer” begins as follows: “Ms. Royer’s testimony was similarly inconsistent. She testified that the length, duration and frequency of physical restraints were different than what Ms. Ericson reported.” This statement is completely false. Ms. Royer’s testimony was substantially limited by Magistrate Bloom. Mr. Bloom asked if her testimony would be similar to Ms. Ericson’s and Ms. Grant’s. When Ms. Royer answered “yes,” Magistrate Bloom asked that she not recount the same events. To use this hearing to support the SSEC’s allegation that Royer’s testimony was inconsistent is both false and misleading.
- The Rebuttal Statement attempts to paint Ms. Royer as a gullible, intimidated individual who was, in effect, forced by Ms. Grant and Ms. Ericson to fabricate allegations against Gibbons and lie in two criminal proceedings. This implication defies logic. Both the probable cause hearing and the appeal occurred well after Ms. Royer had left the SSEC and was working for another school district. She had no connection to Grant or Ericson at this point. The idea that she was intimidated to lie during these hearings, and during the interview with the DLC, is without merit and requires a leap of logic that is difficult to fathom. The SSEC continues to fail to come up with a credible reason why each of these three aides would fabricate these allegations against Gibbons.
- The Rebuttal Statement makes several unsubstantiated allegations that the aides, “lied under oath.” While there are some misstatements and minor inconsistencies in their testimony, it is a stretch to characterize these misstatements as “lies under oath.” In fact, the Rebuttal Statement quotes Mary Scott, who testified in the appeal that Julie Quill told her, “I give my son a bath every night.” We do not give Sean a bath every night, and Julie has never made such a statement to Mary Scott. By the SSEC’s logic, Mary Scott, “lied under oath.” In fact, Mary Scott is confusing Julie Quill with another parent and made an honest mistake. Rather than make an allegation that Mary Scott “blatantly lied under oath,” we submit that Mary Scott’s recollection was not 100%, as was the case with the aides when

they could not recount exact dates and durations of abuse over a period of several weeks.

8. The Rebuttal alleges that there could have been a “Possible misperception” by Ms. Royer. The SSEC also clings to the idea that Ms. Royer allegedly told Mary Scott that this was a “possible misperception.” With the exception of the incident with Sean Quill where he was sent home with a bloody lip, the SSEC denies that any of these events ever happened. It is hard to understand how the SSEC can deny that any of these events took place, and also argue that the abuse could have been a “possible misperception.”
9. Regarding the alleged lack of physical evidence, this is incorrect. The Rebuttal Statement cites a “lack of physical evidence of any abuse whatsoever as reported by the students’ physicians and the students’ parents prior to the allegations of abuse.”
  - The allegation that there is no physical evidence is untrue, although this is the fault of DSS. My son, Sean Quill was taken to his primary care physician because, on the day that he was sent home with a cut lip, he had a limp that was so severe he could not put any weight on his leg. My wife Julie called the SSEC twice to ask about the injury to Sean’s leg, and took him to his physician the next day to be examined.
  - The final DSS report completely omits the interview of my wife and me, which was conducted by Brendan Sullivan of DSS. During this interview, we reported that Sean was taken to the physician to have his leg examined. When asked about this omission, the DSS did not amend their report, but rather sent a copy of the interview to us and asserted that this interview was considered in the final DSS report. However, our interview does not appear anywhere in the DSS investigative report.
  - Moreover, DSS alleges that they contacted the pediatricians of each of the students in Gibbons’ classroom. However, Sean’s physician was never contacted by DSS: Dr. David Irons of Quincy Pediatric Associates told Julie and me that DSS never contacted him or anyone else in his practice about Sean Quill.
10. The Rebuttal alleges that during the appeal, the aides “were overheard specifically discussing their testimony and making threatening and harassing remarks to the SSEC staff.” This allegation is untrue, and it is difficult to fathom how the Collaborative or their attorneys can even make such an allegation based on the setup of the courthouse.
  - During the appeal, the witnesses who were scheduled to testify were sequestered. My wife Julie was scheduled to testify, and sat outside a second-floor courtroom in Quincy District Court. She sat with the aides and with Sgt. Marag, all of whom were also sequestered. The other SSEC employees who were going to testify were also seated outside in the foyer. Julie, the aides, and Sgt. Marag were seated around a bench on one side of the foyer, and the other SSEC employees were on the other side of the foyer, approximately 50-75 feet away. It is hard to

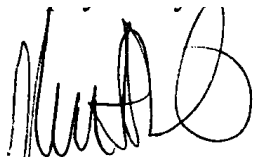
understand how the SSEC could be aware of the conversations being held by the aides.

- Moreover, Sgt. Marag was with the aides and Julie Quill during this time. Sgt. Marag is an experienced police sergeant who has testified on multiple occasions. He certainly understand the concept of being sequestered. It is difficult to imagine that he would allow the aides to discuss their courtroom testimony or make “threatening and harassing remarks” to the other SSEC employees.

11. Finally, the fact that the Magistrate did not find probable cause does not change my opinion that the students were physically abused by Gibbons. There are a number of inconsistencies in the defense of Gibbons that I don’t think were drawn out by the police prosecutor, and were not given weight by Magistrate Bloom. For the record, I don't blame the police prosecutors, as I believe the Randolph P.D. put forth their best efforts. However, I do feel that the District Attorney’s office should have filed criminal charges so that an experienced prosecutor could have handled this case. I feel that the prosecution and the magistrate did not focus on a number of key issues, including:

- The lack of attention given to the custody of the behavioral logs, and the fact that Gibbons was ultimately responsible for keeping the behavioral logs.
- The conclusion that the abuse didn't happen because it wasn't documented in the behavioral logs. According to this logic, the behavioral logs must be an accurate depiction of what happened in the classroom. Yet, the fact that Gibbons said that she hadn't restrained a child since November or December, which was completely contradicted by the 25 or so documented instances of restraint in the behavioral logs, was not addressed.
- The aides never knew whether or not they were mandated reporters, and never received training on how to report abuse. Despite the fact that the SSEC did not train the aides on reporting, the aides were discredited because of the way they reported the abuse.
- The defense attorney presented completely different depictions of the classroom. He had a number of people testify about how calm the classroom environment was when Gibbons was teaching. Yet, he also repeatedly described the students’ behaviors, that they would, “kick, bite, punch, scratch and head-butt.” It is difficult to believe the testimony describing the calm nature of the classroom when Gibbons attorney repeatedly described the students’ aggressiveness as a regular part of their behaviors.

12. In summary, the SSEC's Rebuttal continues to make allegations that defy logic, have no basis in fact, and/or generally lack credibility. There is nothing in this Rebuttal that changes my opinion that my son Sean and the other students in the classroom were physically abused by Ann Gibbons.

  
\_\_\_\_\_  
John F. Quill

12/22/09  
\_\_\_\_\_  
Date

# **SOUTH SHORE COLLABORATIVE'S REBUTTAL STATEMENT TO THE DLC INVESTIGATION INTO THE 2008 ALLEGATIONS OF ABUSE**

## **I. INTRODUCTION**

In late March 2008, an employee of the South Shore Educational Collaborative (hereinafter "SSEC") alleged that another SSEC employee had abused two (2) students. SSEC filed a 51A with the Department of Social Services, now called the Department of Children and Families (DCF). DCF screened out the 51A filed by the South Shore Educational Collaborative, finding that the allegation of abuse was unsubstantiated under DCF regulations. Because the complaining employee made further allegations of abuse, SSEC requested on March 28, 2008 that DCF engage in a more comprehensive investigation of all the allegations of mistreatment, abuse and/or neglect of students. SSEC cooperated fully with the two DCF investigators by making all employees associated with the program available to DCF, and by providing any requested documentation.

After a complete investigation of all allegations by DCF staff, a report was issued by DCF that there was no reasonable cause to support allegations of abuse and/or neglect by SSEC staff. More than ten (10) employees were interviewed, and the only conclusion that could be drawn from this investigation is that the initial claims of abuse and neglect were misstatements and distortions of the truth.

In addition to the DCF investigation, the Department of Elementary and Secondary Education (DESE), then Department of Education (DOE), conducted its own investigation and similarly concluded that the allegations of abuse failed to contain an evidentiary basis.

This original conclusion by DCF is supported by events subsequent to the DCF investigation. Since that time, both a clerk-magistrate and a judge held two court hearings at which more than ten (10) witnesses testified, subject to direct and cross examination. At the conclusion of both hearings, both the clerk-magistrate and the judge concluded that the allegations of abuse were not credible, and would not permit a complaint to issue.

SSEC agrees with the findings of DCF, DESE, the clerk-magistrate and district court judge that the allegations of abuse are not credible based upon the highly contradictory testimony and statements provided by Ms. Grant, Ms. Ericson, and Ms. Royer; the aides' failure to inform the parents of the allegations of abuse despite ample opportunity to do so through daily behavior logs and employment within the home of one of the students in question; the lack of physical evidence of any abuse whatsoever as reported by the students' physicians and the students' parents prior to the allegations of abuse; Randolph Police Department's failure to pursue this matter in a timely manner; Ms. Gibbons' personnel record as a teacher; and consistent testimony by the several personnel at SSEC including the Program Director, School Nurse, Occupational Therapist, Speech Therapist, Physical Therapist, Adaptive Physical Education teacher,

teacher's aide from the adjoining classroom and Program Director of the adjoining classroom. SSEC has been guided not by any desire to marginalize or criticize the aides who reported the allegations of abuse, but by the greater weight of evidence in concluding that the allegations are meritless.

DLC failed to consider significant information during its investigations. The investigative report states that the investigations of DCF, DESE, and the Randolph Police Department were reviewed. However, there is no mention of the clerk-magistrate's written decision, attached hereto as Attachment 1, or the subsequent appeal to the district court judge. It is unclear what weight, if any, DLC gave to the fact that this matter had been decided by a clerk-magistrate and district court judge. DLC fails to list individuals who provided testimony in these proceedings. There were two additional witnesses who testified during the appeal, both of whom were individuals in the adjoining classroom next to the class where the incidents of abuse allegedly took place. These individuals are not listed in the report and it is not clear that their testimony was considered by DLC. Lastly, while DLC interviewed all three aides, there were no interviews conducted with SSEC staff. During this process, the DLC investigator made statements to SSEC's counsel that suggested that interviews with SSEC staff "might be able to change his mind," suggesting that he had made determinations about the validity of the aides' allegations prior to completing the investigation. Subsequently, neither Ms. Gibbons nor any other staff from SSEC were interviewed during this process. This is a departure from all other investigations into this matter as historically, the investigators have considered all sides of this complicated matter. Thus, DLC's conclusions must take this deficiency into account. SSEC believes the entire investigation contains overt bias and offers the following in rebuttal of the investigator's findings.

## **II. EVIDENCE AND INFORMATION NOT CONSIDERED BY DLC**

The reporting of the allegations of abuse has been anything but consistent. Therefore DLC's reliance on the aides' interviews without consideration of their testimony, particularly on cross examination, is less than comprehensive. During the Clerk's Hearing and subsequent appeal, the aides' testimony was inconsistent and contradicted by documented evidence in addition to the testimony of other SSEC personnel. However, the inconsistency in the reporting of these allegations started much sooner than the Clerk's Hearing. From the first report of the allegations by Ms. Grant, the information reported by all three aides has significantly changed. The initial reporting of allegations of abuse against two (2) students in the class became allegations of abuse of six (6) students in Ms. Grant's letter to the Collaborative, allegations of five (5) students at the Clerk's Hearing by Ms. Grant and Ms. Royer's testimony, and six (6) students by Ms. Ericson's testimony despite conflicting testimony by Ms. Royer and Ms. Grant. The visual demonstration of the "wrist bending" reported by all three aides was demonstrated differently by two of the aides during the Clerk's Hearing. The timeline of abuse as reported by the aides has constantly changed with each additional report providing a different frequency and severity of abuse. At no point has any of the aides provided a consistent or accurate timeline of the allegations of abuse. The testimony of the aides changed between the initial report, Ms. Grant's formal letter to the

Collaborative, the Clerk's Hearing, and the appeal to the district court judge, making it difficult to assign probative value to their allegations.

### Initial Report

It is undisputed that Ms. Grant spoke to Ms. Scott, Program Director, on March 18, 2008 to discuss the allegations of abuse by Ms. Gibbons. As Ms. Scott testified during the Clerk's Hearing and subsequent appeal, Ms. Grant reported that Ms. Gibbons was engaging in abusive behavior towards students in her class. Specifically, Ms. Grant offered that there were incidents of abuse against two students in particular: Sean Quill and Ethan Goloski. When Ms. Scott asked for specific dates of the alleged abuse Ms. Grant could not provide these details. Ms. Scott testified that Ms. Grant reported that Ms. Gibbons engaged in "wrist bends" to gain compliance of students, provided inappropriate snacks to students, allowed an inappropriate fire drill, and failed to provide enough field trips to her students. When Ms. Scott asked Ms. Grant when these alleged instances of abuse occurred, Ms. Grant reported that these events occurred in February 2008, after the school's vacation. Ms. Scott asked Ms. Grant when these allegations occurred during the day and whether or not it was happening when the specialists were in the room. Ms. Grant stated that the abuse did not happen when other specialists were in the room. Ms. Scott asked specifically about the afternoon of March 18<sup>th</sup> and whether Ms. Grant thought the students would be safe as Ms. Earle would be in the classroom that afternoon. Ms. Grant stated that the students would be safe. Unbeknownst to Ms. Grant or Ms. Gibbons, Ms. Scott spoke with Ms. DiChristofaro, the Adaptive Physical Education teacher, and asked her to watch Ms. Gibbons' behavior specifically to see whether she was engaging in any inappropriate conduct with her students. As Ms. DiChristofaro testified during the Clerk's Hearing and subsequent appeal, she witnessed no inappropriate behavior by Ms. Gibbons.

### Ms. Grant's letter to SSEC

On April 11, 2008, Ms. Grant sent a letter to the SSEC Board of Directors and Dr. Peter Kurtzburg. The letter is attached here to as Attachment 2. In the first paragraph of the letter, Ms. Grant reports the allegations of abuse differently than what she reported to Ms. Scott on March 18<sup>th</sup>, less than a month prior to this letter. The letter alleges abuse against six (6) students in the Mini-School Program spanning January 2008-March 18, 2008. This point was discussed extensively during the Clerk's Hearing and appeal before Judge Cadavan. Additionally, during the meeting with Dr. Savage, Ms. Scott and Ms. Gattine on March 24, 2008, all three aides explicitly told these individuals that the allegations of abuse started after the February 2008 school vacation, despite the fact that the Randolph Police Department's report reference "early February" and "February" as the dates of the incidents.

Ms. Grant's letter is replete with mischaracterizations of the events that occurred between March 18<sup>th</sup> and April 10<sup>th</sup>. SSEC drafted a narrative response to Ms. Grant's letter disputing facts in each paragraph, attached hereto as Attachment 3. Ms. Grant's

letter contradicted what was initially reported to SSEC and the contradictions continued at the Clerk's Hearing on October 20, 2008.

### Clerk's Hearing

#### Testimony of Ms. Grant

During her testimony and particularly on cross-examination, Ms. Grant was unable to consistently and persuasively substantiate her allegations of abuse by Ms. Gibbons. Ms. Grant could not recall the dates of incidents of abuse. Despite being under oath, she denied writing email correspondence containing disparaging remarks about Ms. Gibbons and Ms. Weinberg, the school nurse. When Ms. Gibbons' attorney had Ms. Grant read from the email containing these statements, she was unable to explain her contradictory testimony. When Ms. Gibbons' attorney questioned her about the "road rage" incident while she was driving an SSEC van, Ms. Grant denied the event entirely. Ms. Grant denied seeing any kind of therapist and denied being upset about the school's policy which resulted in the increased cost of insurance. With each assertion, Ms. Gibbons' counsel would provide Ms. Grant with documents and evidence to disprove her statements. In effect, Ms. Grant lied under oath several times during her testimony. During her testimony, Ms. Grant stated that the abuse started sometime in February 2008. As discussed below, this assertion changed during the appeal before Judge Cadavan.

Ms. Grant's testimony revealed that she had ample opportunity to report the allegations of abuse to the parents of the students in Ms. Gibbons' class but failed to do so prior to her conversation with Ms. Scott on March 18, 2008. Ms. Grant testified that she had a close relationship with one of the students (Ethan Goloski) because she worked for his parents, privately, in his home. Despite that close relationship, her testimony at the Clerk's Hearing was that she failed to report the allegations of abuse to these parents, despite having ample opportunity to do so, free from her superiors at the Collaborative. When Ms. Gibbons' counsel questioned Ms. Grant about the daily behavior logs that went home to the parents of the students in the class each day, Ms. Grant testified that there "wasn't enough room" on the form to report this abuse and there was no area designated for this type of communication. A review of the logs shows that there was ample room for any reports of abuse. Despite her testimony that she was witnessing what she deemed to be abuse, she never documented any of these allegations or made any attempt to communicate this abuse to the parents of the students. Ultimately, Ms. Grant's repeatedly dishonest testimony failed to adequately substantiate her allegations of abuse.

In addition to her contradictory testimony, Ms. Grant behaved in an aggressive and hostile manner during her testimony, becoming flustered when it was plainly obvious that she was not telling the truth under oath. Ms. Grant exemplified this demeanor during her testimony towards Ms. Gibbons' attorney in addition to responding to the clerk's questions. Her behavior was egregious to the point that the clerk asked her to adjust her behavior. While DLC has concluded, through the one interview conducted with Ms. Grant, that it was "hard to believe" that she and two other aides had fabricated stories

about Ms. Gibbons, her testimony and intimidating behavior made such an assertion relatively easy to substantiate.

#### Testimony of Ms. Ericson

Ms. Ericson's testimony at the Clerk's Hearing was similarly vague and inconsistent. While she could not recall specific dates of the incidents of abuse, she alleged that Ms. Gibbons abused every student in the class despite contradictory testimony by Ms. Grant and Ms. Royer. In addition to Ms. Grant and Ms. Royer, Ms. Ericson testified that the abuse began in February 2008, despite signing Ms. Grant's letter stating that the abuse began in January 2008. Ms. Ericson's testimony contradicted Ms. Grant's testimony because they each reported different lengths of the physical restraints. Ms. Ericson testified to a particular incident for a student using the restroom and obtaining possession of an aerosol spray can. This testimony was rebutted by the testimony of the school nurse, Ms. Weinberg, as discussed below. Like Ms. Grant, Ms. Ericson acknowledged that she knew she was a mandated reporter, though she freely admitted to previous investigators that she "never would have come forward" unless others did first. Additionally, Ms. Ericson never reported these incidents prior to March 19<sup>th</sup> and never documented these incidents in any way, on the daily communication logs or otherwise.

In addition to Ms. Ericson's inconsistent testimony, she engaged in intimidating and threatening behavior during her testimony so severe that the clerk repeatedly asked her to adjust her behavior and demeanor, raising his voice with her more than once. Ms. Ericson yelled during her testimony, pointed threateningly at Ms. Gibbons, and attempted to walk around during her testimony. Both Ms. Grant's and Ms. Ericson's demeanor was so threatening that it was hard to imagine a first year aide, such as Ms. Royer, standing up to either of them in defiance.

#### Testimony of Ms. Royer

Ms. Royer's testimony was similarly inconsistent. She testified that the length, duration and frequency of physical restraints were different than what Ms. Ericson reported. In addition, when Ms. Royer was asked to provide a visual demonstration of how the "wrist bending" would occur, she demonstrated the "wrist bend" differently than Ms. Grant and Ms. Ericson. While they visually demonstrated this action as fingers pointed downward, Ms. Royer demonstrated a wrist bend backward with fingers pointed upward. Ms. Royer testified that she knew what a mandated reporter was and that she did not report the allegations of abuse until March 19<sup>th</sup>. In addition, she failed to document any of the incidents of abuse, either on the daily behavior logs or otherwise. In general, Ms. Royer reported a smaller number of incidents of abuse and this testimony conflicted with Ms. Ericson's testimony in particular, who asserted that this abuse was ongoing and consistently happening throughout the day.

Unlike the behavior of Ms. Grant and Ms. Ericson, Ms. Royer was much softer spoken. In fact, it was difficult to hear her testimony because she spoke so softly. Ms.

Scott testified during the Clerk's Hearing that prior to the allegations of abuse, Ms. Grant and Ms. Ericson mistreated Ms. Royer. During Ms. Scott's testimony, she recounted one conversation she had with Ms. Royer that spring. During this conversation, Ms. Royer told Ms. Scott that the allegations were a "possible misperception." As a first year employee at SSEC, trying to have a peaceful work environment with two aides in her classroom, it seemed that Ms. Royer's testimony was provided in an effort to avoid further confrontation with the other two aides. In addition to this perception, her testimony was similarly inconsistent.

#### Appeal to Judge Cadavan

The appeal of the clerk-magistrate's opinion included two additional days of witness testimony and cross examination. The testimony provided by the three aides was inconsistent and at times contradictory to each other as well as to previous testimony during the Clerk's Hearing. Ms Grant denied being spoken to about insubordination in her position at the Collaborative. In addition, she denied the "road rage" incident as she had previously done in the Clerk's Hearing. Both of these assertions were rebutted with documents and testimony by SSEC staff. Ms. Ericson testified that she showed Ms. DiChristofaro scratches on Ethan Goloski during gym class. At both the Clerk's Hearing and the appeal, Ms. DiChristofaro denied that this ever happened. At the appeal, the aides testified that the abusive behavior they witnessed began in January 2008. This testimony was different than what was originally reported to Ms. Scott, reported to DCF, reported to Sergeant Marag, and what was told to the clerk-magistrate.

The severity of the incidents reported changed during the aides' testimony at the appeal before Judge Cadavan. When Judge Cadavan asked these aides what they meant by "abusive" behaviors, he received answers that significantly varied. The aides reported such incidents as one of the students did not have enough snack choices, one of the students was crying during a fire alarm and that the alarm itself was unnecessary, one of the students was asked to run during gym class, and one of the students was not allowed to ride in the van after going swimming. These definitions of abuse exemplify that the aides did not understand much of what was happening in the class or how to accurately define the term abuse. Ms. Weinberg testified to this point in both proceedings. She stated that she believed these aides had problems with the students' behavior support plans and that it was likely that they did not understand the value of some of the practices in the class, as they were not teachers. In the example of the student on the van, the student in question has a seizure disorder that causes him to seize while he sleeps. This student was not allowed to ride in the van after swimming in an effort to avoid the onset of seizures. To the untrained eye, this practice would seem unfair but at no point were these practices abusive toward the students and in many cases consistent with accommodations and services listed in their IEPs.

In addition to inconsistent testimony, two of the aides (Ms. Grant and Ms. Ericson) continued to engage in aggressive, hostile and intimidating behavior during the proceedings. Because all witnesses scheduled to testify were sequestered, the witnesses waited outside of the court room in a large waiting area. Despite being instructed not to

discuss their testimony, the aides were overhead specifically discussing their testimony and making threatening and harassing remarks to the SSEC staff who were scheduled to testify.

The SSEC staff members who previously testified during the Clerk's Hearing were called again to testify in the appeal. Ms. Gibbons' attorney also called two additional witnesses to testify during this appeal. He called a teacher's aide, Christine Merritt, and the Program Director, Mary Ellen Pambookian, both of whom were situated in the classroom next door to Ms. Gibbons' classroom. Both Ms. Merritt and Ms. Pambookian testified that they each were in and out Ms. Gibbons' classroom for various reasons throughout the day, often times unannounced. Neither Ms. Merritt nor Ms. Pambookian ever witnessed the alleged "wrist bending," aggressive or intimidating behaviors, or any other abusive conduct by Ms. Gibbons. Ms. Pambookian, as a Program Director of a different program than the Mini-School, testified to the fact that she knew the aides in addition to Ms. Gibbons and that had any of the aides felt uncomfortable reporting these allegations to Ms. Scott, she surely would have been able to assist them with their reporting of the allegations of abuse. However, none of the aides ever reported abuse to Ms. Pambookian.

During the appeal, the three aides presented accounts of abuse that differed from the Clerk's Hearing, the initial report, the police report, and the DCF investigation. The repeated variations of the incidents, the changing visual demonstrations of "wrist bending," the changing number of victims, the varying length of the physical restraint holds, the changing dates of when these incidents did and did not occur all suggest that the aides were not being truthful in the reporting of these allegations of abuse. In addition to their inconsistent testimony, they consistently and repeatedly testified that they did not report the allegations of abuse to the parents of these students despite having ample opportunity to do so. All three aides testified during the appeal that they understood that they were mandated reporters and that they had an obligation to report any suspected abuse or neglect.

### Lack of Physical Evidence

The DLC investigator interviewed the parents of the students who were allegedly victimized and indicated that the parents noticed changes in their children, marks on their bodies, and ultimately that the parents believed Ms. Gibbons had abused their children. However, there is a complete lack of physical evidence of abuse of these children. The last page of the DCF investigation, which includes the conclusions of the DCF investigators, specifically states:

*"We spoke with all of the children's primary care physicians and they did not have concerns to report about the care of the children or that there have been any concerns that any of the children have been abused in the past."*

In addition to the fact that DCF specifically spoke to the doctors of these children, none of the Parents ever came forward with any concerns about the safety of their children until after learning of the allegations of abuse. As part of her testimony during the appeal, Ms. Scott stated that she offered a parents group every other week on Wednesday mornings. None of the parents of any of these students ever attended a single meeting. When the allegations were first brought to the attention of Ms. Scott, Ms. Scott personally called the parents of the two students Ms. Grant referenced. As Ms. Scott testified during the appeal before Judge Cadavan, Ms. Quill stated to Ms. Scott, "I give my son a bath every night and would know if he was being abused." Notably, DLC relies on the parents' reporting of changes in their children's behavior to substantiate the claims alleged by the aides. However, some of these statements explicitly state that the cause of changes in behavior are unknown, even to the parents. In some cases, the student's medications had changed or educational programming had changed. Therefore, changes in the students' behavior is simply not conclusive evidence that these children were abused by Ms. Gibbons.

#### Randolph Police Department's Investigation and Sergeant Marag's Testimony

It is critical for DLC to note that despite the Randolph Police Department's own investigation into these allegations, there was a six (6) month lag in the application for a criminal complaint. Sergeant Marag was specifically questioned about this lag by the clerk-magistrate and, in the opinion of the clerk, failed to provide a satisfactory answer. The Randolph Police Department had ample time to file an application for a criminal complaint between April and September 2008, but they failed to act on this matter in a timely manner. While DLC relies on Sergeant Marag's statement that he believed that Ms. Royer was "telling the truth," such a qualifying statement presumes that he did not believe Ms. Grant or Ms. Ericson were being truthful. Had Sergeant Marag believed all three aides were telling the truth, it would have made no sense to limit the statement to Ms. Royer. While Sergeant Marag testified before the clerk-magistrate that he identified an inconsistency in the statements give by Ms. Weinberg, the clerk-magistrate concluded that no inconsistency existed and further stated that had there truly been belief that this abuse occurred, the Randolph Police Department would not have waited 6 months to file an application for a criminal complaint. SSEC believes that the Randolph Police Department was delayed in filing an application for criminal compliant because Sergeant Marag himself doubted the veracity of the allegations.

#### Ms. Gibbons' Employee Record

Prior to the allegations of abuse, Ms. Gibbons worked as a special education teacher at SSEC for six (6) years. Ms. Gibbons' personnel file shows positive evaluations and no prior incidents of any form of abusive conduct. Ms. Gibbons was a popular teacher among parents in addition to being a respected teacher within the SSEC community. The DLC report fails to consider Ms. Gibbons' exemplary employee record in its entirety. While highlighting the personnel records of Ms. Grant and Ms. Ericson and ultimately using their personnel records to substantiate their claims, it seems significantly biased to disregard the same evidence regarding Ms. Gibbons. Additionally,

the evidence that DLC did consider regarding Ms. Gibbons and these allegations (i.e. the testimony of several professionals who worked with these children inside and outside the classroom) was dismissed in sum as bias. SSEC rejects DLC's contentions that its staff were biased towards Ms. Gibbons and asserts that all of these witnesses testified at two separate proceedings sincerely and honestly. Further, SSEC rejects the implicit assertion within this conclusion that eight (8) professionals at SSEC failed to report incidents of abuse and/or neglect. To assert that all of these witnesses would lie under oath for Ms. Gibbons is a far fetched theory utterly lacking in evidence, considering the fact that the three reporting aides were inconsistently reporting these allegations and in some cases, blatantly lying under oath.

### Testimony of SSEC Staff

In stark contrast to the testimony of the three aides, the SSEC witnesses provided reliable and consistent testimony over the Clerk's Hearing and subsequent appeal before Judge Cadavan. The individuals who testified at the Clerk's Hearing included the Program Director of the Mini School, School Nurse, Occupational Therapist, Speech Therapist, Physical Therapist, and Adaptive Physical Education teacher. In the subsequent appeal, all of these individuals testified again plus another teacher's aide from the adjoining classroom and Program Director of the adjoining classroom. None of these individuals ever saw inappropriate behavior or abusive practices by Ms. Gibbons. Ms. Weinberg was stationed in the classroom and was present for at least two of the incidents discussed (the student's cut lip and the student with the aerosol can in the bathroom). In both cases, Ms. Weinberg's testimony differed radically from the aides' testimony. The various therapists who were in and out of the room at different times of the day and week all failed to substantiate even a single claim by the three aides. None of their testimony was rebutted and at no point was their testimony impeached by documents or evidence. Significantly, Ms. DiChristofaro testified during the appeal that she has reported allegations of abuse in the past and that she would not hesitate to do the same in the future, with or without support. When Ms. Scott asked Ms. DiChristofaro to monitor Ms. Gibbons during her physical education class, she did not see or report any abusive practices whatsoever. The only testimony that Ms. DiChristofaro could provide was that Ms. Ericson had lied about ever showing her marks on a student on the day in question.

In this case, the aides were reporting that there were seemingly constant instances of abuse occurring in Ms. Gibbons' classroom. However, eight (8) individuals were in and out of that classroom and never saw a single incident. All 8 of these individuals are mandated reporters and professionals in the educational setting. To suggest that these individuals were biased in their testimony ultimately discounts reliable and consistent testimony that withstood cross examination over two separate proceedings.

The DLC investigator repeatedly considers why these aides would lie about the allegations, positing that SSEC had "more to lose" and that even the DCF investigation was questionable because of one supervisor's connection with SSEC<sup>1</sup>. The same

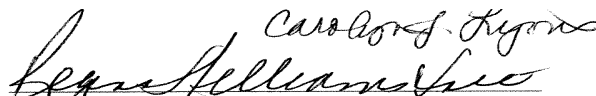
<sup>1</sup> This alleged conflict of interest is tenuous at best. Mr. Madigan did not conduct the DCF investigation and was offering his conclusion based on what his investigators had provided. The investigators concluded

question can be asked regarding the individuals from SSEC who testified. Why would eight (8) separate individuals lie about what they saw, given their professional obligations as mandated reporters? It is highly unlikely that all of these professional individuals would disregard their professional obligations out of allegiance to one teacher or their employer. What did they stand to gain from doing lying?

### III. CONCLUSION

SSEC believes that there is an abundance of evidence that suggests that these aides were not being truthful in the reporting of the allegations of abuse against Ms. Gibbons and that Ms. Gibbons did not engage abusive behavior of her students. There have been numerous independent sources who have thoroughly investigated this matter, all of which have come to the same conclusion: that there is not enough to evidence to suggest that Ms. Gibbons abused her students. A clerk-magistrate and district court judge each ruled that there was a lack of probable cause regarding these allegations. DCF screened out the complaints on more than one occasion. DESE similarly concluded that there was not enough evidence to substantiate the claims. The Randolph Police Department waited a full 6 months to pursue a probable cause hearing. The aides' testimony was inconsistent, dishonest, and thus unreliable while the other SSEC employees' testimony was consistent and trustworthy. The DLC investigation failed to critically analyze any evidence that suggested that the aides were not being honest in their reporting of allegations of abuse and wrongfully discounted contrary testimony without adequate evidence. For the reasons stated above, SSEC believes DLC's investigation was predetermined and biased in its conclusions and that none of the recommendations are warranted or appropriate.

Respectfully submitted,  
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Dated: November 2, 2009

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that there was no evidence that the abuse had occurred. There is no evidence that Mr. Madigan, in agreeing with his investigators, acted improperly in any way.